

110TH CONGRESS
1ST SESSION

S. 40

To authorize the issuance of Federal charters and licenses for carrying on the sale, solicitation, negotiation, and underwriting of insurance or any other insurance operations, to provide a comprehensive system for the Federal regulation and supervision of national insurers and national agencies, to provide for policyholder protections in the event of an insolvency or the impairment of a national insurer, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2007

Mr. SUNUNU (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To authorize the issuance of Federal charters and licenses for carrying on the sale, solicitation, negotiation, and underwriting of insurance or any other insurance operations, to provide a comprehensive system for the Federal regulation and supervision of national insurers and national agencies, to provide for policyholder protections in the event of an insolvency or the impairment of a national insurer, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Insurance Act of 2007”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—OFFICE OF NATIONAL INSURANCE

Subtitle A—Establishment of Office of National Insurance

- Sec. 1101. Establishment.
- Sec. 1102. Commissioner of National Insurance.
- Sec. 1103. Office personnel matters.
- Sec. 1104. Division of Insurance Fraud.
- Sec. 1105. Division of Consumer Affairs.
- Sec. 1106. Insurance self-regulatory organizations.
- Sec. 1107. Office of the Ombudsman.

Subtitle B—Supervision of National Insurers and National Agencies

- Sec. 1121. Examination of national insurers and national agencies.
- Sec. 1122. Examination fees and other assessments.
- Sec. 1123. Disclosure of information.
- Sec. 1124. Reporting requirement.
- Sec. 1125. Regulatory supervision and relationship to State law.
- Sec. 1126. Preservation of office records.
- Sec. 1127. Compliance with anti-money laundering requirements.

Subtitle C—Enforcement of Federal Insurance Laws

- Sec. 1141. National insurer license suspension, restriction, or revocation.
- Sec. 1142. Suspension, restriction, or revocation of Federal license of national agencies and federally licensed insurance producers.
- Sec. 1143. Cease-and-desist proceedings.
- Sec. 1144. Affirmative action to correct conditions resulting from violations or conduct.
- Sec. 1145. Suspension, removal, and prohibition authority.
- Sec. 1146. Suspension or prohibition based on criminal activity.
- Sec. 1147. Ancillary provisions.
- Sec. 1148. Hearings and judicial review of suspension, removal, or prohibition order.
- Sec. 1149. Civil and criminal penalties.
- Sec. 1150. Public disclosures of final orders and agreements.
- Sec. 1151. Foreign investigations.
- Sec. 1152. Action or proceeding against non-United States insurers.
- Sec. 1153. Cooperation between Commissioner and State commissioners.

Subtitle D—Insurance Fraud

- Sec. 1161. Investigation of insurance fraud.
- Sec. 1162. Penalties.
- Sec. 1163. Civil remedy.

TITLE II—NATIONAL INSURANCE COMPANIES AND NATIONAL INSURANCE AGENCIES

Subtitle A—Organization, Licensing, and Operations

- Sec. 1201. Organization, operation, and regulation of national insurance companies and national insurance agencies.
- Sec. 1202. United States branches of non-United States insurers.
- Sec. 1203. Federal licensing of national insurers.
- Sec. 1204. Corporate governance.
- Sec. 1205. Participating policy procedures.
- Sec. 1206. Conversion of State insurer to national insurer or State insurance agency to national agency.
- Sec. 1207. Conversion of national insurer to State insurer or national agency to State agency.
- Sec. 1208. Powers.
- Sec. 1209. Separate accounts of national life insurer.
- Sec. 1210. Protected cells.
- Sec. 1211. Chartering and licensing commencement date.

Subtitle B—Financial, Product, and Market Regulations

- Sec. 1212. Transitional financial regulations.
- Sec. 1213. Other financial regulations.
- Sec. 1214. Product regulation for national life insurers.
- Sec. 1215. Product regulation for national property/casualty insurers.
- Sec. 1216. Regulation of sales and marketing.
- Sec. 1217. Prompt corrective action.

Subtitle C—Reinsurance

- Sec. 1221. Federal licensing of reinsurers.
- Sec. 1222. Credit for insurance ceded by a national insurer or federally licensed reinsurer.
- Sec. 1223. Relationship to State law.
- Sec. 1224. Freedom of commercial contract.
- Sec. 1225. Review by the Commissioner.

Subtitle D—Acquisitions of Control; Mergers; Bulk Transfers; Domestication

- Sec. 1231. Acquisition of control of national insurers.
- Sec. 1232. Mergers, consolidations, and acquisitions of national insurers.
- Sec. 1233. Bulk transfers.
- Sec. 1234. Domestication of United States branch of a non-United States insurer.
- Sec. 1235. Mergers, consolidations, and acquisitions of national agencies.

Subtitle E—Conversions

- Sec. 1241. Definitions.
- Sec. 1242. Conversion of stock life insurer to national life insurer in mutual form.
- Sec. 1243. Conversion of mutual insurer to national insurer in stock form.

Subtitle F—State Taxation

- Sec. 1251. State taxation of national insurers.
- Sec. 1252. State taxation of national agencies.
- Sec. 1253. State taxation of non-admitted and surplus lines insurance.

TITLE III—INSURANCE PRODUCERS AND OTHER INSURANCE SERVICING PERSONS

- Sec. 1301. Federal licensing of insurance producers.
- Sec. 1302. Producer database.
- Sec. 1303. Supervision and oversight of federally licensed insurance producers.
- Sec. 1304. Relationship to State law.
- Sec. 1305. Licensing commencement date.

TITLE IV—HOLDING COMPANIES

- Sec. 1401. Definitions.
- Sec. 1402. Registration.
- Sec. 1403. Standards and management of a national insurer within an insurance holding company system.
- Sec. 1404. Relationship to State law.
- Sec. 1405. Conflict with other Federal laws.
- Sec. 1406. No delegation permitted.

TITLE V—RECEIVERSHIP

- Sec. 1501. Appointment of Office as receiver.
- Sec. 1502. Effect of receivership proceeding.
- Sec. 1503. Powers and duties.
- Sec. 1504. Rulemaking.
- Sec. 1505. Judicial review.

TITLE VI—INSOLVENCY PROTECTION

- Sec. 1601. Participation in guaranty associations.
- Sec. 1602. Qualified and nonqualified associations.
- Sec. 1603. Establishment of the National Insurance Guaranty Corporation.
- Sec. 1604. Benefits for policyholders of national life insurers.
- Sec. 1605. Claims covered for policyholders of national property/casualty insurers.
- Sec. 1606. Powers and duties of the Corporation.
- Sec. 1607. Subrogation.
- Sec. 1608. Assessments.
- Sec. 1609. Regulations.
- Sec. 1610. State taxation.
- Sec. 1611. Examination of the Corporation; annual report.
- Sec. 1612. Immunity.

TITLE VII—CONFORMING AMENDMENTS AND MISCELLANEOUS PROVISIONS

- Sec. 1701. Nondiscrimination.
- Sec. 1702. Application of the Federal antitrust laws to national insurers, national agencies, and federally licensed insurance producers.
- Sec. 1703. Application of State law and regulation to national insurers, national agencies, and federally licensed insurance producers.
- Sec. 1704. Federal court jurisdiction.

Sec. 1705. Federal court venue.
 Sec. 1706. Judicial review.
 Sec. 1707. Amendment to the Freedom of Information Act.
 Sec. 1708. Amendments to the Federal securities laws.
 Sec. 1709. Amendments to the Employee Retirement Income Security Act of 1974.
 Sec. 1710. Amendments to the Gramm-Leach-Bliley Act.
 Sec. 1711. Amendments to the Federal Deposit Insurance Act.
 Sec. 1712. Amendments to the Bank Holding Company Act of 1956.
 Sec. 1713. Amendments to title 18 (crimes and criminal procedure).
 Sec. 1714. Amendments to the Americans with Disabilities Act of 1990.
 Sec. 1715. Amendment to the Age Discrimination in Employment Act.
 Sec. 1716. Amendments to the Fair Credit Reporting Act.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to establish a comprehensive system of Fed-
 4 eral chartering, licensing, regulation, and supervision
 5 for insurers and insurance producers that is inde-
 6 pendent of the State system of insurance licensing,
 7 regulation, and supervision, yet that requires feder-
 8 ally chartered and licensed insurers and producers to
 9 comply with certain State laws, including State tax
 10 laws;

11 (2) to provide for the creation of an Office of
 12 National Insurance within the Department of the
 13 Treasury that is funded by assessments imposed
 14 upon federally chartered and licensed insurers and
 15 insurance producers; and

16 (3) to provide for the appointment of a Com-
 17 missioner of National Insurance, who, among other
 18 duties, is authorized—

1 (A) to issue Federal charters and licenses
 2 to insurers and insurance producers;

3 (B) to exclusively regulate and supervise
 4 the operations and solvency of federally char-
 5 tered or licensed insurers and producers on a
 6 uniform, nationwide basis, including the con-
 7 duct of such insurers and producers with policy-
 8 holders; and

9 (C) to protect the interests of policyholders
 10 by establishing a comprehensive scheme for the
 11 receivership for federally chartered insurers
 12 that requires federally chartered insurers to
 13 participate in qualified State guaranty funds.

14 **SEC. 3. DEFINITIONS.**

15 In this Act, the following definitions shall apply:

16 (1) **AFFILIATE.**—The term “affiliate” means
 17 any person that controls, is controlled by, or is
 18 under common control with another person.

19 (2) **BUSINESS ENTITY.**—The term “business
 20 entity” means a corporation, association, partner-
 21 ship, trust, limited liability company, limited liability
 22 partnership, or other legal entity.

23 (3) **BUSINESS OF INSURANCE.**—The term
 24 “business of insurance” has the meaning given to

1 such term in section 1033(f) of title 18, United
2 States Code.

3 (4) COMMISSIONER.—The term “Commis-
4 sioner” means the Commissioner of National Insur-
5 ance.

6 (5) CONTROL.—

7 (A) IN GENERAL.—The term “control”, in-
8 cluding the terms “controlling”, “controlled
9 by”, and “under common control with” means
10 the possession, direct or indirect, of the power
11 to direct or cause the direction of the manage-
12 ment and policies of a person, whether through
13 the ownership of voting securities, by contract
14 or otherwise, unless the power is the result of
15 an official position with or corporate office held
16 by a person.

17 (B) SPECIAL RULE.—For purposes of sec-
18 tions 1204(c), 1231, 1243(g), and title IV, con-
19 trol shall be presumed to exist if any person, di-
20 rectly or indirectly, owns, controls, holds with
21 the power to vote, or holds proxies representing,
22 10 percent or more of the voting securities of
23 any other person.

1 (6) CORPORATE GOVERNANCE PROCEDURES.—

2 The term “corporate governance procedures” in-
3 cludes rules governing—

4 (A) corporate finance;

5 (B) shareholders, members, policyholders,
6 directors, and officers and meetings, elections,
7 voting, and notice relating to such persons;

8 (C) indemnification of directors and offi-
9 cers and insurance for indemnification of direc-
10 tors and officers; and

11 (D) the duties of shareholders, directors,
12 and officers (including any duty of care or duty
13 of fair dealing and any business judgment rule).

14 (7) CORPORATION.—The term “Corporation”
15 means the National Insurance Guaranty Corporation
16 established under section 1603.

17 (8) FEDERAL BANKING AGENCIES.—The term
18 “Federal banking agencies” means the Office of the
19 Comptroller of the Currency, the Board of Gov-
20 ernors of the Federal Reserve System, the Federal
21 Deposit Insurance Corporation, and the Office of
22 Thrift Supervision.

23 (9) FEDERALLY LICENSED INSURANCE PRO-
24 DUCER.—The term “federally licensed insurance
25 producer” means a person, including a national

1 agency and a natural person acting on behalf of a
 2 national agency, that is an insurance producer li-
 3 censed pursuant to section 1301.

4 (10) FRAUDULENT INSURANCE ACT.—The term
 5 “fraudulent insurance act” has the meaning given to
 6 such term in section 1037A(d)(3) of title 18, United
 7 States Code.

8 (11) FUNCTIONAL REGULATOR.—The term
 9 “functional regulator” means—

10 (A) in the case of a broker-dealer, invest-
 11 ment advisor or investment company, the Secu-
 12 rities and Exchange Commission;

13 (B) in the case of a State insurer or State
 14 insurance producer, the appropriate State in-
 15 surance regulator of a State that has jurisdic-
 16 tion over such insurer or insurance producer;

17 (C) in the case of a bank holding company
 18 or financial holding company, the Federal Re-
 19 serve Board;

20 (D) in the case of a savings and loan hold-
 21 ing company, the Office of Thrift Supervision;

22 (E) in the case of a national bank, the Of-
 23 fice of the Comptroller of the Currency;

(F) in the case of a Federal savings bank or Federal savings association, the Office of Thrift Supervision;

(G) in the case of a State bank, the appropriate State banking authority for the State in which the bank is chartered or the Federal Deposit Insurance Corporation, in the case of a State bank that is not a member of the Federal Reserve System, or the Federal Reserve Board, in the case of a State bank that is a member of the Federal Reserve System;

(H) in the case of a State savings bank or State savings association, the appropriate banking authority for the State in which the thrift is chartered; and

(I) in the case of a commodities company, the Commodities Exchange Commission.

(12) FUNCTIONALLY REGULATED AFFILIATE.—

The term “functionally regulated affiliate” means—

(A) a broker or dealer that is registered under the Securities Exchange Act of 1934;

(B) a registered investment adviser, registered by or on behalf of either the Securities and Exchange Commission or any State;

1 (C) an investment company that is reg-
2 istered under the Investment Company Act of
3 1940;

4 (D) a State insurer or State insurance pro-
5 ducer that is subject to supervision by a State
6 insurance regulator;

7 (E) a bank holding company or financial
8 holding company registered with or certified by
9 the Federal Reserve Board;

10 (F) a national bank subject to the super-
11 vision of the Office of the Comptroller of the
12 Currency;

13 (G) a State bank subject to the supervision
14 of a State banking regulator;

15 (H) a Federal savings bank or Federal
16 savings association subject to the supervision of
17 the Office of Thrift Supervision;

18 (I) a State savings bank or State savings
19 association subject to the supervision of a State
20 banking regulator; and

21 (J) a business entity that is subject to reg-
22 ulation by the Commodity Futures Trading
23 Commission, with respect to commodities activi-
24 ties of such entity and activities incidental to
25 such commodities activities.

1 (13) INSOLVENCY; INSOLVENT.—

2 (A) IN GENERAL.—The term “insolvency”
 3 or “insolvent” means the inability of an insurer
 4 to pay its obligations when they are due or
 5 when the assets do not exceed liabilities plus
 6 the greater of—

7 (i) any capital and surplus required
 8 by law for its organization; or

9 (ii) the total par or stated value of its
 10 authorized and issued capital stock.

11 (B) LIABILITIES.—In this paragraph, the
 12 term “liabilities” shall include reserves required
 13 by statute or by rule or specific requirements
 14 imposed by the Commissioner upon an insurer.

15 (14) INSURANCE OPERATIONS.—The term “in-
 16 surance operations” includes—

17 (A) the business of insurance;

18 (B) all acts and transactions relating to
 19 the sale, solicitation, negotiation, and under-
 20 writing of insurance;

21 (C) all acts and transactions relating to
 22 claims adjustment and settlement;

23 (D) all acts and transactions relating to
 24 the establishment of rates, rules, risk classifica-
 25 tions, rating classifications, rating territories,

1 and forms (including, endorsements,
2 addendums, and policy language) for insurance;

3 (E) all acts and transactions relating to
4 marketing and sales practices;

5 (F) financial condition and solvency;

6 (G) holding company transactions; and

7 (H) corporate governance.

8 (15) INSURANCE PERSON.—The term “insur-
9 ance person” has the same meaning as in section
10 1037A(d)(4) of title 18, United States Code.

11 (16) INSURANCE PRODUCER.—The term “in-
12 surance producer”—

13 (A) means any person, including a national
14 agency and a natural person acting on behalf of
15 a national agency, that sells, solicits, or nego-
16 tiates policies of insurance, non-admitted insur-
17 ance, and surplus lines of insurance; and

18 (B) does not include—

19 (i) a national insurer;

20 (ii) an officer, director, or employee of
21 a national insurer or of an insurance pro-
22 ducer—

23 (I) if the officer, director, or em-
24 ployee does not receive any commis-
25 sion or other compensation on insur-

1 ance policies written or sold by the
2 national insurer or insurance pro-
3 ducer, which commission or other
4 compensation is directly dependent
5 upon the amount of insurance policies
6 written or sold; and

7 (II) if—

8 (aa) the activities of the offi-
9 cer, director, or employee are ex-
10 ecutive, administrative, manage-
11 rial, clerical, or a combination
12 thereof, and are only indirectly
13 related to the sale, solicitation, or
14 negotiation of insurance;

15 (bb) the functions of the of-
16 ficer, director, or employee relate
17 to underwriting, loss control, in-
18 spection, or the processing, ad-
19 justing, investigating, or settling
20 of a claim on a policy of insur-
21 ance; or

22 (cc) the officer, director, or
23 employee is acting in the capacity
24 of a special agent or agency su-
25 pervisor assisting insurance pro-

1 ducers where the person's activi-
2 ties are limited to providing tech-
3 nical advice and assistance to
4 federally licensed insurance pro-
5 ducers, and do not include the
6 sale, solicitation, or negotiation
7 of insurance;

8 (iii) a person who secures and fur-
9 nishes information for the purpose of
10 group insurance policies, or for the pur-
11 pose of enrolling individuals under plans,
12 or issuing certificates under plans, or oth-
13 erwise assisting in administering plans,
14 where no commission or other compensa-
15 tion directly dependent upon the amount of
16 insurance policies written or sold is paid to
17 the person for the service;

18 (iv) an employer or association or its
19 officers, directors, employees, or the trust-
20 ees of an employee trust plan, to the extent
21 that the employer, association, officer, di-
22 rector, employee, or trustee is engaged in
23 the administration or operation of a pro-
24 gram of employee benefits for the employ-
25 er's or association's own employees or the

1 employees of its subsidiaries or affiliates,
2 which program involves the use of insur-
3 ance written by the national insurer, as
4 long as the employer, association, officer,
5 director, employee, or trustee is not in any
6 manner compensated, directly or indirectly,
7 by the national insurer;

8 (v) an employee of a national insurer
9 or an organization employed by a national
10 insurer that is engaging in the inspection,
11 rating, or classification of risks, or in the
12 supervision of the training of insurance
13 producers and that is not individually en-
14 gaged in the sale, solicitation, or negotia-
15 tion of insurance;

16 (vi) a person whose activities are lim-
17 ited to advertising without the intent to so-
18 licit insurance through communications in
19 printed publications or other forms of elec-
20 tronic mass media, provided that the per-
21 son does not sell, solicit, or negotiate in-
22 surance;

23 (vii) a salaried full-time employee who
24 counsels or advises his or her employer rel-
25 ative to the insurance interests of the em-

1 ployer or of the subsidiaries or business af-
 2 filiates of the employer provided that the
 3 employee does not sell or solicit insurance
 4 or receive a commission or other com-
 5 pensation directly dependent upon the
 6 amount of insurance policies written or
 7 sold;

8 (viii) a person that sells, solicits, or
 9 negotiates a funding agreement; or

10 (ix) any other kind of person identi-
 11 fied by the Commissioner, by regulation, as
 12 not being an insurance producer for pur-
 13 poses of this Act.

14 (17) INSURANCE SECURITIZATION.—The term
 15 “insurance securitization” means the issuance of
 16 debt instruments by a national insurer, the proceeds
 17 from which support the exposures attributed to a
 18 protected cell, where repayment of principal or inter-
 19 est, or both, to investors under the transaction terms
 20 is contingent upon the occurrence or nonoccurrence
 21 of an event with respect to which the national in-
 22 surer is exposed to loss under insurance policies or
 23 reinsurance contracts it has written.

24 (18) INSURER-AFFILIATED PARTY.—The term
 25 “insurer-affiliated party” means—

1 (A) any director, officer, employee, or con-
2 trolling shareholder of, or agent for, a national
3 insurer or a national agency;

4 (B) any other person who has filed or is
5 required to file a statement with the Commis-
6 sioner under section 1231;

7 (C) any shareholder, consultant, joint ven-
8 ture partner, and any other person as deter-
9 mined by the Commissioner (by regulation or
10 order) who participates in the conduct of the af-
11 fairs of a national insurer or a national agency;
12 and

13 (D) any independent contractor (including
14 any attorney, actuary, or accountant) of a na-
15 tional insurer or a national agency who in that
16 capacity knowingly or recklessly participates in
17 any violation of any law or regulation, any
18 breach of fiduciary duty, or any conduct that
19 involves an undue risk of loss to the policy-
20 holders of a national insurer as a whole, and
21 which violation, breach, or conduct caused or is
22 likely to cause more than a minimal financial
23 loss to, or a significant adverse effect on, a na-
24 tional insurer or the policyholders as a whole of
25 a national insurer.

1 (19) INSURER IN FRATERNAL FORM.—The
2 term “insurer in fraternal form” means an incor-
3 porated society, order, or supreme lodge, without
4 capital stock (generally known as a fraternal benefit
5 society), that—

6 (A) is conducted solely for the benefit of
7 its members and their beneficiaries and not for
8 profit;

9 (B) is operated on a lodge system with rit-
10 ualistic form of work;

11 (C) has a representative form of govern-
12 ment;

13 (D) provides benefits to members and their
14 dependents; and

15 (E) operates for 1 or more social, intellec-
16 tual, educational, charitable, benevolent, moral,
17 fraternal, patriotic, or religious purposes for the
18 benefit of its members, which may also be ex-
19 tended to others.

20 (20) NAIC.—The term “NAIC” means the Na-
21 tional Association of Insurance Commissioners.

22 (21) NATIONAL AGENCY.—The term “national
23 agency” means a national insurance agency char-
24 tered under section 1201.

1 (22) NATIONAL INSURER.—The term “national
2 insurer” means a national insurance company char-
3 tered under section 1201.

4 (23) NATIONAL LIFE INSURER.—The term “na-
5 tional life insurer” means a national insurer that
6 holds a Federal license to sell, solicit, negotiate, and
7 underwrite 1 or both of life insurance and annuities,
8 provided that a national life insurer may also sell,
9 solicit, negotiate, and underwrite disability income
10 insurance, long-term care insurance, and funding
11 agreements.

12 (24) NATIONAL PROPERTY/CASUALTY IN-
13 SURER.—The term “national property/casualty in-
14 surer” means a national insurer that holds a Fed-
15 eral license to sell, solicit, negotiate, and underwrite
16 any combination of lines of property/casualty insur-
17 ance.

18 (25) NEGOTIATE.—The term “negotiate”, in
19 the context of negotiating insurance, means the act
20 of conferring directly with or offering advice directly
21 to a purchaser or prospective purchaser of a par-
22 ticular policy of insurance concerning any of the
23 substantive benefits, terms, or conditions of the con-
24 tract, provided that the person engaged in that act

1 either sells insurance to or obtains insurance cov-
2 erage for purchasers.

3 (26) NON-ADMITTED INSURANCE.—The term
4 “non-admitted insurance” means any property/cas-
5 ualty insurance permitted to be placed directly or
6 through an insurance producer with a non-admitted
7 insurer eligible to accept such insurance.

8 (27) NON-ADMITTED INSURER.—The term
9 “non-admitted insurer” means an insurer that is not
10 licensed to engage in the business of insurance in a
11 State and that—

12 (A) satisfies the eligibility requirements of
13 the State in which an insured maintains its
14 principal place of business, or, in the case of an
15 individual, maintains a principal residence; and

16 (B) is not a national insurer.

17 (28) NON-UNITED STATES INSURER.—The term
18 “non-United States insurer” means a business entity
19 that is organized under the law of a foreign country
20 to sell, solicit, negotiate, and underwrite insurance,
21 but is not so organized under the laws of a State,
22 and is not a national insurer.

23 (29) OFFICE.—The term “Office” means the
24 Office of National Insurance.

1 (30) PARTICIPATING POLICY PROCEDURES.—

2 The term “participating policy procedures”—

3 (A) means the rules applicable to a life in-
 4 surer in mutual form, by which the insurer as-
 5 certains divisible surplus and apportions an
 6 amount of divisible surplus to participating in-
 7 surance policies; and

8 (B) does not include any limitation on the
 9 amount of surplus that may be retained by a
 10 life insurer in mutual form.

11 (31) PERSON.—The term “person” means any
 12 natural person, business entity, governmental body
 13 or entity, voluntary organization, or similar organi-
 14 zation.

15 (32) POLICY OF INSURANCE; INSURANCE POL-
 16 ICY.—The term “policy of insurance” or “insurance
 17 policy” means a policy, contract, certificate, or other
 18 evidence of insurance. “Policy of insurance” or “in-
 19 surance policy” includes an annuity contract and a
 20 funding agreement, but does not include a reinsur-
 21 ance contract.

22 (33) POLICYHOLDER.—The term “policyholder”
 23 of an insurance policy means the person who is iden-
 24 tified as the legal owner under the terms of the in-
 25 surance policy or who is otherwise vested with legal

1 title to the insurance policy. An assignment, absolute
 2 on its face, completed in accordance with the terms
 3 of the insurance policy and properly recording the
 4 assignee as the policyholder on the books of the in-
 5 surer vests legal title in the name of the assignee.
 6 The term “policyholder” does not include a person
 7 with a mere beneficial interest in an insurance policy
 8 or a person to whom an insurance policy is assigned
 9 for collateral security purposes.

10 (34) PROPERTY/CASUALTY INSURANCE.—The
 11 term “property/casualty insurance”—

12 (A) means a product that insures, guaran-
 13 tees, or indemnifies against liability, loss of life,
 14 loss of health, or loss through damage to or de-
 15 struction of property, including surety bonds,
 16 private passenger or commercial automobile,
 17 homeowners, mortgage guaranty, financial
 18 guaranty, commercial multiperil, general liabil-
 19 ity, professional liability, workers’ compensa-
 20 tion, fire and allied lines, farm or ranch owners
 21 multiperil, aircraft, fidelity, surety, medical
 22 malpractice, ocean marine, inland marine, and
 23 boiler and machinery insurance; and

24 (B) does not include life insurance, dis-
 25 ability income insurance, long-term care insur-

1 ance, health insurance, annuities, a funding
2 agreement, or title insurance.

3 (35) PROTECTED CELL.—The term “protected
4 cell” means an identified pool of assets and liabil-
5 ities of a national insurer segregated and insulated
6 from the remainder of the national insurer’s assets
7 and liabilities. The remainder of the national insur-
8 er’s assets and liabilities includes general account
9 assets and liabilities, separate account assets and li-
10 abilities, and assets and liabilities of other protected
11 cells.

12 (36) PROTECTED CELL ACCOUNT.—The term
13 “protected cell account” means a specifically identi-
14 fied bank or custodial account established by a na-
15 tional insurer for the purpose of segregating the pro-
16 tected cell assets of 1 protected cell from the pro-
17 tected cell assets of other protected cells and from
18 the assets of the national insurer’s general account
19 and separate accounts.

20 (37) SELL.—The term “sell”, in the context of
21 selling a policy of insurance, includes exchanging a
22 policy of insurance by any means, for money or any
23 other valuable consideration, on behalf of an insurer.

24 (38) SEPARATE ACCOUNT.—The term “separate
25 account” means an account established and main-

1 tained by a national life insurer under which income,
2 gains, and losses, whether or not realized, from as-
3 sets allocated to such account, are, in accordance
4 with the applicable contract, credited to or charged
5 against such account without regard to other in-
6 come, gains, or losses of the national life insurer.

7 (39) SOLICIT.—The term “solicit”, in the con-
8 text of soliciting a policy of insurance, means at-
9 tempting to sell insurance or asking or urging a per-
10 son to apply for a particular kind of insurance from
11 a particular insurer.

12 (40) STATE.—The term “State” means each of
13 the 50 States, the District of Columbia, the Com-
14 monwealth of Puerto Rico, any territory of the
15 United States, Guam, American Samoa, the Trust
16 Territory of the Pacific Islands, the United States
17 Virgin Islands, and the Commonwealth of the North-
18 ern Mariana Islands.

19 (41) STATE INSURANCE AGENCY.—The term
20 “State insurance agency” means an insurance pro-
21 ducer that is organized under the laws of a State.

22 (42) STATE INSURER.—The term “State in-
23 surer” means an insurer incorporated or organized
24 under the laws of a State.

1 (43) SUBSIDIARY.—The term “subsidiary”
2 means a business entity controlled, directly or indi-
3 rectly, by another business entity. For purposes of
4 this definition—

5 (A) a business entity is conclusively pre-
6 sumed to be controlled by a person that, di-
7 rectly or indirectly, with power to vote, owns,
8 controls, or holds a majority of the outstanding
9 voting securities of such business entity;

10 (B) no presumption, either of control or of
11 absence of control, arises if such ownership,
12 control, or holding of voting securities is less
13 than a majority but more than 5 percent;

14 (C) absence of control is presumed if such
15 ownership, control or holding of voting securi-
16 ties is 5 percent or less; and

17 (D) in determining control, voting securi-
18 ties held in separate accounts of a business en-
19 tity shall be deemed to be owned by the busi-
20 ness entity, but voting securities in an invest-
21 ment advisory account that are not owned by a
22 business entity but are held in an account as to
23 which the business entity is an investment ad-
24 viser shall not be deemed to be controlled or
25 held by such business entity.

1 (44) SURPLUS LINES OF INSURANCE.—The
2 term “surplus lines of insurance” means insurance
3 on properties, risks, or exposures located or to be
4 performed in a State with a non-admitted insurer
5 that is sold, solicited, or negotiated by a national
6 agency, federally licensed insurance producer, or
7 other insurance producer.

8 (45) TITLE INSURANCE.—The term “title in-
9 surance” or “business of title insurance” means any
10 of the following:

11 (A) A contract insuring or indemnifying
12 the owners of real or personal property, or
13 other persons lawfully interested therein,
14 against loss or damage arising from any of the
15 following conditions, or the reinsurance thereof:

16 (i) Defects in or any liens or encum-
17 brances on the insured title.

18 (ii) Unmarketability of the insured
19 title.

20 (iii) Invalidity, lack of priority, or un-
21 enforceability of any liens or encumbrances
22 on the stated property.

23 (iv) Lack of legal right of access to
24 the land.

1 (v) Unenforceability of rights in title
2 to the real or personal property.

3 (B) Insuring the correctness of searches
4 and examinations of all instruments, liens, or
5 charges affecting the title to real or personal
6 property.

7 (C) Procuring and furnishing information
8 relative to the title to real or personal property,
9 including abstracting, searching, and examining
10 titles.

11 (D) Handling escrows, settlements, or clos-
12 ings done in conjunction with subparagraph
13 (A), (B), (C), (E), or (F).

14 (E) Any product or service defined by the
15 laws of any State, whether by statute, regula-
16 tion, or administrative determination, as title
17 insurance.

18 (F) Doing or proposing to do any business
19 substantially equivalent to any of the activities
20 described in this paragraph, in a manner de-
21 signed to evade the provisions of this Act.

22 (46) TITLE INSURER.—The term “title insurer”
23 means a company organized under the laws of a
24 State for the purpose of conducting the business of
25 title insurance.

1 (47) TRUSTEED ASSETS.—The term “trusteed
2 assets” means, with respect to a United States
3 branch, assets required or permitted by this title to
4 be deposited by a non-United States insurer with a
5 qualified trustee for the security of its policyholders
6 and creditors in the United States.

7 (48) TRUSTEED SURPLUS.—The term “trusteed
8 surplus” means, with respect to a United States
9 branch, the value of the insurer’s trustee assets de-
10 posited with a trustee under section 1202(b), plus
11 accrued investment income thereon where such in-
12 come is collectible by the trustee, less the aggregate
13 net amount of all of its reserves and other liabilities
14 in the United States as determined under section
15 1202(b).

16 (49) UNITED STATES BRANCH.—The term
17 “United States branch” means the business unit
18 through which business is transacted within the
19 United States by a non-United States insurer and
20 the assets and liabilities of the insurer within the
21 United States pertaining to such business.

22 (50) UNITED STATES HOLDING COMPANY.—
23 The term “United States holding company” means,
24 with respect to a national insurer, a person orga-

1 nized or incorporated in a State that directly or indi-
 2 rectly controls a national insurer.

3 (51) VIOLATION.—The term “violation” in-
 4 cludes any action or inaction (alone or with another
 5 or others) for or toward causing, bringing about,
 6 participating in, counseling, or aiding or abetting a
 7 violation.

8 (52) VOTING SECURITIES.—The term “voting
 9 securities” means securities of any class or any own-
 10 ership interest having voting power for the election
 11 of directors, trustees, or management of a business
 12 entity, other than securities having such power only
 13 by reason of the happening of a contingency.

14 **TITLE I—OFFICE OF NATIONAL**
 15 **INSURANCE**
 16 **Subtitle A—Establishment of Office**
 17 **of National Insurance**

18 **SEC. 1101. ESTABLISHMENT.**

19 (a) IN GENERAL.—There is established, in the De-
 20 partment of the Treasury, the Office of National Insur-
 21 ance, which shall be headed by the Commissioner of Na-
 22 tional Insurance.

23 (b) OFFICES.—The Commissioner shall establish a
 24 main office in Washington, D.C., not fewer than 6 regional
 25 offices, and such additional offices, within or outside the

1 United States, as the Commissioner determines to be nec-
 2 essary to carry out the provisions of this Act.

3 (c) FUNDING.—The operations of the Office, includ-
 4 ing the compensation of the Commissioner and all employ-
 5 ees of the Office, shall be paid from fees and assessments
 6 imposed under the terms of section 1122.

7 (d) APPLICABILITY OF ADMINISTRATIVE PROCE-
 8 DURES ACT.—The Office shall be an agency of the United
 9 States for purposes of subchapter II of chapter 5 and
 10 chapter 6 of title 5, United States Code.

11 (e) ANNUAL REPORT.—The Commissioner shall pre-
 12 pare and submit to Congress an annual report on the ac-
 13 tivities of the Office.

14 **SEC. 1102. COMMISSIONER OF NATIONAL INSURANCE.**

15 (a) APPOINTMENT.—

16 (1) IN GENERAL.—The Commissioner of Na-
 17 tional Insurance shall be appointed by the President,
 18 by and with the advice and consent of the Senate,
 19 from among individuals who are citizens of the
 20 United States.

21 (2) TERM.—The Commissioner shall be ap-
 22 pointed for a term of 5 years.

23 (3) VACANCY.—A vacancy in the position of the
 24 Commissioner, which occurs before the expiration of
 25 the term for which the Commissioner was appointed

1 shall be filled in the manner established under para-
 2 graph (1). The Commissioner appointed to fill the
 3 vacancy shall be appointed only for the remainder of
 4 the term of the preceding Commissioner.

5 (4) SERVICE AFTER TERM.—An individual may
 6 serve as the Commissioner after the expiration of
 7 the term for which appointed until the earlier of—

8 (A) such time as a successor has been ap-
 9 pointed; or

10 (B) 1 year after the expiration of the indi-
 11 vidual's term.

12 (5) PROHIBITION ON FINANCIAL INTERESTS.—
 13 The Commissioner may not have a direct or indirect
 14 financial interest in any national insurer, national
 15 agency, or other federally licensed insurance pro-
 16 ducer, except that the Commissioner may own, di-
 17 rectly or indirectly, or may have a direct or indirect
 18 beneficial interest in any insurance policy written or
 19 sold by a national insurer or national agency.

20 (6) OVERSIGHT.—The Commissioner shall be
 21 subject to the general oversight of the Secretary of
 22 the Treasury, who may not intervene in any matter
 23 or proceeding before the Commissioner unless other-
 24 wise specifically provided by law.

25 (7) EXECUTIVE SCHEDULE.—

1 (A) IN GENERAL.—The Commissioner
 2 shall receive compensation at the rate pre-
 3 scribed by law under section 5314 of title 5,
 4 United States Code, for positions at level III of
 5 the Executive Schedule.

6 (B) TECHNICAL AMENDMENT.—Section
 7 5314 of title 5, United States Code, is amended
 8 by inserting “Commissioner of National Insur-
 9 ance, Department of the Treasury.” as a new
 10 item after “Administrator, Pipeline and Haz-
 11 ardous Materials Safety Administration.”.

12 (b) POWERS OF THE COMMISSIONER.—

13 (1) IN GENERAL.—

14 (A) POWERS.—The Commissioner shall—

15 (i) oversee the organization, incorpo-
 16 ration, operation, regulation, and super-
 17 vision of national insurers and national
 18 agencies;

19 (ii) issue charters and licenses for na-
 20 tional insurers and national agencies;

21 (iii) license, regulate, and supervise
 22 federally licensed insurance producers
 23 other than national agencies; and

24 (iv) have exclusive authority to deter-
 25 mine whether a person subject to this Act

1 has complied with the Act or the applica-
2 tion of any State law to matters regulated
3 under this Act, including the determination
4 of any complaint raised by any person.

5 (B) FINAL AGENCY ACTION.—A deter-
6 mination of the Commissioner under subpara-
7 graph (A)(iv) shall be the final agency action
8 for purposes of judicial review of that action.

9 (2) RULEMAKING.—

10 (A) ISSUANCE OF REGULATIONS AND
11 OTHER ACTIONS.—The Commissioner may issue
12 such rules, regulations, orders, and interpreta-
13 tions as the Commissioner determines to be
14 necessary to carry out the purposes of this Act.

15 (B) AUTONOMY.—The Secretary of the
16 Treasury may not delay or prevent the issuance
17 of any rule, regulation, order, or interpretation
18 by the Commissioner, unless otherwise specifi-
19 cally authorized by law.

20 (C) NO DELEGATION PERMITTED.—The
21 Commissioner may not delegate any authority
22 conferred under subparagraph (A) to any insur-
23 ance self-regulatory organization.

24 (3) LITIGATION AUTHORITY.—

1 (A) IN GENERAL.—The Commissioner may
2 sue and be sued, complain and defend, and oth-
3 erwise litigate, in the Commissioner’s name and
4 through the Commissioner’s own attorney, in
5 any Federal or State court, other than the Su-
6 preme Court of the United States in which the
7 Commissioner shall be represented by the Solie-
8 itor General of the United States.

9 (B) ENFORCEMENT.—The Commissioner
10 may apply to the United States district court
11 for the jurisdiction in which the main office of
12 a national insurer or national agency is located,
13 or in which any other federally licensed insur-
14 ance producer or other person is located, for the
15 enforcement of any effective and outstanding
16 rule, regulation, order, or interpretation issued
17 pursuant to this Act.

18 (4) CONSULTATION WITH STATE INSURANCE
19 REGULATORS.—The Commissioner may, as appro-
20 priate, consult with State insurance regulators re-
21 sponsible for the supervision of States insurers,
22 State insurance agencies, and State licensed insur-
23 ance producers regarding regulatory and supervisory
24 matters of common interest.

1 (5) INTERNATIONAL COORDINATION AND CO-
2 OPERATION.—

3 (A) IN GENERAL.—The Commissioner may
4 engage in international efforts to secure bilat-
5 eral and multilateral cooperation and agree-
6 ments, as appropriate, with respect to insurance
7 regulation in global markets in order to pro-
8 mote open and fair competition in such markets
9 and to improve the quality and uniformity of in-
10 surance regulation in all countries.

11 (B) FOREIGN INSURANCE REGULATORS.—
12 The Commissioner may provide appropriate
13 technical assistance to, and cooperation with,
14 individual foreign insurance regulators and re-
15 gional and global regulatory organizations in in-
16 surance matters affecting international com-
17 merce, including—

18 (i) the development and implementa-
19 tion of international regulatory standards;
20 and

21 (ii) the development and implementa-
22 tion of bilateral and multilateral mutual
23 recognition agreements on the licensing of
24 insurance companies and insurance pro-
25 ducers.

1 (C) CONSULTATION AND COOPERATION.—

2 In exercising the authority granted under sub-
3 paragraphs (A) and (B), the Commissioner—

4 (i) shall consult and cooperate with
5 the Executive Office of the President and
6 the United States Trade Representative;
7 and

8 (ii) may include a representative of
9 any interested State insurance regulators
10 as the Commissioner determines to be ap-
11 propriate.

12 (6) INDEPENDENCE IN CONGRESSIONAL TESTI-
13 MONY AND RECOMMENDATIONS.—Section 111 of
14 Public Law 93–495 (12 U.S.C. 250) is amended by
15 inserting “the Commissioner of National Insurance,”
16 after “the Director of the Office of Thrift Super-
17 vision,”.

18 (c) GAO AUDIT.—The Commissioner shall make
19 available to the Comptroller General of the United States
20 all books and records necessary to audit all of the activities
21 of the Office.

22 **SEC. 1103. OFFICE PERSONNEL MATTERS.**

23 (a) IN GENERAL.—The Commissioner may employ
24 such examiners, lawyers, accountants, actuaries, and other

1 employees as are necessary to carry out the provisions of
2 this Act.

3 (b) COMPENSATION.—The Commissioner shall fix the
4 compensation and number of employees of the Office with-
5 out regard to chapter 51 or subchapter III of chapter 53
6 of title 5, United States Code.

7 (c) ADDITIONAL COMPENSATION.—The Commis-
8 sioner may provide additional compensation and benefits
9 to employees of the Office if the same type of compensa-
10 tion or benefits are then being provided by any Federal
11 banking agency or, if not then being provided, could be
12 provided by any such agency under applicable provisions
13 of law or regulation. In setting and adjusting the total
14 amount of compensation and benefits for employees of the
15 Office, the Commissioner shall consult, and seek to main-
16 tain comparability with, the Federal banking agencies.

17 (d) ACTING COMMISSIONER.—The Commissioner
18 shall designate an employee of the Office to serve as the
19 Acting Commissioner during the absence or disability of
20 the Commissioner.

21 (e) DELEGATION OF POWERS.—

22 (1) EMPLOYEES AND OTHERS.—Unless other-
23 wise prohibited by this Act, the Commissioner may
24 delegate to any employee, representative, or agent
25 any power of the Commissioner.

1 (2) SELF-REGULATORY ORGANIZATIONS.—Un-
 2 less otherwise prohibited by this Act, the Commis-
 3 sioner may, by regulation, delegate to any insurance
 4 self-regulatory organization any power of the Com-
 5 missioner in accordance with the terms of section
 6 1106.

7 **SEC. 1104. DIVISION OF INSURANCE FRAUD.**

8 (a) ESTABLISHMENT.—There is established, within
 9 the Office, a Division of Insurance Fraud.

10 (b) AUTHORITY.—The Division of Insurance Fraud
 11 shall have all powers necessary to enforce the terms of
 12 subtitle D, other than the power to execute search and
 13 arrest warrants.

14 **SEC. 1105. DIVISION OF CONSUMER AFFAIRS.**

15 (a) ESTABLISHMENT.—There is established, within
 16 the Office, a Division of Consumer Affairs.

17 (b) AUTHORITY.—The Division of Consumer Affairs
 18 shall support the Commissioner in the implementation and
 19 enforcement of the market conduct regulations issued pur-
 20 suant to section 1216.

21 **SEC. 1106. INSURANCE SELF-REGULATORY ORGANIZA-**
 22 **TIONS.**

23 (a) AUTHORITY OF THE COMMISSIONER.—Subject to
 24 the terms of this section, and the regulations issued pursu-

1 ant to this section, the Commissioner shall have the au-
 2 thority to—

3 (1) provide for the registration of an insurance
 4 self-regulatory organization; and

5 (2) supervise and regulate any registered insur-
 6 ance self-regulatory organization, which shall include
 7 the authority to—

8 (A) review, approve, abrogate, modify, or
 9 add to the operating rules of an insurance self-
 10 regulatory organization;

11 (B) review, approve, abrogate, or modify
 12 any disciplinary action taken by an insurance
 13 self-regulatory organization;

14 (C) remove, suspend, or bar an individual
 15 from serving as an officer or director of an in-
 16 surance self-regulatory organization;

17 (D) remove or suspend a member of an in-
 18 surance self-regulatory organization; and

19 (E) suspend or revoke the registration of
 20 an insurance self-regulatory organization.

21 (b) AUTHORITY OF REGISTERED INSURANCE SELF-
 22 REGULATORY ORGANIZATIONS.—An insurance self-regu-
 23 latory organization that is registered by the Commissioner
 24 shall have the authority to—

25 (1) carry out the purpose of this Act; and

1 (2) enforce compliance by its members with the
2 provisions of this Act, applicable regulations issued
3 by the Commissioner, and the rules of the organiza-
4 tion.

5 (c) MEMBERSHIP.—An insurance self-regulatory or-
6 ganization may be formed by, and consist exclusively of—

7 (1) national insurers;

8 (2) national agencies;

9 (3) federally licensed insurance producers; or

10 (4) any combination of national insurers, na-
11 tional agencies, and federally licensed insurance pro-
12 ducers.

13 (d) REGULATIONS.—Not later than 2 years after the
14 date of enactment of this Act, the Commissioner shall
15 issue regulations governing the registration and operations
16 of insurance self-regulatory organizations. Such regula-
17 tions shall establish—

18 (1) the procedures insurance self-regulatory or-
19 ganizations must follow to be registered by the Com-
20 missioner, which shall provide for public notice and
21 an opportunity for public comment on the proposed
22 registration;

23 (2) the standards that the Commissioner shall
24 apply in reviewing a proposed registration, which

1 shall require an insurance self-regulatory organiza-
2 tion to demonstrate that—

3 (A) it has the capacity to—

4 (i) carry out the purpose of this Act;

5 and

6 (ii) enforce compliance by its members
7 with the provisions of this Act, applicable
8 regulations, and the rules of the organiza-
9 tion; and

10 (B) its operating rules—

11 (i) assure a fair representation of its
12 members in the selection of its directors
13 and the administration of its affairs;

14 (ii) provide for the equitable allocation
15 of fees, dues, and other charges among its
16 members;

17 (iii) provide for the organization to
18 take appropriate disciplinary actions
19 against members, including the revocation
20 of membership status, for violations of this
21 Act, the regulations issued pursuant to this
22 Act, or the operating rules of the organiza-
23 tion; and

24 (iv) include procedures for members
25 that are subject to disciplinary actions to

1 obtain review of such actions by the Com-
2 missioner;

3 (3) the procedures and standards the Commis-
4 sioner shall follow in reviewing, approving, abro-
5 gating, or modifying any new operating rule or any
6 amendment to an existing operating rule that is pro-
7 posed by an insurance self-regulatory organization,
8 which shall include procedures for public notice and
9 comment on such rule or amendment;

10 (4) the procedures and standards the Commis-
11 sioner shall follow in abrogating, modifying, or add-
12 ing to the operating rules of an insurance self-regu-
13 latory organization;

14 (5) the procedures and standards the Commis-
15 sioner shall follow in reviewing, approving, abro-
16 gating, or modifying any disciplinary action by an
17 insurance self-regulatory organization;

18 (6) the procedures and standards the Commis-
19 sioner shall follow in removing, suspending, or bar-
20 ing any individual from serving as an officer or di-
21 rector of an insurance self-regulatory organization;

22 (7) the procedures and standards the Commis-
23 sioner shall follow in suspending or revoking the reg-
24 istration of an insurance self-regulatory organiza-
25 tion; and

1 (8) such other matters as the Commissioner de-
 2 termines appropriate to ensure and protect the pub-
 3 lic interest and the interests of policyholders.

4 **SEC. 1107. OFFICE OF THE OMBUDSMAN.**

5 (a) ESTABLISHMENT OF THE OFFICE OF THE OM-
 6 BUDSMAN.—There is established within the Office, an Of-
 7 fice of the Ombudsman. The Commissioner shall appoint
 8 an Ombudsman to administer the Office of the Ombuds-
 9 man. The Ombudsman shall report directly to the Com-
 10 missioner.

11 (b) DUTIES OF THE OMBUDSMAN.—

12 (1) IN GENERAL.—The Ombudsman shall act
 13 as a liaison between the Office and any regulated
 14 person adversely affected by the supervisory or regu-
 15 latory activities of the Office, including the failure of
 16 the Office to take a requested action. The Ombuds-
 17 man shall assure that safeguards exist to encourage
 18 complainants to come forward and preserve con-
 19 fidentiality.

20 (2) DEFINITION.—For purposes of this section
 21 the term, a “regulated person” means a national in-
 22 surer, a national agency, a federally licensed insur-
 23 ance producer, or an insurer-affiliated party.

24 (c) POWERS OF THE OMBUDSMAN.—The Ombuds-
 25 man—

1 (1) with the prior consent of the Commissioner,
 2 may stay any appealable decision or action during
 3 the resolution of an appealable matter; and

4 (2) shall review and report any weakness in pol-
 5 icy or procedures to the Commissioner, and make
 6 recommendations to the Commissioner regarding
 7 changes in such policies or procedures.

8 (d) APPEALABLE MATTERS.—Any regulated person
 9 adversely affected by an Office decision or action may seek
 10 Ombudsman review of such decision or action, other
 11 than—

12 (1) the appointment of a receiver or conser-
 13 vator;

14 (2) any preliminary examination conclusions
 15 communicated to the regulated person before a final
 16 examination report is issued;

17 (3) any formal enforcement-related action or
 18 decision, including the issuance of a cease-and-desist
 19 order, assessment of a civil money penalty, or com-
 20 mencement of a formal investigation;

21 (4) any formal or informal rulemaking pursuant
 22 to subchapter II of chapter 5 of title 5, United
 23 States Code;

24 (5) any decision or recommended decision fol-
 25 lowing a formal adjudication conducted pursuant to

1 subchapter II of chapter 5 of title 5, United States
2 Code; or

3 (6) any request for agency records pursuant to
4 section 552 of title 5, United States Code (com-
5 monly referred to as the Freedom of Information
6 Act).

7 (e) PROCEDURES FOR FILING AN APPEAL TO THE
8 OMBUDSMAN.—A regulated person may seek review of an
9 appealable matter by filing a written appeal with the Of-
10 fice of the Ombudsman. In the case of a regulated person
11 that is an entity, the appeal shall be signed by the Presi-
12 dent or Chief Executive Officer of the regulated person.
13 The appeal shall set forth all of the reasons for the appeal
14 and supporting documentation. The Ombudsman may ar-
15 range for a meeting of Office personnel and the complain-
16 ants to discuss the appeal.

17 (f) DECISIONS OF THE OMBUDSMAN.—After a thor-
18 ough investigation of the matter, and after considering all
19 relevant information provided by the complainant and the
20 Office, the Ombudsman shall issue a written determina-
21 tion of the appeal. Such determination shall become the
22 final decision of the Office, unless reversed, modified, or
23 stayed by the Commissioner.

24 (g) RETALIATION PROHIBITED.—The Office and its
25 staff may not take any adverse action against a complain-

1 ant for appealing any decision or action to the Ombuds-
 2 man. Upon learning of any possible retaliatory actions, the
 3 Ombudsman shall investigate the matter, and if the Om-
 4 budsman determines that reasonable grounds exist to con-
 5 clude that retaliation has taken place, shall refer the mat-
 6 ter to the Commissioner.

7 **Subtitle B—Supervision of Na-**
 8 **tional Insurers and National**
 9 **Agencies**

10 **SEC. 1121. EXAMINATION OF NATIONAL INSURERS AND NA-**
 11 **TIONAL AGENCIES.**

12 (a) IN GENERAL.—

13 (1) EXAMINATION.—The Commissioner shall
 14 provide for examinations of national insurers and
 15 national agencies.

16 (2) REGULAR AND SPECIAL EXAMINATIONS OF
 17 NATIONAL INSURERS.—Not less than once during
 18 each 36-month period, the Commissioner shall con-
 19 duct an on-site examination of each national insurer,
 20 and may conduct a special examination of a national
 21 insurer whenever the Commissioner determines that
 22 a special examination is necessary.

23 (3) EXAMINATION OF NATIONAL AGENCIES.—
 24 The Commissioner may examine a national agency
 25 only in response to a complaint or any other evi-

dence that the national agency has violated or is about to violate—

(A) a law, rule, or regulation;

(B) any condition imposed in writing by the Commissioner in connection with issuing a license for a federally licensed insurance producer; or

(C) any written agreement entered into with the Commissioner.

(4) AFFILIATES.—

(A) IN GENERAL.—In making examinations of national insurers or national agencies, the Commissioner may, to the extent necessary to discover information concerning activities of an affiliate that may have a materially adverse effect on the operations, management, or financial condition of the national insurer or national agency—

(i) require an affiliate to make such reports and provide such material as the Commissioner may direct; and

(ii) conduct an examination of the affairs of an affiliate, if—

(I) the Commissioner has reasonable cause to believe that the activities

1 of the affiliate may have such an ef-
 2 fect;

3 (II) the examination is limited to
 4 the extent necessary to disclose infor-
 5 mation related to such effect; and

6 (III) the Commissioner is unable
 7 to obtain the necessary information
 8 from the national insurer or national
 9 agency.

10 (B) ACCEPTANCE OF AVAILABLE INFORMA-
 11 TION.—To the extent that the Commissioner re-
 12 quires an affiliate to make reports or provide
 13 material under subparagraph (A), the Commis-
 14 sioner shall, to the fullest extent possible, ac-
 15 cept—

16 (i) reports that the affiliate has pro-
 17 vided or been required to provide to other
 18 Federal or State regulatory authorities or
 19 appropriate self-regulatory organizations;

20 (ii) information that is otherwise re-
 21 quired to be reported publicly; and

22 (iii) audited financial statements.

23 (C) USE OF REGULATORY REPORTS.—If
 24 the Commissioner determines to conduct an ex-
 25 amination of an affiliate under subparagraph

1 (B) and such affiliate is a functionally regu-
2 lated affiliate, the Commissioner shall, to the
3 fullest extent possible, rely on the examination
4 reports made by the functional regulator of
5 such affiliate.

6 (b) ACCESS TO PEOPLE AND RECORDS.—

7 (1) IN GENERAL.—In the course of examining
8 a national insurer, national agency, or affiliate of a
9 national insurer or national agency, the Commis-
10 sioner, upon request, shall be given prompt and rea-
11 sonable access to officers, employees, agents, books,
12 records, and documents of such insurer, agency, or
13 affiliate.

14 (2) COURT ORDER.—If prompt and reasonable
15 access is not given as required under paragraph (1),
16 the Commissioner may apply to the United States
17 district court for the judicial district in which the
18 main office of the national insurer or the national
19 agency is located, or in which the affiliate or person
20 denying such access resides or conducts business, for
21 an order requiring that such information be prompt-
22 ly provided.

23 (3) SUBPOENA POWER.—In connection with ex-
24 aminations of national insurers, national agencies, or
25 affiliates under this section and the examination of

1 federally licensed insurance producers under section
2 1301, the Commissioner may—

3 (A) administer oaths and affirmations;

4 (B) examine, take, and preserve testimony
5 under oath as to any matter in respect of the
6 affairs or ownership of any such national in-
7 surer, national agency, affiliate, or federally li-
8 censed insurance producer;

9 (C) issue subpoenas; and

10 (D) in order to enforce a subpoena issued
11 under subparagraph (C), apply to the United
12 States district court for the judicial district—

13 (i) in which the main office of the na-
14 tional insurer, national agency, or affiliate
15 is located;

16 (ii) in which the federally licensed in-
17 surance producer is located; or

18 (iii) in which the witness resides or
19 carries on business.

20 **SEC. 1122. EXAMINATION FEES AND OTHER ASSESSMENTS.**

21 (a) EXAMINATION FEE.—

22 (1) NATIONAL INSURERS, NATIONAL AGENCIES,
23 AND FEDERALLY LICENSED INSURANCE PRO-
24 DUCERS.—The Commissioner shall assess the cost of
25 conducting examinations of national insurers, na-

1 tional agencies, and federally licensed insurance pro-
 2 ducers against each such insurer, agency, or pro-
 3 ducer, as the Commissioner determines to be appro-
 4 priate.

5 (2) AFFILIATES.—The Commissioner shall as-
 6 sess the cost of conducting examinations of affiliates
 7 against each such affiliate, as the Commissioner de-
 8 termines to be appropriate.

9 (3) REFUSAL TO PAY.—

10 (A) IN GENERAL.—Subject to subpara-
 11 graph (B), if any affiliate refuses to pay an as-
 12 sessment imposed pursuant to paragraph (2),
 13 the Commissioner may assess such cost against
 14 the affiliated national insurer or national agen-
 15 cy.

16 (B) SHARED AFFILIATES.—If an affiliate
 17 is an affiliate of more than 1 national insurer
 18 or national agency, the assessment with respect
 19 to that affiliate may be assessed against, and
 20 collected from, any affiliated national insurer or
 21 national agency, in such proportions as the
 22 Commissioner may prescribe.

23 (b) PROCESSING FEE.—The Commissioner may as-
 24 sess a fee against any person who submits to the Office

1 an application, filing, statement, notice, or request for ap-
 2 proval to cover the cost of processing such submission.

3 (c) OTHER ASSESSMENTS.—The Commissioner may
 4 assess against national insurers, national agencies, and
 5 federally licensed insurance producers such additional fees
 6 as the Commissioner determines to be necessary and ap-
 7 propriate to fund the expenses of the Office.

8 (d) NOTICE.—The Commissioner shall notify na-
 9 tional insurers, national agencies, and federally licensed
 10 insurance producers of—

11 (1) the initial fees and assessments imposed
 12 under this section; and

13 (2) any change in fees and assessments.

14 (e) TREATMENT OF FEES AND ASSESSMENTS.—

15 (1) DEPOSITS.—Amounts received by the Com-
 16 missioner from fees and assessments imposed under
 17 this section shall be deposited in the manner pro-
 18 vided for in section 5234 of the Revised Statutes of
 19 the United States (12 U.S.C. 192) with respect to
 20 assessments by the Comptroller of the Currency.

21 (2) GOVERNMENT FUNDS; APPORTIONMENT.—
 22 Notwithstanding any other provision of law,
 23 amounts received by the Commissioner from any fee
 24 or assessment imposed under this section—

1 (A) shall not be considered Government or
2 public funds or appropriated money; and

3 (B) shall not be subject to apportionment
4 for purpose of chapter 15 of title 31, United
5 States Code, or under any other authority.

6 (f) WORKING CAPITAL FUND.—

7 (1) IN GENERAL.—The Commissioner may im-
8 pose fees and assessments pursuant to subsections
9 (a), (b), and (c), in excess of actual expenses for any
10 given year, to maintain an appropriate working cap-
11 ital fund.

12 (2) REFUNDS.—The Commissioner shall remit
13 to the payers of such fees and assessments any
14 funds collected in excess of what the Commissioner
15 determines to be necessary to maintain such working
16 capital fund.

17 (g) USE OF FUNDS.—The Commissioner may use the
18 combined resources collected through fees and assess-
19 ments imposed pursuant to this section to pay all direct
20 and indirect operating costs of the Office, including the
21 salary and administrative expenses of the Office.

22 (h) APPROPRIATIONS DURING START-UP PERIOD.—

23 (1) AUTHORIZATION.—The Commissioner may
24 borrow from the Secretary of the Treasury such
25 funds as the Commissioner determines to be nec-

1 essary and appropriate to organize and begin oper-
2 ations of the Office.

3 (2) PAYMENT.—Any loan extended pursuant to
4 paragraph (1) shall be repaid, in full (with interest
5 at a rate set by the Secretary of the Treasury),
6 within 30 years following the date of enactment of
7 this Act, with individual payments on any loan to be
8 made in such amounts and at such times as the
9 Commissioner determines to be appropriate.

10 (i) RULEMAKING.—The Commissioner shall promul-
11 gate regulations with respect to the computation, assess-
12 ment, notice, and collection of the fees and assessments
13 provided for in this section.

14 **SEC. 1123. DISCLOSURE OF INFORMATION.**

15 (a) REGULATIONS REQUIRED.—The Commissioner
16 shall, by regulation, establish standards for the disclosure
17 of examination reports, other reports, applications, filings,
18 correspondence, records, and other information prepared
19 by, reported to, obtained by, or submitted to, the Commis-
20 sioner. The regulation shall exclude matters to be ad-
21 dressed under regulations required under section 1161.

22 (b) SUPERVISORY PRIVILEGE.—The regulation
23 issued pursuant to subsection (a) shall prohibit the disclo-
24 sure of confidential supervisory information, as such infor-
25 mation is defined by the Commissioner in such regulation.

1 (c) OTHER PRIVILEGES.—The submission by any
2 person of any information to the Commissioner for any
3 purpose in the course of any supervisory or regulatory
4 process of the Commissioner shall not be construed as
5 waiving, destroying, or otherwise affecting any privilege
6 that such person may claim with respect to such informa-
7 tion under Federal or State law as to any person or entity
8 other than the Commissioner.

9 **SEC. 1124. REPORTING REQUIREMENT.**

10 (a) GENERAL AUTHORITY.—The Commissioner is
11 authorized to require national insurers and national agen-
12 cies to make such reports, containing such information
13 and in such form, as the Commissioner may prescribe by
14 regulation.

15 (b) FINANCIAL STATEMENTS.—Each national in-
16 surer holding a Federal license shall submit annual and
17 quarterly financial statements, in compliance with the ac-
18 counting principles and auditing standards specified under
19 section 1211, to the Commissioner at such times and in
20 such form as the Commissioner may require under regula-
21 tions promulgated pursuant to subsection (c).

22 (c) REGULATIONS.—The Commissioner shall promul-
23 gate regulations that—

1 (1) specify the information that shall be dis-
 2 closed in the financial statements required under
 3 subsection (b); and

4 (2) specify any additional financial schedules
 5 that national insurers shall make available for exam-
 6 ination by the Commissioner upon request.

7 **SEC. 1125. REGULATORY SUPERVISION AND RELATIONSHIP**
 8 **TO STATE LAW.**

9 (a) IN GENERAL.—Except as authorized by this Act
 10 or otherwise authorized under Federal law, national insur-
 11 ers, national agencies, and federally licensed insurance
 12 producers shall not be subject to any form of licensing,
 13 examination, reporting, regulation, or other supervision
 14 relating to—

15 (1) the sale, solicitation, or negotiation of insur-
 16 ance;

17 (2) the underwriting of insurance; or

18 (3) any other insurance operations.

19 (b) APPLICABLE STATE LAWS.—Notwithstanding
 20 subsection (a), national insurers, national agencies, and
 21 federally licensed insurance producers shall be subject
 22 to—

23 (1) applicable State unclaimed property and es-
 24 cheat laws;

1 (2) applicable tax laws of a State, in accordance
2 with sections 1251, 1252, and 1253;

3 (3) applicable State law relating to participa-
4 tion in an assigned risk plan, mandatory joint un-
5 derwriting association, or any other mandatory re-
6 sidual market mechanism designed to make insur-
7 ance available to those unable to obtain insurance in
8 the voluntary market, except to the extent that such
9 State law—

10 (A) relates to participation in any vol-
11 untary joint underwriting association or similar
12 arrangement;

13 (B) results in rates in effect for an as-
14 signed risk plan, mandatory joint underwriting
15 association, or any other mandatory residual
16 market mechanism that fail to cover the ex-
17 pected value of all future costs associated with
18 insurance policies written by such residual mar-
19 ket mechanism;

20 (C) requires a national insurer to use any
21 particular rate, rating element, price, or form;
22 or

23 (D) is inconsistent with any provision of
24 this Act;

1 (4) applicable State insurance law that pre-
2 scribes the compulsory coverage requirements for
3 workers' compensation or motor vehicle insurance,
4 or both, that every insurer must provide if the in-
5 surer issues insurance policies in such State, except
6 to the extent that such State law requires a national
7 insurer to use any particular rate, rating element,
8 price, or form;

9 (5) applicable State insurance law mandating
10 the participation of insurers in an advisory or statis-
11 tical organization, except to the extent that such
12 State law requires a national insurer to use any par-
13 ticular rate, rating element, price, or form; and

14 (6) applicable State law relating to participa-
15 tion in a workers' compensation administration
16 mechanism, except to the extent that such State law
17 is inconsistent with any provision of this Act.

18 (c) TERMS.—For purposes of this section, the term—

19 (1) “advisory or statistical organization” does
20 not include the National Association of Insurance
21 Commissioners;

22 (2) “compulsory coverage” does not include any
23 State statutory requirement other than those pre-
24 scribing the minimum extent of insurance protection
25 afforded by a policy of insurance; and

1 (3) “mandatory residual market” means a facil-
2 ity, entity, or plan required by and established pur-
3 suant to State law to provide coverage for persons
4 that cannot obtain insurance in the private market.

5 **SEC. 1126. PRESERVATION OF OFFICE RECORDS.**

6 (a) IN GENERAL.—The Commissioner may cause any
7 and all records, papers, or documents kept by the Office
8 or in the possession or custody of the Office to be—

9 (1) photographed or microphotographed or oth-
10 erwise reproduced upon film; or

11 (2) preserved in any electronic medium or for-
12 mat which is capable of—

13 (A) being read or scanned by computer;
14 and

15 (B) being reproduced from such electronic
16 medium or format by printing any other form
17 or reproduction of electronically stored data.

18 (b) TREATMENT AS ORIGINAL RECORDS.—Any pho-
19 tographs, microphotographs, or photographic film or cop-
20 ies thereof described in subsection (a)(1) or reproduction
21 or electronically stored data described in subsection (a)(2)
22 shall be deemed to be an original record for all purposes,
23 including introduction in evidence in all State and Federal
24 courts or administrative agencies, and shall be admissible

1 to prove any act, transaction, occurrence, or event therein
2 recorded.

3 (c) **AUTHORITY OF THE COMMISSIONER.**—Any pho-
4 tographs, microphotographs, or photographic film or cop-
5 ies thereof described in subsection (a)(1) or reproduction
6 of electronically stored data described in subsection (a)(2)
7 shall be preserved in such manner as the Commissioner
8 shall prescribe, and the original records, papers, or docu-
9 ments may be destroyed or otherwise disposed of, as the
10 Commissioner may direct.

11 **SEC. 1127. COMPLIANCE WITH ANTI-MONEY LAUNDERING**
12 **REQUIREMENTS.**

13 (a) **COMPLIANCE REQUIRED.**—The Commissioner
14 shall prescribe regulations requiring national life insurers
15 to establish and maintain procedures reasonably designed
16 to assure and monitor compliance with the requirements
17 of subchapter II of chapter 53 of title 31, United States
18 Code, to the extent applicable.

19 (b) **EXAMINATIONS.**—Each examination of a national
20 life insurer shall include a review of the procedures re-
21 quired to be established and maintained under subsection
22 (a).

23 (c) **ORDER.**—The Commissioner shall issue an order,
24 in the manner prescribed in subsection (c) or (d) of section
25 1142, requiring such insurer to cease and desist from a

1 violation of this section or regulations prescribed under
 2 this section, if the Commissioner determines that a na-
 3 tional life insurer—

4 (1) has failed to establish and maintain the pro-
 5 cedures described in subsection (a); or

6 (2) has failed to correct any problem with the
 7 procedures maintained by such national life insurer
 8 which was previously reported to such insurer by the
 9 Commissioner.

10 **Subtitle C—Enforcement of** 11 **Federal Insurance Laws**

12 **SEC. 1141. NATIONAL INSURER LICENSE SUSPENSION, RE-** 13 **STRICTION, OR REVOCATION.**

14 (a) IN GENERAL.—In accordance with the conditions
 15 under this section, the Commissioner may revoke or re-
 16 strict the Federal license of a national insurer if the Com-
 17 missioner determines that the national insurer—

18 (1) has engaged in conduct that is hazardous to
 19 the national insurer and that involves an undue risk
 20 to the policyholders of the national insurer, as a
 21 whole;

22 (2) is in a financial or other condition that is
 23 not consistent with the continuation of existing oper-
 24 ations; or

25 (3) has violated any—

1 (A) applicable law or regulation;

2 (B) order or condition imposed in writing
3 by the Commissioner in connection with the ap-
4 proval of an application, filing, statement, no-
5 tice, or other request by the national insurer; or

6 (C) written agreement entered into be-
7 tween the national insurer and the Commis-
8 sioner.

9 (b) NOTICE TO NATIONAL INSURER.—

10 (1) IN GENERAL.—If the Commissioner deter-
11 mines under subsection (a) that the Federal license
12 of a national insurer should be revoked or restricted,
13 the Commissioner shall—

14 (A) serve the national insurer with written
15 notice of the intent of the Commissioner to re-
16 voke or restrict such Federal license;

17 (B) provide the national insurer with a
18 statement of the basis for the determination to
19 revoke or restrict such Federal license; and

20 (C) notify, not less than 30 days before a
21 hearing under subsection (c), the date and place
22 of the hearing.

23 (2) NOTICE OF SERVICE.—Any service required
24 or authorized to be made by the Commissioner
25 under this section may be made by registered mail,

1 or in such other manner reasonably calculated to
2 give actual notice as the Commissioner may by regu-
3 lation or otherwise provide.

4 (c) REVOCATION OR RESTRICTION HEARING.—

5 (1) IN GENERAL.—Before revoking or restrict-
6 ing a Federal license, the Commissioner shall con-
7 duct a hearing in accordance with section 554 of
8 title 5, United States Code, to determine if the con-
9 ditions described in subsection (a) exist.

10 (2) AUTHORITY TO REVOKE OR RESTRICT FED-
11 ERAL LICENSE.—If, on the basis of the evidence pre-
12 sented at the hearing under paragraph (1) and the
13 written findings of the Commissioner with respect to
14 such evidence, the Commissioner establishes the ex-
15 istence of any conduct, condition, or violation speci-
16 fied in the notice sent to a national insurer under
17 subsection (b), the Commissioner may issue an order
18 revoking or restricting the Federal license of the na-
19 tional insurer, which shall be effective as of a date
20 subsequent to such finding.

21 (3) CONSENT TO REVOCATION OR RESTRIC-
22 TION.—If a duly authorized representative of the na-
23 tional insurer fails to appear at the hearing under
24 this subsection, the national insurer shall be deemed
25 to have consented to the revocation or restriction of

1 its Federal license, and the Commissioner may im-
2 mediately revoke or restrict such Federal license.

3 (d) NOTICE OF REVOCATION OR RESTRICTION RE-
4 QUIRED.—

5 (1) NOTICE BY NATIONAL INSURER.—

6 (A) IN GENERAL.—The national insurer
7 shall give notice of a revocation or restriction of
8 its Federal license under this section to each
9 policyholder affected by the revocation or re-
10 striction.

11 (B) TYPE OF NOTICE.—Notice under this
12 paragraph shall be sent to the last address of
13 record of the policyholder on the books of the
14 national insurer, in such manner and at such
15 time as the Commissioner determines to be nec-
16 essary for the protection of policyholders.

17 (2) NOTICE BY COMMISSIONER.—

18 (A) IN GENERAL.—The Commissioner
19 shall publish notice of a revocation or restric-
20 tion under this section. If the Commissioner de-
21 termines that a national insurer has not given
22 notice of an order under this subsection in ac-
23 cordance with the requirements of the Commis-
24 sioner, the Commissioner may provide such no-

1 tice in such manner as the Commissioner may
2 find to be necessary and proper.

3 (B) COSTS.—The cost of any notice pro-
4 vided under subparagraph (A) shall be paid by
5 the national insurer.

6 (e) TEMPORARY SUSPENSION OR RESTRICTION.—

7 (1) IN GENERAL.—If the Commissioner, in the
8 course of a revocation proceeding under this section,
9 finds that the national insurer poses an immediate
10 threat to the interests of its policyholders as a whole
11 or to the public, the Commissioner may issue an
12 order temporarily suspending or restricting the Fed-
13 eral license of the national insurer.

14 (2) NOTICE OF TEMPORARY ORDER.—A na-
15 tional insurer whose Federal license is temporarily
16 suspended or restricted under this subsection shall
17 give notice of an order issued under this paragraph
18 to each affected policyholder in such manner and at
19 such times as the Commissioner may find to be nec-
20 essary and may order for the protection of policy-
21 holders and the public.

22 (3) EFFECTIVE PERIOD OF TEMPORARY
23 ORDER.—A temporary order issued under paragraph
24 (1) shall—

1 (A) become effective not earlier than 10
 2 days from the date of service upon the national
 3 insurer; and

4 (B) unless set aside, limited, or suspended
 5 by a court in proceedings authorized under
 6 paragraph (4), remain effective and enforceable
 7 until the earlier of—

8 (i) the effective date of an order under
 9 subsection (c)(2); or

10 (ii) the date on which the Commis-
 11 sioner determines that there is insufficient
 12 evidence to revoke or restrict a Federal li-
 13 cense under this subsection.

14 (4) JUDICIAL REVIEW.—

15 (A) IN GENERAL.—During the 10-day pe-
 16 riod beginning on the date on which a tem-
 17 porary order has been issued under paragraph
 18 (1), the national insurer may apply to a court
 19 described in subparagraph (B) for an injunction
 20 setting aside, limiting, or suspending the en-
 21 forcement, operation, or effectiveness of such
 22 order.

23 (B) JURISDICTION.—The United States
 24 District Court for the District of Columbia and
 25 the United States district court for the judicial

1 district in which the main office of the national
2 insurer is located shall have jurisdiction to issue
3 an injunction under this paragraph.

4 (f) DECISION TO SUSPEND, RESTRICT, OR RE-
5 VOKE.—

6 (1) IN GENERAL.—Except as provided under
7 paragraph (2), any decision by the Commissioner to
8 suspend, restrict, or revoke a Federal license under
9 this section shall be made by the Commissioner and
10 may not be delegated.

11 (2) EXCEPTION.—The Commissioner may, by
12 order, designate an employee of the Office who may
13 make a decision described in paragraph (1), if the
14 Commissioner is not able to act by reason of recusal
15 or is otherwise disqualified from acting.

16 (g) JUDICIAL REVIEW.—Any national insurer whose
17 Federal license has been revoked or restricted by order
18 of the Commissioner under this section shall have the
19 right of judicial review of such order only to the same ex-
20 tent as provided for the review of orders under section
21 1148.

1 **SEC. 1142. SUSPENSION, RESTRICTION, OR REVOCATION OF**
2 **FEDERAL LICENSE OF NATIONAL AGENCIES**
3 **AND FEDERALLY LICENSED INSURANCE PRO-**
4 **DUCERS.**

5 (a) IN GENERAL.—In accordance with the provisions
6 of this section, the Commissioner may revoke or restrict
7 the Federal producer license, including lines of insurance
8 covered by such license, of a national agency or other fed-
9 erally licensed insurance producer if the Commissioner de-
10 termines that the Agency or producer has—

11 (1) violated any applicable law, regulation,
12 order, condition imposed in writing by the Commis-
13 sioner in connection with the approval of an applica-
14 tion, filing, statement, notice or other request by the
15 producer, or written agreement entered into between
16 the producer and the Commissioner;

17 (2) provided incorrect, misleading, incomplete,
18 or materially untrue information in an application
19 for a Federal charter or a Federal producer license;

20 (3) used fraudulent, coercive, or dishonest prac-
21 tices; or

22 (4) demonstrated incompetence,
23 untrustworthiness, or financial irresponsibility as an
24 insurance producer.

25 (b) NOTICE TO FEDERALLY LICENSED INSURANCE
26 PRODUCER.—If the Commissioner determines that any

1 conduct, breach, or violation specified in subsection (a) re-
 2 quires revocation or restriction of the Federal producer li-
 3 cense of a national agency or other federally licensed in-
 4 surance producer, the Commissioner shall—

5 (1) serve written notice on the national agency
 6 or other federally licensed insurance producer of the
 7 Commissioner’s intention to revoke or restrict the
 8 Federal producer license;

9 (2) provide the national agency or other feder-
 10 ally licensed insurance producer with a statement of
 11 the basis for the determination to revoke or restrict
 12 the Federal producer license; and

13 (3) notify the national agency or other federally
 14 licensed insurance producer, not less than 30 days
 15 before a hearing under subsection (c), of the date
 16 and place of the hearing.

17 (c) REVOCATION OR RESTRICTION HEARING.—

18 (1) IN GENERAL.—Before revoking or restrict-
 19 ing a Federal producer license, the Commissioner
 20 shall conduct a hearing in accordance with section
 21 554 of title 5, United States Code, to determine if
 22 the conditions described in subsection (a) exist.

23 (2) AUTHORITY TO REVOKE OR RESTRICT FED-
 24 ERAL LICENSE.—If, on the basis of the evidence pre-
 25 sented at the hearing under paragraph (1) and the

1 written findings of the Commissioner with respect to
2 such evidence, the Commissioner finds any conduct,
3 condition, or violation specified in the notice sent to
4 a national agency or other federally licensed insur-
5 ance producer under subsection (b), the Commis-
6 sioner may issue an order revoking or restricting the
7 Federal producer license of the national agency or
8 other federally licensed insurance producer, which
9 shall be effective as of a date subsequent to such
10 finding.

11 (3) CONSENT TO REVOCATION OR RESTRIC-
12 TION.—If a duly authorized representative of the na-
13 tional agency or other federally licensed insurance
14 producer fails to appear at the hearing under this
15 subsection, the national agency or other federally li-
16 censed insurance producer shall be deemed to have
17 consented to the revocation or restriction of its Fed-
18 eral producer license, and the Commissioner may im-
19 mediately revoke or restrict such Federal producer
20 license.

21 (d) NOTICE OF REVOCATION OR RESTRICTION RE-
22 QUIRED.—

23 (1) NOTICE BY FEDERALLY LICENSED INSUR-
24 ANCE PRODUCER.—Each national agency or other
25 federally licensed insurance producer shall give writ-

ten notice of revocation or restriction under this section to each national insurer or State insurer for which such agency or producer acts as an insurance producer.

(2) NOTICE BY COMMISSIONER.—

(A) IN GENERAL.—The Commissioner shall publish notice of a revocation or restriction under this section. If the Commissioner determines that a national agency or other federally licensed insurance producer has not given notice of an order under this subsection in accordance with the requirements of the Commissioner, the Commissioner may provide such notice in any manner that the Commissioner determines to be necessary and proper.

(B) COSTS.—The cost of any notice provided under subparagraph (A) shall be paid by the national agency or other federally licensed insurance producer.

(e) TEMPORARY SUSPENSION OR RESTRICTION.—

(1) IN GENERAL.—If the Commissioner, in the course of a revocation or restriction proceeding under this section, finds that the national agency or other federally licensed insurance producer poses an immediate threat to the interests of the policyholders

1 of a national insurer or a State insurer as a whole,
 2 or to the public, the Commissioner may issue a tem-
 3 porary order suspending or restricting the Federal
 4 producer license of the agency or other producer.

5 (2) NOTICE OF TEMPORARY ORDER.—The na-
 6 tional agency or other federally licensed insurance
 7 producer shall give notice of a temporary order
 8 issued under this paragraph in such manner and at
 9 such times as the Commissioner may find to be nec-
 10 essary and may order for the protection of policy-
 11 holders and the public.

12 (3) EFFECTIVE PERIOD OF TEMPORARY
 13 ORDER.—Any temporary order issued under para-
 14 graph (1) shall—

15 (A) become effective not earlier than 10
 16 days from the date of service upon the national
 17 agency or other federally licensed insurance
 18 producer; and

19 (B) unless set aside, limited, or suspended
 20 by a court under paragraph (4), remain effec-
 21 tive and enforceable until an order of the Com-
 22 missioner under subsection (c) becomes final or
 23 until the Commissioner dismisses the pro-
 24 ceedings under paragraph (4).

25 (4) JUDICIAL REVIEW.—

1 (A) IN GENERAL.—During the 10-day pe-
2 riod beginning on the date on which a tem-
3 porary order has been issued under paragraph
4 (1), the national agency or other federally li-
5 censed insurance producer may apply to a court
6 described in subparagraph (B) for an injunction
7 setting aside, limiting, or suspending the en-
8 forcement, operation, or effectiveness of such
9 order.

10 (B) JURISDICTION.—The United States
11 District Court for the District of Columbia and
12 the United States district court for the judicial
13 district in which the federally licensed insurance
14 producers (or the main office of the national
15 agency) is located shall have jurisdiction to
16 issue an injunction under this paragraph.

17 (f) JUDICIAL REVIEW.—Any national agency or other
18 federally licensed insurance producer whose Federal pro-
19 ducer license has been revoked or restricted by order of
20 the Commissioner under this subsection shall have the
21 right of judicial review of such order only to the same ex-
22 tent as provided for the review of orders under section
23 1148.

24 **SEC. 1143. CEASE-AND-DESIST PROCEEDINGS.**

25 (a) NOTICE.—

1 (1) ISSUANCE.—The Commissioner may issue
2 and serve upon a national insurer, national agency,
3 federally licensed insurance producer, or insurer-af-
4 filiated party a notice of charges if the Commis-
5 sioner determines that such insurer, agency, pro-
6 ducer, or party—

7 (A) has engaged, or is about to engage, in
8 conduct that is hazardous to a national insurer
9 or a State insurer and involves an undue risk
10 to the policyholders as a whole of a national in-
11 surer or a State insurer; or

12 (B) has violated, or is about to violate—

13 (i) a law, rule, or regulation;

14 (ii) any condition imposed in writing
15 by the Commissioner in connection with
16 the granting of any application, filing,
17 statement, notice, or other request by the
18 national insurer, national agency, federally
19 licensed insurance producer, or party; or

20 (iii) any written agreement entered
21 into with the Commissioner by such in-
22 surer, agency, producer, or party.

23 (2) CONTENTS.—The notice issued under para-
24 graph (1) shall—

1 (A) contain a statement of the facts consti-
2 tuting the alleged violations; and

3 (B) state the time and place at which a
4 hearing will be held to determine whether an
5 order to cease and desist should be issued
6 against the national insurer, national agency,
7 federally licensed insurance producer, or in-
8 surer-affiliated party.

9 (b) HEARING.—

10 (1) TIMING.—A hearing under this section shall
11 be scheduled for a date which is not earlier than 30
12 days nor later than 60 days after the service of no-
13 tice under subsection (a) unless another date is set
14 by the Commissioner at the request of any party so
15 served.

16 (2) CONSENT.—If a duly authorized representa-
17 tive of a party served notice under subsection (a)
18 fails to appear at a hearing under this section, the
19 party shall be deemed to have consented to the
20 issuance of the cease-and-desist order.

21 (c) CEASE-AND-DESIST ORDER.—

22 (1) IN GENERAL.—If the Commissioner finds,
23 upon the record made at a hearing under this sec-
24 tion, that any violation or conduct specified in the
25 notice of charges has been established, or if the

1 party consents, the Commissioner may issue and
2 serve upon the national insurer, national agency,
3 federally licensed insurance producer, or insurer-af-
4 filiated party, an order to cease and desist from any
5 such violation or conduct.

6 (2) CONTENTS.—A cease-and-desist order
7 issued under this subsection may—

8 (A) require the national insurer, national
9 agency, federally licensed insurance producer,
10 or insurer-affiliated party to cease and desist
11 from the alleged violation or conduct; and

12 (B) take affirmative action to correct the
13 conditions resulting from any such violation or
14 conduct.

15 (3) EFFECTIVE DATE.—A cease-and-desist
16 order issued under this subsection shall—

17 (A) take effect on the expiration of the
18 date which is 30 days after the service of such
19 order upon the party or on another date, if
20 issued upon consent; and

21 (B) remain in effect and enforceable as
22 provided therein, unless stayed, modified, termi-
23 nated, or set aside by action of the Commis-
24 sioner or a reviewing court.

1 (4) AUTHORITY TO LIMIT ACTIVITIES.—The au-
 2 thority to issue an order under this section includes
 3 the authority to place limitations on the activities or
 4 functions of a national insurer, national agency, a
 5 federally licensed insurance producer, or an insurer-
 6 affiliated party.

7 (5) STANDARD FOR CERTAIN ORDERS.—No au-
 8 thority under this section to prohibit any insurer-af-
 9 filiated party from withdrawing, transferring, remov-
 10 ing, dissipating, or disposing of any funds, assets, or
 11 other property may be exercised, unless the Commis-
 12 sioner meets the standards of Rule 65 of the Federal
 13 Rules of Civil Procedure, without regard to the re-
 14 quirement of such rule that the applicant show that
 15 the injury, loss, or damage is irreparable and imme-
 16 diate.

17 (d) TEMPORARY CEASE-AND-DESIST ORDERS.—

18 (1) IN GENERAL.—If the Commissioner deter-
 19 mines that the violation, threatened violation, or
 20 conduct specified in the notice of charges served
 21 under subsection (c)(1) is likely to cause insolvency
 22 or significant dissipation of assets or earnings of a
 23 national insurer or a State insurer, or is likely to
 24 weaken the condition of a national insurer or a State
 25 insurer or otherwise prejudice the interests of the

1 policyholders, as a whole, of a national insurer or a
 2 State insurer before the completion of the pro-
 3 ceedings conducted under subsection (c)(1), the
 4 Commissioner may issue a temporary order requir-
 5 ing the national insurer, national agency, producer,
 6 or party to—

7 (A) cease and desist from any such viola-
 8 tion or conduct; and

9 (B) take affirmative action to prevent or
 10 remedy such insolvency, dissipation, condition,
 11 or prejudice pending completion of such pro-
 12 ceedings.

13 (2) CONTENTS OF ORDER; EFFECTIVE DATE.—

14 A temporary cease-and-desist order issued under
 15 paragraph (1)—

16 (A) may include any action authorized
 17 under section 1144(2);

18 (B) shall become effective upon service to
 19 the national insurer, national agency, producer,
 20 or party; and

21 (C) unless set aside, limited, or suspended
 22 by a court under paragraph (3), shall remain in
 23 effect and enforceable until the date on which—

24 (i) administrative proceedings pursu-
 25 ant to such order are completed;

1 (ii) the Commissioner dismisses the
2 charges specified in such order; or

3 (iii) if a cease-and-desist order is
4 issued against such national insurer, na-
5 tional agency, producer, or party, such
6 order is effective.

7 (3) INJUNCTION.—

8 (A) IN GENERAL.—A national insurer, na-
9 tional agency, federally licensed insurance pro-
10 ducer, or insurer-affiliated party that has been
11 served with a temporary cease-and-desist order
12 under this subsection may, not later than 10
13 days after the date of such service, apply to a
14 court described in subparagraph (B) for an in-
15 junction setting aside, limiting, or suspending
16 the enforcement, operation, or effectiveness of
17 such order until the completion of administra-
18 tive proceedings under this section.

19 (B) JURISDICTION.—The United States
20 District Court for the District of Columbia and
21 the United States district court for the judicial
22 district in which the producer, party, or main
23 office of the national insurer or national agency
24 is located shall have jurisdiction to issue an in-
25 junction under this paragraph.

1 (4) INCOMPLETE OR INACCURATE RECORDS.—

2 (A) TEMPORARY ORDER.—If a notice of
 3 charges served under subsection (a) specifies,
 4 on the basis of particular facts and cir-
 5 cumstances, that the books and records of a na-
 6 tional insurer are so incomplete or inaccurate
 7 that the Commissioner is unable, through the
 8 normal supervisory process, to determine the fi-
 9 nancial condition of that national insurer or the
 10 details or purpose of any transaction or trans-
 11 actions that may have a material effect on the
 12 financial condition of that national insurer, the
 13 Commissioner may issue a temporary order re-
 14 quiring—

15 (i) the cessation of any activity or
 16 practice which gave rise to the incomplete
 17 or inaccurate state of the books or records;
 18 or

19 (ii) affirmative action to restore such
 20 books or records to a complete and accu-
 21 rate state.

22 (B) EFFECTIVE PERIOD.—A temporary
 23 order issued under subparagraph (A)—

24 (i) shall become effective upon service;
 25 and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (a) in connection with the notice of charges; or

(II) the date the Commissioner determines, by examination or otherwise, that the books and records of the national insurer accurately reflect the financial condition of the national insurer.

**SEC. 1144. AFFIRMATIVE ACTION TO CORRECT CONDITIONS
RESULTING FROM VIOLATIONS OR CONDUCT.**

The authority granted to the Commissioner under this subtitle to issue an order that requires a national insurer, national agency, federally licensed insurance producer, or insurer-affiliated party to take affirmative action to correct or remedy any condition resulting from any violation or conduct with respect to which such order is issued includes the authority to require such national insurer, national agency, producer, or party to—

(1) restrict the growth of the national insurer;

1 (2) dispose of any asset or insurance policy or
2 reinsurance contract;

3 (3) rescind any other agreements or contracts,
4 other than insurance policies or reinsurance con-
5 tracts, to which the national insurer is the issuer;

6 (4) employ qualified officers or employees, sub-
7 ject to approval by the Commissioner; and

8 (5) take such other action as the Commissioner
9 determines to be appropriate if—

10 (A) such national insurer, national agency,
11 producer, or party was unjustly enriched in con-
12 nection with such violation or conduct; or

13 (B) the violation or conduct involved a
14 reckless disregard for the law or any applicable
15 regulations or prior order of the Commissioner.

16 **SEC. 1145. SUSPENSION, REMOVAL, AND PROHIBITION AU-**
17 **THORITY.**

18 (a) **AUTHORITY TO ISSUE ORDER.**—The Commis-
19 sioner may serve a written notice of the Commissioner’s
20 intention to suspend or remove an insurer-affiliated party
21 from office or to prohibit any further participation by such
22 party in the conduct of the affairs of any national insurer
23 or national agency, if the Commissioner determines that—

24 (1) an insurer-affiliated party has—

25 (A) violated—

- 1 (i) any law or regulation;
- 2 (ii) any final cease-and-desist order
- 3 issued under section 1143;
- 4 (iii) any condition imposed in writing
- 5 by the Commissioner in connection with
- 6 the grant of any application, filing, state-
- 7 ment, notice, or other request by such na-
- 8 tional insurer or national agency; or
- 9 (iv) any written agreement between
- 10 such national insurer or national agency
- 11 and the Commissioner;
- 12 (B) engaged or participated in any conduct
- 13 that—
- 14 (i) is hazardous to the national in-
- 15 surer or national agency; and
- 16 (ii) involves an undue risk to the pol-
- 17 icyholders of such national insurer, as a
- 18 whole, or the policyholders, as a whole,
- 19 serviced by such national agency; or
- 20 (C) committed or engaged in any act,
- 21 omission, or practice, which constitutes a
- 22 breach of the fiduciary duty of such party;
- 23 (2) through any violation, conduct, practice, or
- 24 breach described in paragraph (1)—

1 (A) such national insurer or national agen-
 2 cy has suffered, or will probably suffer, finan-
 3 cial loss or other damage;

4 (B) the interests of the policyholders of the
 5 national insurer or the policyholders serviced by
 6 the national agency have been, or could be,
 7 prejudiced; or

8 (C) such party has received financial gain
 9 or other benefit by reason of such violation,
 10 practice, or breach; and

11 (3) the violation, conduct, practice, or breach—

12 (A) involves personal dishonesty on the
 13 part of such party; or

14 (B) demonstrates willful or continuing dis-
 15 regard by such party for the condition of such
 16 national insurer or national agency or the inter-
 17 ests of the national insurer's policyholders or
 18 the policyholders serviced by the national agen-
 19 cy.

20 (b) TEMPORARY SUSPENSION ORDER.—

21 (1) SUSPENSION OR PROHIBITION AUTHOR-
 22 IZED.—If the Commissioner serves written notice
 23 under subsection (a) on any insurer-affiliated party
 24 of the Commissioner's intention to issue an order
 25 under such subsection, the Commissioner may issue

1 a temporary order suspending such party from office
 2 or prohibiting such party from further participation
 3 in any manner in the conduct of the affairs of the
 4 national insurer or national agency, if the Commis-
 5 sioner—

6 (A) determines that such action is nec-
 7 essary for the protection of the national insurer
 8 or its policyholders or the national agency or
 9 the policyholders serviced by such Agency; and

10 (B) serves such party with the temporary
 11 order of suspension or prohibition.

12 (2) EFFECTIVE PERIOD.—Any temporary order
 13 issued under paragraph (1)—

14 (A) shall become effective upon service;
 15 and

16 (B) unless a court issues a stay of such
 17 order under subsection (e), shall remain in ef-
 18 fect and enforceable until—

19 (i) the date the Commissioner dis-
 20 misses the charges contained in the notice
 21 served under subsection (a) with respect to
 22 such party; or

23 (ii) the effective date of an order
 24 issued by the Commissioner to such party
 25 under subsection (a).

1 (3) COPY OF ORDER.—If the Commissioner
 2 issues a temporary order under paragraph (1) to any
 3 insurer-affiliated party, the Commissioner shall serve
 4 a copy of such order on any national insurer or na-
 5 tional agency with which such party is affiliated at
 6 the time such order is issued.

7 (c) PROCEDURES.—

8 (1) CONTENTS OF NOTICE.—A notice served
 9 under subsection (a) shall include—

10 (A) a statement of the grounds for facts
 11 underlying such notice; and

12 (B) the time and place of a hearing to be
 13 held thereon.

14 (2) HEARING.—The hearing referred to in
 15 paragraph (1)(B) shall take place not earlier than
 16 30 days nor later than 60 days after the date of
 17 service of notice under subsection (a), unless another
 18 date is set by the Commissioner at the request of
 19 such party.

20 (3) SUSPENSION OR REMOVAL.—

21 (A) FAILURE TO APPEAR.—If a duly au-
 22 thorized representative of the party receiving
 23 notice of a hearing under this subsection fails
 24 to appear at such hearing, such party shall be

1 deemed to have consented to the issuance of an
2 order of such removal or prohibition.

3 (B) SUSPENSION OR REMOVAL.—In the
4 event of such consent, or if upon the record
5 made at any hearing under this subsection the
6 Commissioner finds that any of the grounds
7 specified in such notice have been established,
8 the Commissioner may issue such orders of sus-
9 pension or removal from office, or prohibition
10 from participation in the conduct of the affairs
11 of the national insurer or national agency, as
12 the Commissioner determines to be appropriate.

13 (C) EFFECTIVE DATE.—Any order issued
14 under subparagraph (B) shall become effective
15 on the expiration of 30 days after service upon
16 the national insurer or national agency and
17 such party (except in the case of an order
18 issued upon consent, which shall become effec-
19 tive at the time specified in such order). Such
20 order shall remain effective and enforceable as
21 provided therein, except to such extent as it is
22 stayed, modified, terminated, or set aside by ac-
23 tion of the Commissioner or a reviewing court.

24 (d) INDUSTRYWIDE PROHIBITION.—

1 (1) IN GENERAL.—Except as provided under
2 paragraph (2), any person who, pursuant to any
3 order issued under this section or section 1146, has
4 been removed or suspended from office in a national
5 insurer or national agency or prohibited from par-
6 ticipating in the conduct of the affairs of a national
7 insurer or national agency may not, while such order
8 is in effect—

9 (A) continue or commence to hold any of-
10 fice in, or participate in any manner in the con-
11 duct of the affairs of any national insurer or
12 national agency;

13 (B) solicit, procure, transfer, attempt to
14 transfer, vote, or attempt to vote any proxy,
15 consent, or authorization with respect to any
16 voting rights in any national insurer or national
17 agency;

18 (C) act as an insurer-affiliated party; or

19 (D) act as a federally licensed insurance
20 producer.

21 (2) EXCEPTION.—If, on or after the date on
22 which an order is issued under this subsection that
23 removes or suspends from office any insurer-affili-
24 ated party or prohibits such party from participating
25 in the conduct of the affairs of a national insurer or

1 national agency, such party receives the written con-
2 sent of the Commissioner, paragraph (1) shall, to
3 the extent of such consent, cease to apply to such
4 party with respect to the national insurer or national
5 agency described in each written consent.

6 (3) VIOLATION OF ORDER.—Any violation of
7 paragraph (1) by any person who is subject to an
8 order described in such subparagraph shall be treat-
9 ed as a violation of the order.

10 (e) STAY OF SUSPENSION OR PROHIBITION.—Not
11 later than 10 days after any insurer-affiliated party has
12 been suspended from office or prohibited from participa-
13 tion in the conduct of the affairs of a national insurer or
14 national agency by a temporary order issued under sub-
15 section (b), such party may apply to the United States
16 district court for the judicial district in which the main
17 office of the national insurer or national agency is located,
18 or the United States District Court for the District of Co-
19 lumbia, for a stay of such suspension or prohibition pend-
20 ing the completion of the administrative proceedings pur-
21 suant to the notice served upon such party under sub-
22 section (a), and such court shall have jurisdiction to stay
23 such suspension or prohibition.

1 **SEC. 1146. SUSPENSION OR PROHIBITION BASED ON CRIMI-**
2 **NAL ACTIVITY.**

3 (a) SUSPENSION OR PROHIBITION.—

4 (1) IN GENERAL.—The Commissioner may sus-
5 pend an insurer-affiliated party from office or pro-
6 hibit such party from further participation in any
7 manner in the conduct of the affairs of a national
8 insurer or national agency, by written notice served
9 upon such party and the national insurer or national
10 agency, if—

11 (A) continued service or participation by
12 such party may pose a threat to the national in-
13 surer or national agency or the interests of the
14 policyholders of the national insurer, as a
15 whole, or the policyholders, as a whole, serviced
16 by the national agency; and

17 (B) such party is charged in any informa-
18 tion, indictment, or complaint, with the commis-
19 sion of or participation in—

20 (i) a crime involving dishonesty or
21 breach of trust which is punishable by im-
22 prisonment for a term exceeding 1 year
23 under Federal or State law; or

24 (ii) a criminal violation of section
25 1956, 1957, or 1960 of title 18, United

1 States Code, or section 5322 or 5324 of
2 title 31, United States Code.

3 (2) EFFECTIVE PERIOD.—A suspension or pro-
4 hibition under paragraph (1) shall remain in effect
5 until the information, indictment, or complaint re-
6 ferred to in paragraph (1)(B) is resolved or other-
7 wise terminated by the Commissioner.

8 (b) REMOVAL OR PROHIBITION.—

9 (1) IN GENERAL.—If a judgment of conviction
10 or an agreement to enter a pretrial diversion or
11 other similar program is entered against an insurer-
12 affiliated party in connection with a crime described
13 in subsection (a)(1)(B)(i), the Commissioner may
14 issue and serve upon such party and the national in-
15 surer or national agency an order removing such
16 party from office or prohibiting such party from fur-
17 ther participation in any manner in the conduct of
18 the affairs of the national insurer or national agency
19 without the prior written consent of the Commis-
20 sioner if—

21 (A) such judgment is not subject to further
22 appellate review; and

23 (B) continued service or participation by
24 such party may pose a threat to the national in-
25 surer or the interests of the policyholders of the

1 national insurer or a national agency or the pol-
2 icyholders serviced by such agency.

3 (2) REQUIRED FOR CERTAIN OFFENSES.—In
4 the case of a judgment of conviction or agreement
5 against an insurer-affiliated party in connection with
6 a violation described in subsection (a)(1)(B)(ii), the
7 Commissioner shall issue and serve upon such party
8 and the national insurer or national agency an order
9 removing such party from office or prohibiting such
10 party from further participation in any manner in
11 the conduct of the affairs of the national insurer or
12 national agency without the prior written consent of
13 the Commissioner.

14 (3) EFFECT ON DIRECTOR OR OFFICER.—An
15 insurer-affiliated party who is a director or officer
16 and who is subject to an order under this subsection,
17 shall cease to be a director or officer of such na-
18 tional insurer or national agency.

19 (4) EFFECT OF ACQUITTAL.—A finding of not
20 guilty or other disposition of the charge shall not
21 preclude the Commissioner from instituting pro-
22 ceedings after such finding or disposition to remove
23 such party from office or to prohibit further partici-
24 pation in national insurer or national agency affairs
25 under subsection (a) or (b) of section 1145.

1 (5) EFFECTIVE PERIOD.—A notice of suspen-
2 sion or order of removal issued under this subsection
3 shall remain effective and outstanding until the com-
4 pletion of any hearing or appeal under subsection (c)
5 or unless the suspension or order of removal is oth-
6 erwise terminated by the Commissioner.

7 (c) ADMINISTRATIVE HEARING.—

8 (1) REQUEST.—Not later than 30 days after
9 the date on which a notice of suspension or order of
10 removal is received by an insurer-affiliated party
11 under this subsection, such party may submit a writ-
12 ten request to the Commissioner for an opportunity
13 to appear before the Commissioner to show that the
14 continued service to, or participation in, the conduct
15 of the affairs of the national insurer or national
16 agency by such party will not pose a threat to the
17 national insurer or to the interests of its policy-
18 holders or to a national agency or the policyholders
19 serviced by such Agency.

20 (2) TIME AND PLACE.—Upon receipt of a re-
21 quest under paragraph (1), the Commissioner shall
22 set a time and place at which the requesting party
23 may appear, personally or through counsel, before 1
24 or more designated employees of the Commissioner
25 to submit written materials or, at the discretion of

1 the Commissioner, oral testimony, and oral argu-
 2 ment. A hearing under this subsection shall take
 3 place not later than 30 days after the receipt of a
 4 request under paragraph (1), unless extended at the
 5 request of the party.

6 (3) NOTIFICATION OF DECISION.—Not later
 7 than 60 days after a hearing under this subsection,
 8 the Commissioner shall provide written notification
 9 to the insurer-affiliated party that indicates—

10 (A) whether the suspension or prohibition
 11 from participation in any manner in the con-
 12 duct of the affairs of the national insurer or na-
 13 tional agency will be continued, terminated, or
 14 otherwise modified;

15 (B) whether the order removing such party
 16 from office or prohibiting such party from fur-
 17 ther participation in any manner in the conduct
 18 of the affairs of the national insurer or national
 19 agency will be rescinded or otherwise modified;
 20 and

21 (C) the basis for any decision by the Com-
 22 missioner that is adverse to such party.

23 **SEC. 1147. ANCILLARY PROVISIONS.**

24 (a) POWERS RELATED TO HEARINGS.—In the course
 25 of or in connection with any proceeding or other action

1 under this subtitle, the Commissioner, and any person des-
 2 ignated to conduct any hearing under this section, may—

3 (1) administer oaths and affirmations;

4 (2) take depositions or cause depositions to be
 5 taken; and

6 (3) issue, revoke, quash, or modify subpoenas
 7 and subpoenas duces tecum.

8 (b) SUBPOENA POWER.—

9 (1) IN GENERAL.—The Commissioner, or des-
 10 ignee of the Commissioner, may require the attend-
 11 ance of witnesses and the production of documents
 12 provided for in this section from any place in any
 13 State or other place subject to the jurisdiction of the
 14 United States at any designated place where such
 15 proceeding or other action is being conducted.

16 (2) ENFORCEMENT.—The Commissioner or any
 17 party to proceedings under this section may apply
 18 for the enforcement of any subpoena or subpoena
 19 duces tecum issued under this section to—

20 (A) the United States District Court for
 21 the District of Columbia; or

22 (B) the United States district court for the
 23 judicial district in which—

24 (i) such proceeding or other action is
 25 being conducted; or

1 (ii) the witness resides or conducts
2 business.

3 (3) JURISDICTION.—The courts described under
4 paragraph (2) shall have jurisdiction and power to
5 order and require compliance with any subpoena or
6 subpoena duces tecum issued under this section.

7 (4) FEES AND MILEAGE.—Any witness subpoenaed under this subsection shall be paid the same
8 fees and mileage that are paid witnesses in the dis-
9 trict courts of the United States.

11 (5) PENALTY FOR NONCOMPLIANCE.—Any per-
12 son who willfully fails or refuses to attend and tes-
13 tify or to answer any lawful inquiry or to produce
14 books, papers, correspondence, memoranda, con-
15 tracts, agreements, or other records, if in such per-
16 son's power so to do, in obedience to the subpoena
17 of the Commissioner, shall be guilty of a mis-
18 demeanor and, upon conviction, shall be subject to
19 a fine of not more than \$1,000 or to imprisonment
20 for a term of not more than 1 year or both.

21 (c) EXPENSES AND ATTORNEY FEES.—

22 (1) IN GENERAL.—Any court having jurisdic-
23 tion of any proceeding or other action instituted
24 under this section by a national insurer or national
25 agency, a federally licensed insurance producer, or

1 an insurer-affiliated party may allow any such in-
2 surer, agency, producer, or party to receive such rea-
3 sonable expenses and attorney fees, as it determines
4 to be just and proper.

5 (2) PAYMENT OF EXPENSES AND FEES.—Ex-
6 penses and fees awarded under paragraph (1) shall
7 be paid by the national insurer or national agency,
8 the federally licensed insurance producer, or the in-
9 surer-affiliated party from the assets of such in-
10 surer, agency, producer, or party.

11 (d) RULEMAKING.—The Commissioner may promul-
12 gate such regulations as may be necessary with respect
13 to any proceedings, claims, examinations, investigations,
14 or other actions authorized by this subtitle.

15 (e) EFFECT ON BOARD OF DIRECTORS.—

16 (1) LACK OF QUORUM.—If the suspension of 1
17 or more directors under this subtitle reduces the
18 board of directors of a national insurer or national
19 agency below a quorum, all powers and functions
20 vested in or exercisable by such board shall vest in,
21 and be exercisable by, the director or directors on
22 the board not so suspended, until a quorum is rees-
23 tablished.

24 (2) TEMPORARY APPOINTMENTS.—If all of the
25 directors of a national insurer or national agency are

1 suspended under this subtitle, the Commissioner
 2 shall appoint persons to serve temporarily as direc-
 3 tors in their place until the earlier of the date on
 4 which—

5 (A) the suspensions are terminated; or

6 (B) the suspended directors are replaced
 7 on the board of directors of the national insurer
 8 or national agency.

9 (f) NOTICE AFTER SEPARATION FROM SERVICE.—

10 The resignation, termination of employment or participa-
 11 tion, or separation of an insurer-affiliated party (including
 12 a separation caused by the closing of a national insurer
 13 or national agency) shall not affect the jurisdiction and
 14 authority of the Commissioner to issue any notice against
 15 any such party under this subtitle if such notice is served
 16 before the end of the 6-year period beginning on the date
 17 on which such party ceased to be an insurer-affiliated
 18 party with respect to such national insurer or national
 19 agency.

20 **SEC. 1148. HEARINGS AND JUDICIAL REVIEW OF SUSPEN-**
 21 **SION, REMOVAL, OR PROHIBITION ORDER.**

22 (a) JUDICIAL HEARING.—

23 (1) IN GENERAL.—A hearing under this subtitle
 24 (except for a hearing under section 1146(c))—

1 (A) shall be conducted in accordance with
 2 the provisions of chapter 5 of title 5, United
 3 States Code; and

4 (B) shall be held in the Federal judicial
 5 district in which the main office of the national
 6 insurer or national agency is located or in
 7 which the federally licensed insurance producer
 8 or the insurer-affiliated party is located, unless
 9 the party afforded the hearing consents to an-
 10 other place.

11 (2) JUDGMENT.—After a hearing under this
 12 subsection and not later than 90 days after the
 13 Commissioner has notified the parties that the case
 14 has been submitted to the Commissioner for final
 15 decision, the Commissioner shall—

16 (A) render a decision;

17 (B) issue and serve upon each party to the
 18 proceeding an order or orders consistent with
 19 the provisions of this subtitle; and

20 (C) include findings of fact upon which the
 21 decision of the Commissioner is predicated.

22 (b) JUDICIAL REVIEW.—

23 (1) IN GENERAL.—Judicial review of any order
 24 under this subtitle shall be limited to the provisions
 25 under this section.

1 (2) MODIFICATION OR TERMINATION OF ORDER
2 BY COMMISSIONER.—

3 (A) BEFORE APPEAL.—Until a petition for
4 review is timely filed in a court of appeals of
5 the United States, in accordance with para-
6 graph (3), the Commissioner may modify, ter-
7minate, or set aside any order under this sec-
8tion.

9 (B) AFTER APPEAL.—After an appeal de-
10scribed under subparagraph (A) is filed, the
11Commissioner may not modify, terminate, or
12set aside any order under this section without
13the permission of the court.

14 (3) FILING OF PETITION.—

15 (A) IN GENERAL.—Except as provided
16under subparagraph (B), any party to a pro-
17ceeding under this section may obtain judicial
18review of any order served under subsection (a)
19by filing a written petition in a court of appeals
20described in subparagraph (C) not later than
2130 days after the date of service of such order,
22requesting that the order of the Commissioner
23be modified, terminated, or set aside.

24 (B) EXCEPTION.—Judicial review shall not
25be available for an order issued under sub-

1 section (d) with the consent of the national in-
2 surer or national agency, the federally licensed
3 insurance producer, or the insurer-affiliated
4 party.

5 (C) JURISDICTION.—After a petition is
6 filed under this paragraph, the following courts
7 shall have exclusive jurisdiction to modify, ter-
8minate, or set aside, in whole or in part, the
9 order of the Commissioner:

10 (i) The court of appeals of the United
11 States for the circuit in which—

12 (I) the main office of the national
13 insurer or national agency is located;
14 or

15 (II) the federally licensed insur-
16 ance producer or the insurer-affiliated
17 party is located.

18 (ii) The United States Court of Ap-
19 peals for the District of Columbia circuit.

20 (4) FILING OF RECORD.—The clerk of the court
21 shall transmit a copy of the petition filed under
22 paragraph (3) to the Commissioner, who shall file in
23 the court the record in the proceeding, in accordance
24 with section 2112 of title 28, United States Code.

1 (5) EFFECT OF REVIEW PROCEEDINGS.—The
 2 commencement of proceedings for judicial review
 3 under this subsection shall not, unless specifically
 4 ordered by the court, operate as a stay of any order
 5 issued by the Commissioner.

6 (6) FINAL JUDGMENT.—Judicial review under
 7 this section shall be subject to chapter 7 of title 5,
 8 United States Code. The judgment and decree of the
 9 court shall be final, except that the same shall be
 10 subject to review by the Supreme Court upon certio-
 11 rari, as provided in section 1254 of title 28, United
 12 States Code.

13 (c) ENFORCEMENT OF COMMISSIONER ORDER.—

14 (1) APPLICATION.—The Commissioner may
 15 submit an application, to enforce any effective and
 16 outstanding notice or order issued under this sec-
 17 tion, to the United States district court for the judi-
 18 cial district in which—

19 (A) the main office of the national insurer
 20 or national agency is located;

21 (B) the federally licensed insurance pro-
 22 ducer is located; or

23 (C) the insurer-affiliated party is located.

24 (2) JURISDICTION.—The courts described in
 25 paragraph (1)—

1 (A) shall have jurisdiction and power to
2 order and require compliance with an order of
3 the Commissioner under this subtitle; and

4 (B) except as otherwise provided in this
5 subtitle, shall not have jurisdiction to affect, by
6 injunction or otherwise, the issuance or enforce-
7 ment of any notice or order under this subtitle,
8 or to review, modify, suspend, terminate, or set
9 aside any such notice or order.

10 **SEC. 1149. CIVIL AND CRIMINAL PENALTIES.**

11 (a) CIVIL MONEY PENALTY.—

12 (1) FIRST TIER.—A national insurer or na-
13 tional agency, federally licensed insurance producer,
14 or insurer-affiliated party shall pay a civil penalty of
15 not more than \$5,000 for each day during which
16 such person—

17 (A) violates any law or regulation;

18 (B) violates any final order or temporary
19 order issued pursuant to section 1143, 1144,
20 1145, or 1146;

21 (C) violates any condition imposed in writ-
22 ing by the Commissioner in connection with the
23 grant of any application or other request by
24 such national insurer or national agency, pro-
25 ducer or party; or

1 (D) violates any written agreement be-
 2 tween such national insurer or national agency,
 3 producer, or party and the Commissioner.

4 (2) SECOND TIER.—Notwithstanding paragraph
 5 (1), a national insurer, national agency, federally li-
 6 censed insurance producer, or insurer-affiliated
 7 party shall pay a civil penalty of not more than
 8 \$25,000 for each day—

9 (A) during which such person—

10 (i) commits any violation described in
 11 any clause of paragraph (1);

12 (ii) recklessly engages in any conduct
 13 that is hazardous to a national insurer,
 14 State insurer, or national agency and that
 15 involves an undue risk to the policyholders,
 16 as a whole, of such national insurer or
 17 State insurer, or the policyholders, as a
 18 whole, serviced by such national agency; or

19 (iii) breaches any fiduciary duty; and

20 (B) for which such violation, conduct, or
 21 breach—

22 (i) is part of a pattern of misconduct;

23 (ii) causes or is likely to cause more
 24 than a minimal loss to such national in-
 25 surer or State insurer; or

1 (iii) results in pecuniary gain or other
2 benefit to such national agency, producer,
3 or affiliated party.

4 (3) THIRD TIER.—Notwithstanding paragraphs
5 (1) and (2), a national insurer, national agency, fed-
6 erally licensed insurance producer, or any insurer-af-
7 filiated party shall pay a civil penalty in an amount
8 not to exceed the applicable maximum amount deter-
9 mined under paragraph (4) for each day during
10 which such person—

11 (A) knowingly—

12 (i)(I) commits any violation described
13 in any clause of paragraph (1); or

14 (II) engages in any conduct that is
15 hazardous to a national insurer, State in-
16 surer, or national agency and that involves
17 an undue risk to the policyholders, as a
18 whole, of such national insurer, State in-
19 surer, or the policyholders, as a whole,
20 serviced by such national agency; and

21 (ii) breaches any fiduciary duty; and

22 (B) knowingly or recklessly causes a sub-
23 stantial loss to such national insurer, State in-
24 surer, or national agency or a substantial pecu-
25 niary gain or other benefit to such producer or

1 affiliated party by reason of such violation, con-
2 duct, or breach.

3 (4) MAXIMUM AMOUNTS OF PENALTIES FOR
4 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—

5 The maximum daily amount of any civil penalty
6 which may be assessed under paragraph (3) for any
7 violation, practice, or breach described in such para-
8 graph is \$1,000,000.

9 (5) ASSESSMENT.—

10 (A) WRITTEN NOTICE.—Any penalty im-
11 posed under paragraph (1), (2), or (3) may be
12 assessed and collected by the Commissioner by
13 written notice, which shall contain a statement
14 of the facts constituting the basis for the as-
15 sessment of any penalty imposed under para-
16 graph (1), (2), or (3).

17 (B) FINALITY OF ASSESSMENT.—If, with
18 respect to any assessment under subparagraph
19 (A), a hearing is not requested under para-
20 graph (8) within the period of time allowed
21 under such paragraph, the assessment shall
22 constitute a final and unappealable order.

23 (6) AUTHORITY TO MODIFY OR REMIT PEN-
24 ALTY.—The Commissioner may compromise, modify,
25 or remit any penalty which the Commissioner may

1 assess or had already assessed under paragraph (1),
2 (2), or (3).

3 (7) MITIGATING FACTORS.—In determining the
4 amount of any penalty imposed under paragraph
5 (1), (2), or (3), the Commissioner shall take into ac-
6 count the appropriateness of the penalty in relation
7 to—

8 (A) the size of financial resources and good
9 faith of the national insurer, national agency, or
10 other person charged;

11 (B) the gravity of the violation;

12 (C) the history of previous violations; and

13 (D) such other matters as justice may re-
14 quire.

15 (8) HEARING.—The national insurer, national
16 agency, or other person against whom any penalty is
17 assessed under this paragraph shall be afforded a
18 hearing by the Commissioner if such national in-
19 surer, national agency, or person submits a request
20 for such hearing within 20 days after the issuance
21 of the notice of assessment.

22 (9) COLLECTION.—

23 (A) REFERRAL.—If any national insurer,
24 national agency, or other person fails to pay an
25 assessment after any penalty assessed under

1 this paragraph has become final, the Commis-
 2 sioner shall recover the amount assessed by ac-
 3 tion in the appropriate United States district
 4 court.

5 (B) APPROPRIATENESS OF PENALTY NOT
 6 REVIEWABLE.—In any civil action under sub-
 7 paragraph (A), the validity and appropriateness
 8 of the penalty shall not be subject to review.

9 (10) DISBURSEMENT AND USE.—All penalties
 10 collected under authority of this paragraph shall be
 11 deposited into the Treasury, and shall not be used
 12 to fund the compensation of the Commissioner or
 13 employees of the Office or the expenses of the Of-
 14 fice.

15 (b) PREJUDGMENT ATTACHMENT.—

16 (1) IN GENERAL.—In any action brought by the
 17 Commissioner under this section, or in actions
 18 brought in aid of, or to enforce an order in, any ad-
 19 ministrative or other civil action for money damages,
 20 restitution, or civil money penalties brought by the
 21 Commissioner, the court may, upon application of
 22 the Commissioner, issue a restraining order that—

23 (A) prohibits any person subject to the
 24 proceeding from withdrawing, transferring, re-

1 moving, dissipating, or disposing of any funds,
2 assets, or other property; and

3 (B) appoints a temporary receiver to ad-
4 minister the restraining order.

5 (2) STANDARD.—

6 (A) SHOWING.—Rule 65 of the Federal
7 Rules of Civil Procedure shall apply with re-
8 spect to any proceeding under paragraph (1),
9 without regard to the requirement of such rule
10 that the applicant show that the injury, loss, or
11 damage is irreparable and immediate.

12 (B) STATE PROCEEDING.—If, in the case
13 of any proceeding in a State court, the court
14 determines that rules of civil procedure avail-
15 able under the laws of such State provide sub-
16 stantially similar protections to a party's right
17 to due process as rule 65, the relief sought
18 under paragraph (1) may be requested under
19 the laws of such State.

20 (c) CRIMINAL PENALTY.—

21 (1) IN GENERAL.—Chapter 21 of title 18,
22 United States Code, is amended by adding at the
23 end the following:

1 **“§ 404. Violation of order by Commissioner of Na-**
 2 **tional Insurance**

3 “Any person who, being subject to an order under
 4 section 1145 or 1146 of the National Insurance Act of
 5 2007, without the prior written approval of the Commis-
 6 sioner of National Insurance, knowingly participates, di-
 7 rectly or indirectly, in any manner (including by engaging
 8 in an activity specifically prohibited in such an order) in
 9 the conduct of the affairs of any national insurer or na-
 10 tional agency shall be fined not more than \$1,000,000,
 11 imprisoned for not more than 5 years, or both.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
 13 tions at the beginning of chapter 21 of title 18,
 14 United States Code, is amended by adding at the
 15 end the following:

“Sec. 404. Violation of order by Commissioner of National Insurance.”.

16 **SEC. 1150. PUBLIC DISCLOSURES OF FINAL ORDERS AND**
 17 **AGREEMENTS.**

18 (a) IN GENERAL.—Unless the Commissioner deter-
 19 mines that publication of any such agreement, statement,
 20 order, modification, or termination would be contrary to
 21 the public interest, the Commissioner shall, on a monthly
 22 basis, publish and make publicly available—

23 (1) any written agreement or other written
 24 statement for which a violation may be enforced by
 25 the Commissioner;

1 (2) any final order issued with respect to any
2 administrative enforcement proceeding initiated by
3 the Commissioner under this section or any other
4 law; and

5 (3) any modification to or termination of any
6 order or agreement made public pursuant to this
7 paragraph.

8 (b) HEARINGS.—All hearings on the record with re-
9 spect to any notice of charges issued by the Commissioner
10 shall be open to the public, unless the Commissioner deter-
11 mines that holding an open hearing would be contrary to
12 the public interest.

13 (c) TRANSCRIPT OF HEARING.—A transcript con-
14 taining all testimony and other documentary evidence shall
15 be prepared for all hearings commenced pursuant to sec-
16 tion 1148. A transcript of public hearings shall be made
17 available to the public pursuant to section 552 of title 5,
18 United States Code.

19 (d) DOCUMENTS FILED UNDER SEAL.—

20 (1) IN GENERAL.—The Commissioner may file
21 any document or part of a document under seal in
22 any administrative hearing commenced by the Com-
23 missioner if the Commissioner determines that dis-
24 closure of all or part of the document would be con-
25 trary to the public interest.

1 (2) WRITTEN REPORT.—A written report shall
2 be made part of any determination to withhold any
3 part of a document from the transcript of the hear-
4 ing required under subsection (b).

5 (e) RETENTION OF DOCUMENTS.—The Commis-
6 sioner shall maintain a record for not less than 6 years
7 of—

8 (1) all the documents described in subsection
9 (a); and

10 (2) all informal enforcement agreements and
11 other supervisory actions and supporting documents
12 issued in connection with any administrative enforce-
13 ment proceeding initiated by the Commissioner.

14 (f) DISCLOSURES TO CONGRESS.—No provision of
15 this section may be construed to authorize the with-
16 holding, or to prohibit the disclosure, of any information
17 to Congress.

18 **SEC. 1151. FOREIGN INVESTIGATIONS.**

19 (a) REQUESTING ASSISTANCE FROM FOREIGN GOV-
20 ERNMENTS.—In conducting any investigation, examina-
21 tion, or enforcement action under this subtitle, the Com-
22 missioner may request the assistance of any foreign gov-
23 ernment.

24 (b) PROVIDING ASSISTANCE TO FOREIGN GOVERN-
25 MENTS.—

1 (1) IN GENERAL.—The Commissioner may as-
2 sist any foreign government that is conducting an
3 investigation to determine whether any person has
4 violated, is violating, or is about to violate any law
5 or regulation relating to insurance matters or cur-
6 rency transactions administered or enforced by such
7 foreign government.

8 (2) INVESTIGATION BY COMMISSIONER.—The
9 Commissioner may investigate and collect informa-
10 tion and evidence pertinent to a request for assist-
11 ance under paragraph (1). Any such investigation
12 shall comply with the laws of the United States and
13 the policies and procedures of the Commissioner.

14 (3) FACTORS TO CONSIDER.—In deciding
15 whether to provide assistance under this section, the
16 Commissioner shall consider—

17 (A) whether the requesting authority has
18 agreed to provide reciprocal assistance with re-
19 spect to insurance matters within the jurisdic-
20 tion of the Commissioner; and

21 (B) whether compliance with the request
22 would prejudice the public interest of the
23 United States.

24 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to limit the authority of the Com-

1 missioner or any other Federal agency to provide or re-
 2 ceive assistance or information to or from any foreign gov-
 3 ernmental authority with respect to any matter.

4 **SEC. 1152. ACTION OR PROCEEDING AGAINST NON-UNITED**
 5 **STATES INSURERS.**

6 (a) IN GENERAL.—The Commissioner may not take
 7 any action under this subtitle against a non-United States
 8 insurer or any officer, director, employee, or agent of such
 9 insurer unless the Commissioner believes that conduct or
 10 practice of such insurer or individual has been, is, or is
 11 likely to be, carried on in connection with an act or prac-
 12 tice within 1 or more States, which constitutes an appro-
 13 priate basis for action by the Commissioner under this
 14 subtitle.

15 (b) REMOVAL OF OFFICER OR DIRECTOR.—If an of-
 16 ficer, director, or other person associated with a non-
 17 United States insurer fails to appear promptly as a party
 18 in any case in which an action or proceeding is brought,
 19 pursuant to an allegation under subsection (a), for the
 20 suspension or removal of such officer, director, or other
 21 person, or fails to comply with any effective order or judg-
 22 ment therein, any failure by the non-United States insurer
 23 to secure the removal of the officer, director, or other per-
 24 son from any office such person holds in such insurer and
 25 from any further participation in its affairs shall con-

1 stitute grounds for ordering the non-United States insurer
 2 to terminate the sale, solicitation, negotiation, and under-
 3 writing of insurance and all other insurance operations in
 4 the United States.

5 (c) VENUE.—

6 (1) IN GENERAL.—Except as provided under
 7 paragraph (2), if the venue of any judicial or admin-
 8 istrative proceeding under this section is to be deter-
 9 mined by reference to the location of the main office
 10 of a national insurer, the venue of such a proceeding
 11 shall be within the judicial district or other relevant
 12 jurisdiction in which the non-United States insurer
 13 has 1 or more offices.

14 (2) MULTIPLE JURISDICTIONS.—If a national
 15 insurer has offices in more than 1 jurisdiction, the
 16 venue of a proceeding under this section—

17 (A) shall be in the jurisdiction within
 18 which the office or offices involved in the pro-
 19 ceeding are located; and

20 (B) if there is more than 1 jurisdiction
 21 under subparagraph (A), shall be proper in any
 22 such jurisdiction in which the proceeding is
 23 brought or to which it may appropriately be
 24 transferred.

25 (d) SERVICE OF PROCESS.—

1 (1) IN GENERAL.—Any service required or au-
2 thorized to be made on a non-United States insurer
3 may be made on any office located within any State.

4 (2) EXCEPTION.—If any service of process
5 under paragraph (1) is in connection with an action
6 or proceeding involving 1 or more offices located in
7 any State, service shall be made on at least 1 office
8 so involved.

9 **SEC. 1153. COOPERATION BETWEEN COMMISSIONER AND**
10 **STATE COMMISSIONERS.**

11 (a) NOTICE TO STATE COMMISSIONERS.—The Com-
12 missioner shall notify the State commissioner in each
13 State in which a national insurer or national agency is
14 doing business not later than 30 days after the date of
15 taking any of the following actions:

16 (1) Revocation, suspension, or restriction of the
17 authority of the national insurer or national agency
18 to transact insurance.

19 (2) The entry of a formal order that the na-
20 tional insurer restrict its premium writing, obtain
21 additional contributions to surplus, reinsure all or
22 any part of its business, or increase capital, surplus,
23 or any other account for the security of policyholders
24 or creditors.

1 (3) The placement of a national insurer into re-
2 ceivership.

3 **Subtitle D—Insurance Fraud**

4 **SEC. 1161. INVESTIGATION OF INSURANCE FRAUD.**

5 (a) INVESTIGATIVE AUTHORITY OF COMMIS-
6 SIONER.—The Commissioner may investigate suspected
7 fraudulent insurance acts by insurance persons engaged
8 in the business of insurance or by other persons.

9 (b) FRAUD WARNING REQUIRED.—The Commis-
10 sioner, by regulation, shall require each national insurer
11 to place a fraud warning on claim forms and applications
12 for policies of insurance written, or to be written, by a
13 national insurer, regardless of the form of transmission.

14 (c) MANDATORY REPORTING OF FRAUDULENT IN-
15 SURANCE ACTS.—A national insurer, or an insurance per-
16 son engaged in the business of insurance, that knows or
17 reasonably believes that a fraudulent insurance act is
18 being, will be, or has been committed, shall submit such
19 information to the Commissioner in a form and manner
20 prescribed by the Commissioner.

21 (d) IMMUNITY FROM LIABILITY.—

22 (1) IN GENERAL.—Except as provided under
23 paragraphs (2) and (3), any person who furnishes
24 information concerning suspected, anticipated, or
25 completed fraudulent insurance acts shall not be lia-

1 ble to any person under any law or regulation of the
2 United States, any constitution, law, or regulation of
3 any State or political subdivision of any State, or
4 under any contract or other legally enforceable
5 agreement (including any arbitration agreement), for
6 such act, if the information is provided to or re-
7 ceived from—

8 (A) the Commissioner or any employee,
9 agent, or representative of the Commissioner;

10 (B) Federal, State, or local enforcement or
11 regulatory officials or their employees, agents,
12 or representatives;

13 (C) a self-regulatory organization or its
14 employees, agents, or representatives;

15 (D) a person involved in the prevention
16 and detection of fraudulent insurance acts or
17 that person's agents, employees, or representa-
18 tives; or

19 (E) the NAIC or its employees, agents, or
20 representatives.

21 (2) MALICE.—

22 (A) IN GENERAL.—Paragraph (1) shall not
23 apply to false statements made with actual mal-
24 ice.

1 (B) CONTENTS OF COMPLAINT.—In an ac-
 2 tion brought against a person for filing a report
 3 or furnishing other information concerning a
 4 fraudulent insurance act, the party bringing the
 5 action shall plead specifically any allegation
 6 that paragraph (1) does not apply because the
 7 person filed the report or furnished the infor-
 8 mation with actual malice.

9 (3) PRESERVATION OF PRIVILEGE AND IMMUNI-
 10 TIES.—This subsection does not abrogate or modify
 11 common law or statutory privileges or immunities
 12 enjoyed by a person described in paragraph (1).

13 (e) CONFIDENTIALITY REGULATIONS.—The Commis-
 14 sioner shall, by regulation, establish standards for the pro-
 15 tection of confidential information submitted or obtained
 16 in an investigation of a suspected or actual fraudulent in-
 17 surance act, the ability of the Commissioner to testify in
 18 private civil actions concerning any such confidential in-
 19 formation and the sharing by the Commissioner of any
 20 such confidential information with other regulators, self-
 21 regulatory organizations, and other persons.

22 **SEC. 1162. PENALTIES.**

23 If a person committing an offense under subsection
 24 (a) or (c) of section 1033 of title 18, United States Code,
 25 is a national insurer, a national agency, or other federally

1 licensed insurance producer, or an insurer-affiliated party,
 2 the Commissioner may, in addition to the punishment set
 3 forth in section 1034 of title 18, United States Code—

4 (1) revoke, suspend, or restrict the Federal li-
 5 cense of such national insurer, national agency, or
 6 other federally licensed insurance producer, or in-
 7 surer-affiliated party pursuant to subtitle C; and

8 (2) order such national insurer, national agen-
 9 cy, or other federally licensed insurance producer, or
 10 insurer-affiliated party to make restitution to per-
 11 sons aggrieved by such offenses.

12 **SEC. 1163. CIVIL REMEDY.**

13 (a) RECOVERY AUTHORIZED.—Any national insurer,
 14 national agency, or federally licensed insurance producer
 15 that is injured by reason of a fraudulent insurance act
 16 may recover from the person committing the act—

17 (1) return of any profit, benefit, compensation,
 18 or payment received by the person committing the
 19 act;

20 (2) reasonable attorney fees, related legal ex-
 21 penses, including internal legal expenses and court
 22 costs; and

23 (3) all other economic damages directly result-
 24 ing from the act.

25 (b) LIMITATIONS.—No action under this section—

1 (1) may be certified as a class action or made
2 part of a class action; and

3 (2) may be maintained under this section if a
4 court has ordered restitution to the injured national
5 insurer, national agency, or federally licensed insur-
6 ance producer upon criminal conviction of the person
7 committing the fraudulent insurance act.

8 (c) **SOLE PRIVATE REMEDY.**—The remedy provided
9 under this section shall be the only private remedy for
10 commission of a fraudulent insurance act, and no addi-
11 tional remedies shall be implied, nor shall the remedy pro-
12 vided under this section be used in conjunction with or
13 in addition to any other remedies available at law or in
14 equity to duplicate recovery for the same element of eco-
15 nomic damage.

16 **TITLE II—NATIONAL INSURANCE**
17 **COMPANIES AND NATIONAL**
18 **INSURANCE AGENCIES**

19 **Subtitle A—Organization,**
20 **Licensing, and Operations**

21 **SEC. 1201. ORGANIZATION, OPERATION, AND REGULATION**
22 **OF NATIONAL INSURANCE COMPANIES AND**
23 **NATIONAL INSURANCE AGENCIES.**

24 (a) **AUTHORIZATION.**—

1 (1) IN GENERAL.—The Commissioner may, in
2 accordance with the provisions of this Act, and
3 under regulations prescribed by the Commissioner
4 pursuant to paragraph (2)—

5 (A) provide for the organization, incorpora-
6 tion, operation, and regulation of national in-
7 surance companies and national insurance
8 agencies; and

9 (B) issue charters therefor.

10 (2) RULEMAKING.—The Commissioner shall
11 issue regulations that permit the organization of na-
12 tional insurers in stock, mutual, reciprocal, or fra-
13 ternal form, and address such other matters related
14 to the chartering and licensing of national insurers
15 and national agencies, as the Commissioner deter-
16 mines appropriate.

17 (3) ORGANIZATION.—The Commissioner shall
18 require each national agency to be organized as a
19 corporation, partnership, limited liability company,
20 or in such other form as is recognized under State
21 law.

22 (b) CHARTERING CRITERIA.—

23 (1) FACTORS.—In determining whether to issue
24 a charter for a national insurer or national agency,
25 the Commissioner shall consider—

1 (A) the character and competency of the
2 parties seeking the charter; and

3 (B) the financial resources and future
4 prospects of the proposed national insurer or
5 proposed national agency.

6 (2) INFORMATION.—The Commissioner shall re-
7 quest such information from the applicant as the
8 Commissioner determines necessary to make the
9 evaluation required under paragraph (1).

10 (3) CORPORATE NAME.—

11 (A) NATIONAL INSURERS.—The corporate
12 name of each national insurer shall include at
13 the end the words “national insurer” or the ini-
14 tials “N.I.”.

15 (B) NATIONAL AGENCIES.—The corporate
16 name of each national agency shall include at
17 the end the words “National Insurance Agency”
18 or the initials “N.I.A.”.

19 (C) SAVINGS PROVISION.—Nothing in this
20 Act shall preclude a State insurer or State in-
21 surance agency from using the word “national”
22 or “Federal” in its corporate name if such word
23 was included in the corporate name of the State
24 insurer or agency on or before the date of en-
25 actment of this Act.

1 (c) ISSUANCE OR DENIAL OF CHARTER.—

2 (1) DETERMINATION.—Not later than 60 days
3 after the receipt of the articles of incorporation or
4 other organization document from a proposed na-
5 tional insurer or national agency, and such other in-
6 formation required under subsection (b)(2), the
7 Commissioner shall—

8 (A) issue a charter certificate to the appli-
9 cant; or

10 (B) provide the applicant with a written
11 explanation of the grounds for denying a char-
12 ter.

13 (2) FEDERAL PRODUCER LICENSE.—If the
14 Commissioner issues a charter certificate to a na-
15 tional agency, the Commissioner shall concurrently
16 issue a Federal producer license to the applicant
17 pursuant to section 1301. A national agency may
18 not sell, solicit, or negotiate any line of insurance for
19 which it does not hold a Federal producer license.

20 (3) GROUNDS FOR DENIAL.—The Commissioner
21 shall not grant a charter to an applicant if—

22 (A) the applicant fails to—

23 (i) comply with all applicable forma-
24 tion requirements; and

1 (ii) provide any information requested
 2 by the Commissioner under subsection
 3 (b)(2);

4 (B) the applicant lacks—

5 (i) the financial resources necessary to
 6 comply with the standards under this Act;
 7 or

8 (ii) the character or competence to op-
 9 erate the national insurer or national agen-
 10 cy in accordance with the standards under
 11 this Act; or

12 (C) the Commissioner determines that the
 13 national insurer or national agency is being
 14 formed for an illegitimate purpose.

15 (d) AMENDMENT OF CHARTER.—The Commissioner
 16 may, under such regulations as the Commissioner may
 17 prescribe, provide for the amendment of charters issued
 18 to national insurers and national agencies.

19 (e) NO DELEGATION PERMITTED.—The Commis-
 20 sioner may not delegate to any insurance self-regulatory
 21 organization any authority conferred under this section
 22 with respect to—

23 (1) the organization, incorporation, and powers
 24 of national insurers or national agencies; or

1 (2) the issuance and amendment of charters to
2 a national insurer or national agency.

3 (f) MAIN OFFICE.—

4 (1) DESIGNATION.—Subject to the approval of
5 the Commissioner, a national insurer or national
6 agency may designate any office at which it conducts
7 insurance operations as its main office.

8 (2) CHARTER TO SPECIFY MAIN OFFICE.—The
9 charter of a national insurer or national agency shall
10 specify the State in which its main office is located.

11 (3) CHANGE IN MAIN OFFICE.—With the ap-
12 proval of the Commissioner, a national insurer or
13 national agency may change the designation of its
14 main office, including to another existing office of
15 the national insurer or national agency.

16 (4) CITIZENSHIP.—For purposes of jurisdiction,
17 a national insurer or national agency shall be
18 deemed a citizen of the State in which its main of-
19 fice is located and of the State in which it has its
20 principal place of business.

21 (g) INSURER IN FRATERNAL FORM.—Any charter
22 granted to a national insurer in fraternal form in connec-
23 tion with a conversion from a State insurer shall include
24 provisions that allow the national insurer to operate as

1 an insurer in fraternal form in a manner consistent with
2 the requirements of its former State charter.

3 **SEC. 1202. UNITED STATES BRANCHES OF NON-UNITED**
4 **STATES INSURERS.**

5 (a) AUTHORIZATION OF NON-UNITED STATES IN-
6 SURER.—A non-United States insurer may transact insur-
7 ance in the United States through a United States branch
8 by qualifying and licensing the United States branch to
9 do business as a national insurer under this Act, under
10 such regulations as the Commissioner may prescribe.

11 (b) TRUST ACCOUNT.—

12 (1) IN GENERAL.—The Commissioner shall not
13 license a United States branch until the non-United
14 States insurer establishes a trust account, pursuant
15 to a deed of trust that meets the requirements of
16 this subsection.

17 (2) ASSETS.—The trustee assets of a United
18 States branch shall be held pursuant to a deed of
19 trust with a United States bank that meets such re-
20 quirements as the Commissioner may prescribe, in
21 trust for the exclusive benefit, security, and protec-
22 tion of the policyholders, or policyholders and credi-
23 tors, of the United States branch in the United
24 States maintained as long as there is outstanding

1 any liability of the United States branch arising out
 2 of its insurance transactions in the United States.

3 (3) SURPLUS.—The trustee surplus of a
 4 United States branch shall be subject to the same
 5 solvency standards required of national insurers, in-
 6 cluding the risk-based capital standards described in
 7 section 1212(a)(4).

8 (4) FILING.—The Commissioner may require a
 9 United States branch to file a statement, in such
 10 form as the Commissioner may prescribe, that has
 11 been certified by the trustee.

12 (c) SUBJECT TO APPLICABLE LAWS.—Except as oth-
 13 erwise provided under this section, a United States branch
 14 established under this section—

15 (1) shall be subject to all laws applicable to a
 16 national insurer; and

17 (2) shall be treated as a national insurer for all
 18 purposes of this Act.

19 **SEC. 1203. FEDERAL LICENSING OF NATIONAL INSURERS.**

20 (a) IN GENERAL.—A national insurer may not sell,
 21 solicit, negotiate, or underwrite any line of insurance for
 22 which it does not hold a Federal license.

23 (b) ISSUANCE OF FEDERAL LICENSES.—

1 (1) IN GENERAL.—The Commissioner shall,
2 under such regulations as the Commissioner shall
3 prescribe, issue Federal licenses that—

4 (A) permit national insurers to sell, solicit,
5 negotiate, and underwrite lines of insurance;
6 and

7 (B) specify the lines of insurance that each
8 national insurer may sell, solicit, negotiate, and
9 underwrite.

10 (2) RULEMAKING.—The regulations prescribed
11 by the Commissioner pursuant to paragraph (1)
12 shall provide that—

13 (A) a national insurer may hold a license
14 to sell, solicit, negotiate, and underwrite prop-
15 erty/casualty insurance;

16 (B) a national insurer that holds a license
17 to sell, solicit, negotiate, and underwrite life in-
18 surance may also sell, solicit, negotiate, and un-
19 derwrite disability income insurance, long-term
20 care insurance, annuities, and funding agree-
21 ments; and

22 (C) no national insurer may obtain—

23 (i) a Federal license to engage in the
24 sale, solicitation, negotiation, and under-
25 writing of property/casualty insurance; and

1 (ii) a Federal license to engage in the
2 sale, solicitation, negotiation, and under-
3 writing of life insurance, annuities, or
4 funding agreements.

5 (3) AUTHORITY TO LIMIT SCOPE OF INSUR-
6 ANCE.—Subject to paragraph (2), the regulations
7 prescribed by the Commissioner pursuant to para-
8 graph (1) may provide that a national insurer that
9 holds a license to sell, solicit, negotiate, and under-
10 write specified lines of insurance may not hold a li-
11 cense to sell, solicit, negotiate, and underwrite other
12 specified lines of insurance.

13 (4) TITLE INSURANCE.—The Commissioner
14 shall not license any person to engage in the busi-
15 ness of title insurance, except that nothing in this
16 Act shall prevent a provider of title insurance from
17 being affiliated with a national insurer or national
18 agency.

19 (5) DURATION.—A Federal license issued by
20 the Commissioner pursuant to this subsection shall
21 remain in effect until the license is—

22 (A) surrendered by the national insurer; or
23 (B) revoked or suspended by the Commis-
24 sioner in accordance with the provisions of this
25 Act.

1 (c) REINSURANCE.—A national insurer may—

2 (1) only reinsure the lines of insurance that the
3 national insurer is—

4 (A) licensed to sell, solicit, negotiate, and
5 underwrite under its Federal license; or

6 (B) otherwise permitted to reinsure by the
7 terms of its Federal license; and

8 (2) confine its business to reinsurance.

9 (d) NONDISCRIMINATION.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2) and section 1202, the Commissioner may
12 not impose any condition for the granting of a Fed-
13 eral license to a national insurer under this section
14 solely because the national insurer is—

15 (A) a subsidiary of a non-United States
16 person;

17 (B) partially owned by a non-United States
18 person; or

19 (C) a United States branch of a non-
20 United States insurer.

21 (2) EXCEPTION.—Notwithstanding paragraph
22 (1), the Commissioner may impose conditions for the
23 granting of a Federal license that are different from
24 those imposed on other national insurers—

1 (A) if the conditions attached are imposed
 2 on the legal form in which the national insurer
 3 chooses to operate; or

4 (B) if the Commissioner makes a written
 5 finding that the conditions are related to the
 6 protection of policyholders and are the min-
 7 imum conditions necessary to achieve the pur-
 8 poses of this Act.

9 **SEC. 1204. CORPORATE GOVERNANCE.**

10 (a) COMPLIANCE WITH THIS ACT AND APPLICABLE
 11 REGULATIONS.—The corporate governance procedures of
 12 a national insurer and a national agency shall be con-
 13 sistent with the provisions of this Act and all regulations
 14 issued by the Commissioner under this Act.

15 (b) ADHERENCE TO STATE LAW.—

16 (1) IN GENERAL.—Except as provided under
 17 paragraph (3), and to the extent not inconsistent
 18 with the provisions of this Act or regulations issued
 19 by the Commissioner under this Act, each national
 20 insurer and national agency shall adhere to cor-
 21 porate governance procedures of the relevant State
 22 law of the State in which its main office is located
 23 or the State in which 1 of its United States holding
 24 companies is organized or incorporated.

1 (2) DESIGNATION.—Each national insurer and
 2 national agency shall designate in its bylaws the
 3 body of relevant State law selected for its corporate
 4 governance procedures.

5 (3) DISCRIMINATORY PROVISION.—If the Com-
 6 missioner determines that any provision of a State
 7 corporate governance law is discriminatory as ap-
 8 plied to national insurers or national agencies, such
 9 insurer or agency—

10 (A) shall not be obligated to follow such a
 11 provision of the relevant State law; and

12 (B) may follow such other provision of law
 13 as the Commissioner determines to be appro-
 14 priate.

15 (c) INDEPENDENT AUDIT COMMITTEE FOR NA-
 16 TIONAL INSURERS.—

17 (1) ESTABLISHMENT.—Each national insurer
 18 shall establish an audit committee of its board of di-
 19 rectors, which shall be composed entirely of outside
 20 directors who are independent of management of the
 21 national insurer.

22 (2) SATISFACTION.—The requirement described
 23 in paragraph (1) will be satisfied if—

24 (A) any person that controls the national
 25 insurer has established an audit committee of

1 its board of directors entirely composed of out-
2 side directors who are independent of manage-
3 ment of such controlling person; and

4 (B) the role of the audit committee of the
5 controlling person in subparagraph (A) includes
6 review of financial statements of the national
7 insurer.

8 **SEC. 1205. PARTICIPATING POLICY PROCEDURES.**

9 (a) CHOICE OF PROCEDURES.—A national life in-
10 surer in mutual form shall, at the time of its initial char-
11 tering and licensing under sections 1201 and 1203, or its
12 conversion under section 1206, elect to either—

13 (1) adhere to participating policy procedures of
14 the relevant law of the State in which its main office
15 is located; or

16 (2) adhere to the participating policy proce-
17 dures established by regulation of the Commissioner
18 under subsection (b).

19 (b) REGULATIONS.—The Commissioner shall, by reg-
20 ulation, establish participating policy procedures, as the
21 Commissioner determines to be appropriate to carry out
22 this Act.

23 (c) EXCEPTION.—No national life insurer in mutual
24 form shall be subject to any limitation on the amount of
25 surplus that it may retain.

1 **SEC. 1206. CONVERSION OF STATE INSURER TO NATIONAL**
2 **INSURER OR STATE INSURANCE AGENCY TO**
3 **NATIONAL AGENCY.**

4 (a) **AUTHORIZATION TO CONVERT.—**

5 (1) **IN GENERAL.**—Notwithstanding any other
6 provision of law and subject to the approval of the
7 Commissioner, a State insurer may convert to a na-
8 tional insurer and a State insurance agency may
9 convert to a national agency.

10 (2) **ORGANIZATIONAL FORM.**—A State insurer
11 that converts to a national insurer under paragraph
12 (1) may—

13 (A) retain an organizational form per-
14 mitted under section 1201(a)(2); or

15 (B) change directly to another organiza-
16 tional form that is permitted under section
17 1201(a)(2).

18 (b) **CONVERSION PROCEDURES.—**

19 (1) **IN GENERAL.**—The Commissioner may,
20 under such regulations as the Commissioner may
21 prescribe, provide for—

22 (A) the conversion of State insurers into
23 national insurers;

24 (B) the conversion of State insurance
25 agencies to national agencies; and

1 (C) the issuance of charters to such con-
2 verted insurers and agencies.

3 (2) RULEMAKING.—Regulations issued by the
4 Commissioner under this section shall be consistent
5 with—

6 (A) the regulations issued by the Commis-
7 sioner under section 1201; and

8 (B) the provisions of section 1242 or 1243,
9 as applicable, in the case of a change of form
10 effected at the time of a conversion of a State
11 insurer into a national insurer.

12 (c) EFFECT OF CONVERSION.—

13 (1) IN GENERAL.—Except as provided under
14 paragraph (2), a State insurer or State insurance
15 agency that converts under this section—

16 (A) shall be subject to the provisions of
17 this Act and to examination and regulation as
18 provided under this Act to the same extent as
19 other national insurers and national agencies
20 organized under this Act;

21 (B) shall be deemed to be a continuation
22 of the corporate existence of the State insurer
23 or State insurance agency, as applicable; and

24 (C) shall, by operation of law and without
25 further action, hold and be subject to all rights,

1 privileges, liabilities, property interests, and
2 other interests and obligations that the State
3 insurer or State insurance agency held, or was
4 subject to, immediately before the conversion.

5 (2) EXCEPTIONS.—Notwithstanding paragraph
6 (1), a State insurer or State insurance agency that
7 converts under this section—

8 (A) shall not be subject to any requirement
9 to maintain deposits with State insurance regu-
10 latory authorities;

11 (B) shall not hold any State license to sell,
12 solicit, negotiate, and underwrite insurance that
13 was held by the State insurer or State insur-
14 ance agency; and

15 (C) shall obtain, in accordance with section
16 1203 or 1301, as applicable, a Federal license
17 for all lines of insurance that it sells, solicits,
18 negotiates, or underwrites.

19 (d) SPECIAL AUTHORITY.—The Commissioner may,
20 subject to such conditions as the Commissioner may pre-
21 scribe by regulation, permit a national insurer or national
22 agency resulting from the conversion of a State insurer
23 or State insurance agency, as applicable, to retain, hold,
24 or exercise assets, liabilities, powers, and authorities that
25 do not conform to the legal requirements otherwise appli-

1 cable to national insurers or national agencies to the ex-
 2 tent the Commissioner determines is appropriate.

3 (e) MUTUAL HOLDING COMPANY CONTROLLING
 4 STATE INSURERS IN STOCK FORM.—

5 (1) IN GENERAL.—If a State insurer converting
 6 under this section is an insurer in stock form that
 7 is controlled by a mutual holding company as a re-
 8 sult of a previous conversion under State law from
 9 an insurer in mutual form to an insurer in stock
 10 form, and, after the conversion under this section,
 11 the mutual holding company would not control any
 12 other State insurers having policies in force that give
 13 rise to membership in the mutual holding company,
 14 then, notwithstanding any other provision of law, in
 15 accordance with this section and regulations issued
 16 by the Commissioner—

17 (A) upon the conversion under this section,
 18 the mutual holding company may remain a cor-
 19 poration organized under the law of the State
 20 under which it was incorporated or may merge
 21 into a mutual holding company incorporated
 22 under the law of another State; and

23 (B) upon and after the conversion under
 24 this section, the mutual holding company—

1 (i) shall, to the extent provided in reg-
 2 ulations issued by the Commissioner, be
 3 subject to—

4 (I) title V; and

5 (II) examination, reporting, regu-
 6 lation, and other supervision under
 7 this Act; and

8 (ii) shall not be subject to any form of
 9 licensing, examination, reporting, regula-
 10 tion, or other supervision by reason of
 11 being a mutual holding company or relat-
 12 ing to the rights of members, the sale, so-
 13 licitation, negotiation, or underwriting of
 14 insurance (including all products of na-
 15 tional insurers) or any other insurance op-
 16 erations except as authorized under Fed-
 17 eral law and except as provided in section
 18 1125(b), as if the mutual holding company
 19 were a national insurer under this Act.

20 (2) CONVERSION TO A CORPORATION IN STOCK
 21 FORM.—Notwithstanding any other provision of law
 22 and in accordance with this subsection and regula-
 23 tions issued by the Commissioner, a mutual holding
 24 company described in paragraph (1) may convert to
 25 a corporation in stock form in a manner that—

1 (A) is found by the Commissioner to be
 2 fair and equitable to the mutual holding com-
 3 pany and its members; and

4 (B) is generally similar to conversion of an
 5 insurer in mutual form to a national insurer in
 6 stock form pursuant to section 1243.

7 (f) NO DELEGATION PERMITTED.—The Commis-
 8 sioner may not delegate any authority under this section
 9 involving the conversion of a State insurer into a national
 10 insurer or a State insurance agency into a national agency
 11 to any insurance self-regulatory organization.

12 **SEC. 1207. CONVERSION OF NATIONAL INSURER TO STATE**
 13 **INSURER OR NATIONAL AGENCY TO STATE**
 14 **AGENCY.**

15 (a) IN GENERAL.—Subject to such notification proce-
 16 dures as the Commissioner may prescribe by regulation,
 17 a national insurer may convert into a State insurer and
 18 a national agency may convert into a State insurance
 19 agency, in accordance with applicable State law.

20 (b) SAVINGS PROVISION.—Nothing in this section or
 21 in the conversion of a national insurer into a State insurer
 22 or a national agency into a State insurance Agency shall
 23 operate to abrogate any rights, privileges, liabilities, prop-
 24 erty interests, or other interests or obligations that a na-

1 tional insurer or national agency held or was subject to
2 immediately before the conversion.

3 **SEC. 1208. POWERS.**

4 (a) IN GENERAL.—Upon issuance of its charter, a
5 national insurer or national agency shall have the power,
6 subject to such regulations as the Commissioner may pre-
7 scribe—

8 (1) to have, alter, use, and reproduce a cor-
9 porate seal, or a facsimile of it;

10 (2) to have perpetual succession until such time
11 as it is liquidated, dissolved, merged, or otherwise
12 wound up in accordance with applicable law;

13 (3) to adopt, amend, and repeal by-laws;

14 (4) to sue or be sued, complain and defend, and
15 otherwise litigate in any court and participate, as a
16 party or otherwise, in any judicial, administrative,
17 arbitral, or other proceeding, in its corporate name;

18 (5) to make contracts and guarantees, incur li-
19 abilities, borrow money, issue notes, bonds, and
20 other obligations (which may be convertible into or
21 include the option to purchase other securities of the
22 national insurer or national agency), and secure any
23 of its obligations by mortgage or pledge of any of its
24 property, franchises, or income;

1 (6) to purchase, receive, subscribe for, or other-
2 wise acquire, own, hold, vote, improve, employ, use,
3 and otherwise deal in and with real and personal
4 property or other assets, or any interest therein, and
5 sell, convey, mortgage, lease, exchange, transfer, or
6 otherwise dispose of, or mortgage or pledge, all or
7 any of its property and assets, or any interest there-
8 in;

9 (7) to lend money, invest, and reinvest its funds
10 and receive and hold real and personal property as
11 security for repayment;

12 (8) to participate with others in any corpora-
13 tion, partnership, limited partnership, joint venture,
14 or other association, or in any transaction, under-
15 taking, or arrangement, which the national insurer
16 or national agency would have power to conduct by
17 itself, whether or not such participation involves
18 sharing or delegating control with or to others;

19 (9) to elect or appoint directors, officers, em-
20 ployees, and agents of the national insurer or na-
21 tional agency, define their duties, fix their com-
22 pensation, and lend them money and credit;

23 (10) to pay pensions and establish pension
24 plans, pension trusts, profit-sharing plans, share
25 bonus plans, share option plans, and other benefit or

1 incentive plans for any or all current or former di-
2 rectors, officers, employees, and agents of the na-
3 tional insurer or national agency, its subsidiaries or
4 its affiliates;

5 (11) to provide insurance for its benefit on the
6 life of any of its directors, officers, or employees, or
7 on the life of any shareholder for the purpose of ac-
8 quiring, at the death of such shareholder, shares of
9 its stock owned by such shareholder;

10 (12) in the case of a national life insurer—

11 (A) to establish and maintain 1 or more
12 separate accounts and allocate amounts to such
13 accounts (including any proceeds applied under
14 optional modes of settlement or under dividend
15 options) to provide for life insurance, annuities,
16 disability income insurance, long-term care in-
17 surance, or funding agreements (and incidental
18 benefits), payable in fixed or variable amounts
19 (or both) from such accounts or from the gen-
20 eral account (or both);

21 (B) to hold and accumulate funds pursu-
22 ant to funding agreements; and

23 (C) to provide investment advice and in-
24 vestment management services;

25 (13) in the case of a national insurer—

1 (A) to engage in the sale, solicitation, ne-
2 gotiation, and underwriting of insurance;

3 (B) to establish and maintain 1 or more
4 protected cells in connection with an insurance
5 securitization and attribute to such cells insur-
6 ance and reinsurance obligations with respect to
7 its general account, obligations relating to the
8 insurance securitization, and assets to fund
9 such obligations; and

10 (C) to engage in all other insurance oper-
11 ations and exercise all such incidental powers as
12 shall be necessary to carry on insurance oper-
13 ations;

14 (14) in the case of a national agency—

15 (A) to engage in the sale, solicitation, and
16 negotiation of—

17 (i) policies of insurance issued by any
18 national insurer or State insurer; and

19 (ii) surplus lines insurance and non-
20 admitted insurance for a non-admitted in-
21 surer; and

22 (B) to exercise all such incidental powers
23 as shall be necessary to carry out such activi-
24 ties, including claims adjustment and settle-
25 ment, risk management, employee benefits ad-

1 vice, retirement planning, and any other insur-
2 ance-related consulting activities;

3 (15) to provide benefits or payments to its di-
4 rectors, officers, and employees, subsidiaries or af-
5 filiates, and to their estates, families, dependents, or
6 beneficiaries, in recognition of the past services of
7 the directors, officers, and employees to the national
8 insurer or national agency or its subsidiaries or af-
9 filiates;

10 (16) to make donations and otherwise devote its
11 resources for the public welfare or for charitable, sci-
12 entific, educational, humanitarian, philanthropic, or
13 religious purposes;

14 (17) to serve as a promoter, partner, member,
15 associate, or manager of any business entity;

16 (18) to provide loss control, advice, exposure
17 identification, and reduction strategies, and rec-
18 ommend and expedite risk financing alternatives;

19 (19) to engage in any other lawful activity that
20 is necessary or convenient to further its activities
21 and affairs; and

22 (20) to exercise the powers granted by this Act
23 in any State and in any foreign jurisdiction.

24 (b) EFFECT ON STATE LAW.—No State may, by stat-
25 ute, regulation, order, interpretation, or otherwise, prevent

1 or restrict a national insurer or national agency from exer-
2 cising any power conferred by this section or by any regu-
3 lation authorized by this section.

4 (c) SUBSIDIARIES.—

5 (1) NATIONAL INSURERS.—

6 (A) AUTHORIZATION.—

7 (i) IN GENERAL.—A national insurer
8 may establish, invest in, or otherwise ac-
9 quire 1 or more subsidiaries engaged or or-
10 ganized to engage in any business lawful
11 under the laws of the jurisdictions in which
12 the subsidiaries are organized.

13 (ii) RESTRICTION.—Without the prior
14 written approval of the Commissioner, not
15 more than 20 percent of the national in-
16 surer's assets may be invested in any 1
17 subsidiary described in clause (i) and not
18 more than 40 percent of a national insur-
19 er's assets may be invested in 2 or more
20 subsidiaries engaged in such other activi-
21 ties.

22 (B) CALCULATION.—In calculating the
23 amount invested by a national insurer in a sub-
24 sidiary under subparagraph (A), there shall be
25 included only the following:

1 (i) Total net monies or other consider-
2 ation expended and obligations assumed by
3 the national insurer in the acquisition or
4 formation of the subsidiary, including all
5 organizational expenses and contributions
6 to capital and surplus of the subsidiary
7 whether or not represented by the pur-
8 chase of capital stock or issuance of other
9 securities.

10 (ii) All amounts expended by the na-
11 tional insurer in acquiring additional com-
12 mon stock, preferred stock, debt obliga-
13 tions, and other securities of the sub-
14 sidiary.

15 (iii) All contributions by the national
16 insurer to the capital or surplus of the sub-
17 sidiary subsequent to its acquisition or for-
18 mation.

19 (C) QUALIFICATION OF INVESTMENT;
20 WHEN DETERMINED.—Whether any investment
21 made pursuant to subparagraph (A) meets the
22 applicable requirements of such subparagraph
23 shall be determined before the investment is
24 made by calculating the applicable investment
25 limitations as though the investment had al-

1 ready been made, taking into account the then
2 outstanding principal balance on all previous in-
3 vestments in debt obligations, and the value of
4 all previous investments in equity securities as
5 of the day they were made, net of any return
6 of capital invested, not including dividends.

7 (D) EXCEPTION.—The limitations provided
8 for in subparagraph (A) shall not apply to in-
9 vestments by a national insurer in—

10 (i) any subsidiary engaged primarily
11 in the sale, solicitation, negotiation, and
12 underwriting of any line of insurance that
13 the national insurer is authorized to sell,
14 solicit, negotiate, and underwrite; or

15 (ii) any subsidiary whose sole business
16 function is to own assets (including other
17 subsidiaries) that the national insurer
18 itself is authorized to own.

19 (E) NOTICE.—A national insurer shall no-
20 tify the Commissioner, in writing, not later
21 than 20 calendar days after establishing, invest-
22 ing in, or acquiring a subsidiary, unless the
23 transaction requires the prior written approval
24 of the Commissioner under subparagraph (A).

25 (2) NATIONAL AGENCIES.—

1 (A) AUTHORIZATION.—A national agency
 2 may establish, invest in, or otherwise acquire 1
 3 or more subsidiaries engaged or organized to
 4 engage in any business activity that is lawful
 5 for a national agency under this Act.

6 (B) NOTICE.—A national agency shall no-
 7 tify the Commissioner, in writing, not later
 8 than 30 calendar days after establishing, invest-
 9 ing in, or acquiring a subsidiary.

10 (d) DIVIDENDS AND DISTRIBUTIONS TO SHARE-
 11 HOLDERS.—

12 (1) SHAREHOLDER DIVIDENDS AND DISTRIBUTIONS PERMITTED.—A national insurer may declare
 13 and pay dividends or make other distributions in
 14 cash, bonds, or property on its outstanding shares,
 15 unless—
 16

17 (A) the national insurer is insolvent or
 18 would be made insolvent by such payment; or

19 (B) the declaration, payment, or distribu-
 20 tion would be contrary to any restrictions con-
 21 tained in the charter of the national insurer.

22 (2) SOURCE OF SHAREHOLDER DIVIDENDS AND
 23 DISTRIBUTIONS.—A national insurer may only de-
 24 clare and pay dividends or make other distributions
 25 out of surplus if the assets of the national insurer

1 after such declaration, payment, or distribution is
 2 not less than the amount of its capital.

3 (3) OTHER PROVISIONS.—Shareholder divi-
 4 dends and distributions made pursuant to this sub-
 5 section shall be subject to—

6 (A) the standards set forth in section
 7 1403(a)(1)(E); and

8 (B) the notice requirements of section
 9 1403(b).

10 **SEC. 1209. SEPARATE ACCOUNTS OF NATIONAL LIFE IN-**
 11 **SURER.**

12 (a) OWNERSHIP.—Any amount allocated by a na-
 13 tional life insurer to a separate account shall be owned
 14 by the national life insurer, the assets therein shall be the
 15 property of the national life insurer, and no national life
 16 insurer by reason of such account shall be or hold itself
 17 out to be a trustee.

18 (b) LIABILITIES.—Assets allocated by a national life
 19 insurer to a separate account shall not be chargeable with
 20 liabilities arising out of any other business of the national
 21 life insurer to the extent so provided in the applicable
 22 agreements.

23 (c) SECURITY INTERESTS PERMITTED.—A national
 24 life insurer may allow for a security interest to attach to
 25 assets allocated to a separate account if the security inter-

1 est is in favor of a creditor of the separate account and
2 otherwise allowed under applicable law.

3 **SEC. 1210. PROTECTED CELLS.**

4 (a) ESTABLISHMENT.—A national insurer may, in
5 connection with an insurance securitization, establish 1 or
6 more protected cells with the approval of the Commis-
7 sioner.

8 (b) PROTECTED CELL ASSETS.—

9 (1) OWNERSHIP.—All amounts attributed to a
10 protected cell established under this section, includ-
11 ing assets transferred to a protected cell account,
12 shall be owned by the national insurer.

13 (2) TRUSTEE.—The national insurer may not
14 be, nor hold itself out to be, a trustee with respect
15 to the protected cell assets of the protected cell ac-
16 count described in paragraph (1).

17 (3) LIABILITIES.—The assets of a protected cell
18 established under this section shall not be chargeable
19 with liabilities arising out of any other business of
20 the national insurer.

21 (c) SECURITY INTERESTS PERMITTED.—A national
22 insurer may allow for a security interest to attach to pro-
23 tected cell assets or a protected cell account if the security
24 interest is in favor of a creditor of the protected cell and
25 otherwise allowed under applicable law.

1 (d) REACH OF CREDITORS AND OTHER CLAIM-
2 ANTS.—

3 (1) AVAILABILITY.—Protected cell assets shall
4 only be available to the creditors of a national in-
5 surer that are creditors in respect to that protected
6 cell.

7 (2) RECOURSE.—Creditors with respect to a
8 protected cell shall have no recourse against the pro-
9 tected cell assets of other protected cells or the gen-
10 eral account assets of the national insurer.

11 (3) FRAUD.—The establishment of a protected
12 cell shall not, in and of itself, constitute a fraudulent
13 conveyance, an intent by a national insurer to de-
14 fraud creditors, or the carrying out of business by
15 a national insurer for any other fraudulent purpose.

16 (e) RULEMAKING.—The Commissioner shall promul-
17 gate regulations that establish standards for protected
18 cells established by national insurers.

19 (f) EFFECT ON STATE LAW.—No State may, by stat-
20 ute, regulation, order, interpretation, or otherwise, require
21 licensing or otherwise regulate in any manner—

22 (1) an investor in an insurance securitization,
23 solely by reason of its investment, as an insurer, re-
24 insurer, or other person transacting insurance; or

1 (2) an underwriter or selling agent (or its part-
2 ners, directors, officers, members, managers, em-
3 ployees, agents, representatives, or advisors) in an
4 insurance securitization as an insurance or reinsur-
5 ance agent, broker, producer, intermediary, advisor,
6 consultant, or similar insurance professional by vir-
7 tue of its activities in connection with the insurance
8 securitization.

9 **SEC. 1211. CHARTERING AND LICENSING COMMENCEMENT**

10 **DATE.**

11 (a) NATIONAL INSURER.—The Commissioner may
12 not charter or license a national insurer until after the
13 following regulations have been published in final form or
14 interim final form:

15 (1) The fee and assessment regulations required
16 by section 1122.

17 (2) The reporting regulations required by sec-
18 tion 1124.

19 (3) The organizational regulations required by
20 section 1201.

21 (4) The licensing regulations required by sec-
22 tion 1203.

23 (5) The participating policy procedures regula-
24 tions required by section 1205.

1 (6) The charter conversion regulations required
2 by section 1206.

3 (7) The transitional financial regulations re-
4 quired by section 1212.

5 (8) The product regulations required by section
6 1214.

7 (9) The market conduct regulations required by
8 section 1216.

9 (10) The control regulations required by section
10 1231.

11 (11) The merger, consolidation, and acquisition
12 regulations required by section 1232.

13 (12) The bulk transfer regulations required by
14 section 1233.

15 (13) The conversion regulations required by
16 sections 1242 and 1243.

17 (14) The holding company regulations required
18 by sections 1402 and 1403.

19 (15) The receivership regulations required by
20 section 1504.

21 (16) The insolvency protection regulations re-
22 quired by section 1609.

23 (b) NATIONAL AGENCIES.—The Commissioner may
24 charter or license a national agency after the following

1 regulations have been published in final form, including
2 interim final form:

3 (1) The fee and assessment regulations required
4 by section 1122.

5 (2) The reporting regulations required by sec-
6 tion 1124.

7 (3) The organizational regulations required by
8 section 1201.

9 (4) The charter conversion regulations required
10 by section 1206.

11 (5) The market conduct regulations required by
12 section 1216.

13 (6) The merger, consolidation, and acquisition
14 regulations required by section 1232.

15 (7) The producer licensing regulations required
16 by section 1301.

17 (8) The holding company regulations required
18 by sections 1402 and 1403.

19 (c) TIMING AND NOTICE.—

20 (1) TIMING.—The regulations described in sub-
21 sections (a) and (b) shall be published in final form
22 or interim final form, not later than 2 years after
23 the date of the initial appointment and confirmation
24 of the Commissioner.

1 (2) NOTICE.—At such time as the regulations
 2 described in subsections (a) or (b) have been issued
 3 in final form or interim final form, the Commis-
 4 sioner shall publish a notice in the Federal Register
 5 announcing that the Office is prepared to act on
 6 chartering and licensing applications.

7 (3) CONSIDERING AND ACTING UPON APPLICA-
 8 TIONS.—Notwithstanding any challenge to the regu-
 9 lations described in subsections (a) and (b), the
 10 Commissioner shall have the authority to consider,
 11 and act upon, chartering and licensing applications
 12 immediately upon publication of the notice described
 13 in paragraph (2).

14 **Subtitle B—Financial, Product, and** 15 **Market Regulations**

16 **SEC. 1212. TRANSITIONAL FINANCIAL REGULATIONS.**

17 (a) PROMULGATION OF FINANCIAL REGULATIONS
 18 THAT ARE CONSISTENT WITH NAIC STANDARDS AND
 19 MODELS.—The Commissioner shall establish, by regula-
 20 tion, the following:

21 (1) Accounting principles for a national insurer,
 22 which are consistent with the statutory accounting
 23 practices promulgated by the NAIC in its “Account-
 24 ing Practices and Procedures Manual”.

1 (2) Auditing standards for a national insurer,
2 which are consistent with the guidance prescribed by
3 the NAIC in its “Model Regulation Requiring An-
4 nual Audited Financial Reports”.

5 (3) Investment standards for a national insurer,
6 which are consistent with the “Investment of Insur-
7 ers Model Act (Defined Standards Version)” of the
8 NAIC, except that such investment standards shall
9 not be bound by the provisions of the Model Act re-
10 lated to authorized classes of investments, class or
11 individual investment limitations, or prohibited in-
12 vestments.

13 (4) Risk-based capital standards for a national
14 insurer, which are consistent with the “Risk-Based
15 Capital (RBC) for Insurers Model Act” and the re-
16 lated “RBC Instructions” of the NAIC and non-
17 disclosure rules and remedies for failing to meet
18 such standards.

19 (5) Valuation standards for the obligations and
20 liabilities of a national life insurer, which are con-
21 sistent with the statutory valuation practices pro-
22 mulgated by the NAIC in its “Accounting Practices
23 and Procedures Manual”.

24 (6) Continuing and alternative (nonforfeiture)
25 benefits standards applicable to national life insur-

1 ers, which are consistent with the “Standard Non-
 2 forfeiture Law for Life Insurance, Variable Life In-
 3 surance Model Regulation, Standard Nonforfeiture
 4 Law for Individual Deferred Annuities, Long-Term
 5 Care Insurance Model Act, and Long-Term Care In-
 6 surance Model Regulation” of the NAIC.

7 (7) Standards for the preparation and filing of
 8 an annual actuarial opinion on the adequacy of the
 9 assets of a national life insurer to meet its reason-
 10 ably expected obligations and liabilities, which are
 11 consistent with the “Actuarial Opinion and Memo-
 12 randum Regulation” of the NAIC.

13 (8) Standards for the preparation and filing of
 14 an annual actuarial opinion on the loss and loss ad-
 15 justment expense reserves of a national property/cas-
 16 ualty insurer, which are consistent with the NAIC’s
 17 “Property and Casualty Actuarial Opinion Model
 18 Law” and applicable “NAIC Property and Casualty
 19 Annual Statement Instructions”.

20 (b) NAIC STANDARDS, MODELS, PRACTICES, AND
 21 INSTRUCTIONS.—The NAIC standards, models, practices,
 22 and instructions referred to in subsection (a) shall be the
 23 standards, models, practices, and instructions adopted by
 24 the NAIC as of May 24, 2007.

1 (c) EFFECTIVE DATE AND FIVE-YEAR TRANSI-
2 TIONAL PERIOD FOR INITIAL FINANCIAL REGULA-
3 TIONS.—The financial regulations specified in subsection
4 (a) shall be issued in final form no later than 2 years fol-
5 lowing the initial appointment and confirmation of the
6 Commissioner, and each regulation shall remain in effect
7 for 5 years following the date upon which it becomes effec-
8 tive.

9 (d) NAIC AMENDMENTS.—If, after May 24, 2007,
10 the NAIC amends any standard, model, practice, or in-
11 struction upon which the initial financial regulations are
12 based, the Commissioner shall determine, by regulation,
13 whether such amendment shall apply to a national insurer.
14 If the Commissioner determines that an NAIC amendment
15 to a standard, model, practice, or instruction should apply
16 to a national insurer, the Commissioner may specify, by
17 regulation, whether the amendment applies in whole or in
18 part.

19 (e) REVISIONS OR MODIFICATIONS TO INITIAL FI-
20 NANCIAL REGULATIONS BY COMMISSIONER.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 after an initial financial regulation specified in sub-
23 section (a) has been in effect for 5 years, the Com-
24 missioner may, by regulation, revise or modify the
25 regulation.

1 (2) SPECIAL CIRCUMSTANCE.—The Commis-
 2 sioner may, by regulation, revise or modify an initial
 3 financial regulation at any time if the Commissioner
 4 determines that any such revision or modification is
 5 necessary to protect policyholders or prevent haz-
 6 ardous conduct by a national insurer.

7 (f) ACCOUNTING PRINCIPLES.—Notwithstanding
 8 subsections (c), (d), and (e), accounting principles for a
 9 national property/casualty insurer shall be consistent with
 10 the statutory accounting practices promulgated by the
 11 NAIC for State property/casualty insurers in its “Ac-
 12 counting Practices and Procedures Manual”, including
 13 any amendments thereto.

14 **SEC. 1213. OTHER FINANCIAL REGULATIONS.**

15 In addition to the financial regulations specified in
 16 section 1212, the Commissioner may issue other financial
 17 regulations as the Commissioner determines necessary.

18 **SEC. 1214. PRODUCT REGULATION FOR NATIONAL LIFE IN-**
 19 **SURERS.**

20 (a) APPLICABILITY.—This section shall apply to the
 21 insurance business of national life insurers.

22 (b) UNDERWRITING STANDARDS.—A national in-
 23 surer may classify or underwrite risks if any decision to
 24 refuse to insure, to continue to insure, to limit the amount,

1 extent, or kind of coverage, or to charge a different rate
 2 for the same coverage is—

3 (1) based on sound actuarial principles; or

4 (2) related to actual or reasonably anticipated
 5 experience.

6 (c) LAW APPLICABLE TO INSURANCE POLICIES OR
 7 OTHER PRODUCTS OF NATIONAL INSURERS.—

8 (1) LAW SPECIFIED BY PARTIES.—Subject to
 9 any applicable Federal law, the provisions of any in-
 10 surance policy or other product of a national insurer
 11 shall be interpreted in accordance with the law of
 12 the jurisdiction specified by the parties to the insur-
 13 ance policy or other product if the parties have spec-
 14 ified the law of—

15 (A) the jurisdiction in which the main of-
 16 fice of the national insurer is located;

17 (B) the jurisdiction in which the principal
 18 place of business of the national insurer is lo-
 19 cated; or

20 (C) the jurisdiction in which the insurance
 21 policy or other product is delivered.

22 (2) DEFAULT LAW.—If the parties to an insur-
 23 ance policy or other product of a national insurer
 24 have not specified the jurisdiction whose law shall
 25 govern the provisions of the insurance policy or

1 other product, such provisions shall be interpreted in
 2 accordance with the law of the jurisdiction in which
 3 the insurance policy or other product is delivered.

4 (3) RULEMAKING.—The Commissioner shall es-
 5 tablish, by regulation, choice of law rules and stand-
 6 ards under this subsection.

7 (d) STANDARDS FOR POLICIES.—

8 (1) POLICY.—In this subsection, the term “pol-
 9 icy”—

10 (A) means a policy, contract, certificate, or
 11 other evidence of life insurance, disability in-
 12 come insurance, or long-term care insurance, or
 13 an annuity contract or a rider or endorsement
 14 thereto; and

15 (B) does not include—

16 (i) a funding agreement;

17 (ii) a reinsurance contract; or

18 (iii) an agreement, special rider, or
 19 endorsement relating only to the manner of
 20 distributing benefits or to the reservation
 21 of rights and benefits used at the request
 22 of the individual policyholder.

23 (2) RULEMAKING.—The Commissioner shall es-
 24 tablish, by regulation, standards for policies issued
 25 by a national insurer.

1 (3) TYPES OF POLICY REQUIREMENTS.—The
2 standards established under paragraph (2) may in-
3 clude general policy requirements and requirements
4 regarding particular classes of policies.

5 (e) PRODUCT FILINGS.—

6 (1) FORM FILING.—A national insurer shall not
7 issue a policy until the form of the policy has been
8 received by the Commissioner.

9 (2) EXEMPTIONS.—The Commissioner may, by
10 regulation, exempt particular categories of policies
11 from the filing requirement.

12 (3) COMPLIANCE CERTIFICATE.—In accordance
13 with regulations promulgated by the Commissioner,
14 any filing of a policy form shall be accompanied by
15 written certification by an officer of the national in-
16 surer that the policy form complies with the stand-
17 ards applicable to such form.

18 (f) INTERPRETIVE RULINGS.—

19 (1) PROCEDURES.—The Commissioner shall es-
20 tablish procedures by which national insurers may
21 obtain interpretive rulings from the Office regarding
22 the interpretation and application of the standards
23 established under this section.

24 (2) PUBLIC AVAILABILITY.—Except as provided
25 under paragraph (3), requests by national insurers

1 for interpretive rulings from the Office and the com-
 2 plete text of such interpretive rulings shall not be
 3 made available to the public.

4 (3) PUBLICATION OF SUMMARIES.—Notwith-
 5 standing paragraph (2), the Commissioner shall pub-
 6 lish a summary of each interpretive opinion, exclud-
 7 ing the name of the national insurer and any other
 8 identifying information, either promptly after the
 9 issuance of such opinion or, upon the request of the
 10 national insurer, after such delay as the Commis-
 11 sioner determines appropriate.

12 (g) GROUP, BLANKET, AND FRANCHISE INSUR-
 13 ANCE.—

14 (1) AUTHORIZATION.—A national insurer
 15 may—

16 (A) sell, solicit, negotiate, and underwrite
 17 group, blanket, and franchise insurance policies;
 18 and

19 (B) extend group, blanket, or franchise in-
 20 surance policies to insure the dependents of em-
 21 ployees or members, or any class of employees
 22 or members.

23 (2) RULEMAKING.—The Commissioner shall, by
 24 regulation, establish standards for kinds and quali-

1 fications of permissible groups for group, blanket,
2 and franchise insurance policies.

3 (h) INSURABLE INTEREST.—

4 (1) REGULATIONS REQUIRED.—The Commis-
5 sioner shall, by regulation—

6 (A) define the term “insurable interest”;

7 (B) identify what persons have an insur-
8 ance interest in the health and bodily safety of
9 an individual;

10 (C) establish circumstances under which
11 an insurance policy issued with respect to an in-
12 dividual, other than a group insurance policy,
13 may be effectuated, including any insured con-
14 sent requirements; and

15 (D) establish rules for insurance policy
16 transfers and assignments, which transactions
17 shall be permitted for insurance policies written
18 or sold in compliance with the regulations.

19 (2) LIMITATION ON APPLICABILITY.—The regu-
20 lations required by paragraph (1) shall not apply to
21 an annuity contract or a funding agreement.

22 (i) EFFECT OF STATE LAW.—No State may, by stat-
23 ute, regulation, order, interpretation, or otherwise, impose
24 any standard, relating to any matter addressed in this sec-

1 tion, on national insurers or persons who purchase insur-
 2 ance from national insurers.

3 **SEC. 1215. PRODUCT REGULATION FOR NATIONAL PROP-**
 4 **ERTY/CASUALTY INSURERS.**

5 (a) APPLICATION.—This section shall apply to the
 6 business of national property/casualty insurers.

7 (b) MAINTENANCE OF COPIES OF POLICIES.—A na-
 8 tional insurer shall maintain for inspection a copy of every
 9 insurance policy form that it uses to insure risks.

10 (c) ANNUAL POLICY FORM LISTING.—A national in-
 11 surer shall annually provide the Commissioner with a list
 12 of all standard policy forms it uses to insure risks.

13 (d) RATES, RATING ELEMENTS, PRICE, AND
 14 FORMS.—The Act does not authorize the Commissioner
 15 to require a national insurer to use any particular rate,
 16 rating element, price, or form.

17 **SEC. 1216. REGULATION OF SALES AND MARKETING.**

18 (a) PURPOSE.—The purpose of this section is to en-
 19 sure appropriate Federal regulation of the sales and mar-
 20 keting practices of national insurers, national agencies,
 21 and federally licensed insurance producers to prevent un-
 22 fair methods of competition and unfair and deceptive acts
 23 and practices in the advertising, sale, issuance, distribu-
 24 tion, and administration of insurance policies and other

1 products of national insurers, and claims under insurance,
2 policies and other products of national insurers.

3 (b) RULEMAKING.—The Commissioner shall promul-
4 gate such regulations, applicable to national insurers, na-
5 tional agencies, and federally licensed insurance pro-
6 ducers, as the Commissioner determines to be necessary
7 to carry out the purpose of this section, including rules
8 governing the advertising, sale, issuance, distribution, and
9 administration of insurance policies and other products of
10 national insurers and claims under insurance policies and
11 other products of national insurers.

12 **SEC. 1217. PROMPT CORRECTIVE ACTION.**

13 (a) RULEMAKING.—

14 (1) IN GENERAL.—Not later than the expira-
15 tion of the 6-month period beginning upon the date
16 of submission of the report under subsection (b)(3)
17 to the Commissioner, the Commissioner shall pro-
18 mulgate such regulations, applicable to national in-
19 surers, as the Commissioner determines appropriate
20 and consistent with the recommendation in that re-
21 port to ensure that prompt corrective action is taken
22 to resolve any hazardous financial condition of a na-
23 tional insurer.

24 (2) AUTHORIZED CONTENT.—Rules required by
25 this subsection may include such capital measures

1 and categories, capital standards, supervisory cri-
2 teria, restrictions on permissible actions of such in-
3 surers, requirements for such insurers, procedures,
4 provisions regarding conservatorship and receiver-
5 ship of such insurers, and other provisions as the
6 Commissioner considers are appropriate and con-
7 sistent with any recommendations in the report and
8 the regulations issued pursuant to section
9 1212(a)(4).

10 (b) GAO STUDY AND REPORT.—

11 (1) IN GENERAL.—The Comptroller General of
12 the United States shall conduct a study to identify
13 an appropriate structure of procedures and require-
14 ments for taking prompt corrective actions with re-
15 spect to national insurers, to ensure that any haz-
16 ardous financial condition of such a national insurer
17 is resolved effectively and efficiently, with the fewest
18 possible losses.

19 (2) REQUIREMENTS.—In conducting the study
20 required by this subsection, the Comptroller General
21 shall analyze and evaluate various proposals, struc-
22 tures, methods, and systems for taking prompt cor-
23 rective actions with respect to various financial enti-
24 ties and institutions, including—

1 (A) the prompt corrective action require-
 2 ments under section 38 of the Federal Deposit
 3 Insurance Act (12 U.S.C. 1831o) with respect
 4 to insured depository institutions; and

5 (B) the “Model Regulation to Define
 6 Standards and Commissioner’s Authority for
 7 Companies Deemed to be in Hazardous Finan-
 8 cial Condition” of the NAIC, as updated in
 9 2006.

10 (3) REPORT.—

11 (A) IN GENERAL.—Not later than the ex-
 12 piration of the 6-month period beginning on the
 13 date of enactment of this Act, the Comptroller
 14 General shall submit a report to the Committee
 15 on Banking, Housing, and Urban Affairs of the
 16 Senate, the Committee on Financial Services of
 17 the House of Representatives, and the Commis-
 18 sioner, regarding the study required under this
 19 subsection.

20 (B) CONTENTS.—The report required
 21 under this paragraph shall describe the study
 22 and the results of the evaluations conducted
 23 under the study, and shall include a specific
 24 recommendation to the Commissioner for estab-
 25 lishment of an appropriate structure of proce-

dures and requirements for taking prompt corrective actions with respect to national insurers, to ensure that any hazardous financial condition of a national insurer is resolved effectively and efficiently with the fewest possible losses.

Subtitle C—Reinsurance

SEC. 1221. FEDERAL LICENSING OF REINSURERS.

(a) AUTHORITY TO LICENSE.—

(1) IN GENERAL.—The Commissioner may—

(A) license insurers that are not National Insurers to provide reinsurance; and

(B) prescribe, by regulation, the standards and procedures for granting such licenses.

(2) CRITERIA.—The standards prescribed under paragraph (1)(B) shall give due consideration to—

(A) the public interest in providing secure and sufficient reinsurance capacity in the United States; and

(B) the need for promoting fair and effective competition.

(b) DETERMINATION AND FINDING; ISSUANCE OF LICENSE.—

(1) **EXAMINATION AND INVESTIGATION.—**Upon the receipt of an application for a license under this section, the Commissioner shall examine the infor-

1 mation submitted by the applicant and may conduct
2 further examinations and investigations, as nec-
3 essary, to determine whether the applicant satisfies
4 the standards for a license under this section.

5 (2) PUBLICATION OF FINDINGS.—The Commis-
6 sioner shall publish the Commissioner’s findings and
7 determination under paragraph (1).

8 (3) ISSUANCE OF FEDERAL LICENSE.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), if the Commissioner deter-
11 mines that the applicant has satisfied the appli-
12 cable requirements of this section, the Commis-
13 sioner shall issue a Federal license to provide
14 reinsurance.

15 (B) RESTRICTION.—The Commissioner
16 shall not issue a Federal license for reinsurance
17 until after the Commissioner is authorized to
18 charter and license a National Insurer pursuant
19 to section 1211.

20 (c) MINIMUM STANDARDS FOR LICENSING OF NON-
21 UNITED STATES INSURERS.—The Commissioner shall not
22 issue a license under this section to any insurer that is
23 not a State insurer or a United States branch of a non-
24 United States insurer unless the insurer agrees to—

1 (1) report its financial statements to the Com-
 2 missioner on a basis that the Commissioner deter-
 3 mines to be substantially similar to that required of
 4 National Insurers under section 1124;

5 (2) submit to the jurisdiction of Federal, State,
 6 and local courts in the United States; and

7 (3) demonstrate that all judgments of all
 8 United States courts would be enforceable and col-
 9 lectible by—

10 (A) being organized or incorporated in a
 11 jurisdiction with which the United States has
 12 entered into a treaty on the recognition and en-
 13 forcement of judgments rendered by Federal,
 14 State, and local courts in the United States; or

15 (B) agreeing to post prejudgment security
 16 in the United States upon the commencement
 17 of any litigation or arbitration in the United
 18 States, subject to such regulations as the Com-
 19 missioner may prescribe.

20 (d) REVOCATION OF LICENSE.—

21 (1) IN GENERAL.—The Commissioner may re-
 22 voke, suspend, or restrict a Federal reinsurer's li-
 23 cense in accordance with subtitle C of title I.

24 (2) STATUS OF FEDERALLY LICENSED REIN-
 25 SURER.—For purposes of this subsection, a federally

1 licensed reinsurer shall be deemed to be a National
 2 Insurer under subtitle C of title I.

3 (e) ANNUAL REPORTS.—The Commissioner shall re-
 4 quire each reinsurer licensed under this section to submit
 5 an annual report of its financial condition and an annual
 6 report on the condition of any trust fund regulated under
 7 this subtitle in such form as may be prescribed by the
 8 Commissioner.

9 **SEC. 1222. CREDIT FOR INSURANCE CEDED BY A NATIONAL**
 10 **INSURER OR FEDERALLY LICENSED REIN-**
 11 **SURER.**

12 (a) CREDIT FOR INSURANCE CEDED TO A NATIONAL
 13 INSURER OR A FEDERALLY LICENSED REINSURER.—A
 14 national insurer may establish an asset or reduce its liabil-
 15 ities, to the extent of such liabilities, for insurance ceded
 16 to another national insurer or federally licensed reinsurer.

17 (b) OTHER ASSET OR REDUCTION FROM LIABILITY
 18 FOR INSURANCE CEDED.—A national insurer may estab-
 19 lish an asset or reduce its liabilities, to the extent of such
 20 liabilities, for insurance—

21 (1) that is ceded to—

22 (A) a State insurer;

23 (B) a United States branch entered
 24 through a State; or

25 (C) a non-United States insurer; and

1 (2) if such insurance is ceded consistent with
2 the standards established by the Commissioner pur-
3 suant to subsection (c).

4 (c) REGULATION.—The Commissioner shall establish,
5 by regulation, standards governing insurance ceded by a
6 national insurer, as the Commissioner may determine to
7 be necessary to protect the policyholders of a national in-
8 surer.

9 **SEC. 1223. RELATIONSHIP TO STATE LAW.**

10 (a) DOMICILIARY STATE DISCRIMINATION PROHIB-
11 ITED.—Except as provided in section 1224(b), no State
12 may, by statute, regulation, order, interpretation, or other-
13 wise, prevent or interfere with a State insurer domiciled
14 in such State or a United States branch entered through
15 such State from establishing an asset or reducing its liabil-
16 ity as a result of insurance ceded to a national insurer
17 or a federally licensed reinsurer, to the same extent as the
18 State would allow such insurer, if the insurance were
19 ceded to another State insurer domiciled in such State.

20 (b) NON-DOMICILIARY ACTION PROHIBITED.—No
21 State may, by statute, regulation, order, interpretation, or
22 otherwise, prevent or interfere with a State insurer not
23 domiciled in that State or a United States branch entered
24 through another State from establishing an asset or reduc-
25 ing its liability as a result of insurance ceded to a national

1 insurer or a federally licensed reinsurer, if the domicile
2 of the ceding insurer allows such asset or reduction.

3 **SEC. 1224. FREEDOM OF COMMERCIAL CONTRACT.**

4 (a) PROHIBITION.—Except as provided in subsection
5 (b), a State may not—

6 (1) deny a State insurer or a United States
7 branch entered through a State all or part of any
8 asset, or require any increase in liability for insur-
9 ance ceded to any national insurer or federally li-
10 censed reinsurer because its reinsurance contract
11 contains, or does not contain, 1 or more specific con-
12 tract terms; or

13 (2) otherwise require specific language or terms
14 in any reinsurance contract.

15 (b) CONSTRUCTION.—Notwithstanding subsection
16 (a), a State may require a State insurer domiciled in such
17 State or a United States branch entered through that
18 State to use contract terms that are substantially equiva-
19 lent to those required under section 1222(c).

20 **SEC. 1225. REVIEW BY THE COMMISSIONER.**

21 (a) REVIEW.—The Commissioner shall review any
22 State action taken pursuant to subsection (b) of section
23 1224 to determine if the State action meets the standards
24 set forth in that subsection.

1 (b) STANDARDS OF REVIEW.—Any State action
2 taken pursuant to section 1224(b) shall meet the stand-
3 ards of this section, if—

4 (1) it is closely based on standards established
5 by the Commissioner pursuant to section 1222(c);

6 (2) it is made in consultation with the Commis-
7 sioner;

8 (3) it serves a legitimate State interest; and

9 (4) it does not frustrate the subject reinsurance
10 contract.

11 (c) NOTICE OF FAILURE; EFFECT OF FAILURE.—If
12 the Commissioner finds that any State action taken pursu-
13 ant to subsection (b) of section 1224 fails to meet any
14 of the standards set forth in that subsection, the Commis-
15 sioner shall provide the applicable State and State insurer
16 with notice of, and reasons for, such failure, and such
17 State action shall be deemed to be subject to section
18 1224(a), notwithstanding the terms of section 1224(b).

19 (d) NO DELEGATION PERMITTED.—The Commis-
20 sioner may not delegate to any insurance self-regulatory
21 organization any authority conferred under this section
22 with respect to review by the Commissioner of any State
23 action taken pursuant to section 1224(b).

1 **Subtitle D—Acquisitions of Con-**
2 **trol; Mergers; Bulk Transfers;**
3 **Domestication**

4 **SEC. 1231. ACQUISITION OF CONTROL OF NATIONAL INSUR-**
5 **ERS.**

6 (a) DEFINITIONS.—For purposes of this section—

7 (1) the term “national insurer” includes any
8 person controlling a national insurer; and

9 (2) the term “person” does not include any se-
10 curities broker holding, in the usual and customary
11 functions of the broker, less than 20 percent of the
12 voting securities of a national insurer or of any per-
13 son who controls a national insurer.

14 (b) COMMISSIONER APPROVAL REQUIRED.—

15 (1) IN GENERAL.—No person, other than the
16 issuer, shall make a tender offer for, make a request
17 or invitation for tenders of, or enter into any agree-
18 ment to exchange securities for, or acquire, in the
19 open market or otherwise, any voting security of a
20 national insurer if, after the consummation of such
21 transaction, such person would, directly or indirectly
22 (or by conversion or by exercise of any right to ac-
23 quire) be in control of the national insurer. No per-
24 son shall enter into an agreement to merge with or
25 otherwise acquire control of a national insurer or

1 any person controlling a national insurer unless, at
2 the time the offer, request, or invitation is made or
3 the agreement is entered into, or before the acquisi-
4 tion of the securities if no offer or agreement is in-
5 volved—

6 (A) such person has filed with the Com-
7 missioner and has sent to the national insurer,
8 a statement that complies with the regulations
9 prescribed under paragraph (3); and

10 (B) the offer, request, invitation, agree-
11 ment, or acquisition has been approved by the
12 Commissioner.

13 (2) SAVINGS PROVISION.—Nothing in this sub-
14 section shall be construed to prohibit a person from
15 making an offer, request, or invitation or entering
16 into an agreement to acquire control of a national
17 insurer, if such transaction is conditioned upon ob-
18 taining the approval of the Commissioner in accord-
19 ance with paragraph (1).

20 (3) FORM AND CONTENT OF STATEMENT.—The
21 Commissioner shall, by regulation, prescribe the
22 form and content of the statement to be filed under
23 paragraph (1)(A).

24 (4) APPROVAL BY COMMISSIONER.—The Com-
25 missioner shall approve any merger or other acquisi-

tion of control referred to in this subsection unless
the Commissioner finds that—

(A) after the acquisition of control, the national insurer would not be able to satisfy the requirements for the issuance of a Federal license to write the line or lines of insurance for which the national insurer was previously licensed;

(B) the financial condition of any acquiring person may jeopardize the financial stability of the national insurer or be hazardous to the policyholders of the national insurer;

(C) the plans or proposals of the acquiring person to liquidate the national insurer, sell its assets, consolidate or merge it with any person, or make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the national insurer and not in the public interest;

(D) those persons who would control the operation of the national insurer lack the competence, experience, or integrity required to protect the interests of policyholders of the national insurer; or

1 (E) the acquisition is likely to be haz-
2 arduous to the insurance-buying public.

3 (c) HEARING.—

4 (1) IN GENERAL.—The Commissioner may, in
5 his sole discretion, hold a hearing on a merger or
6 other acquisition of control that is subject to this
7 section and for which a statement has been filed
8 under subsection (b)(1)(A).

9 (2) PROCEDURES.—A hearing under this sub-
10 section shall be subject to the procedures under sec-
11 tion 1148, except that the Commissioner may deter-
12 mine the location of such hearing.

13 (d) EXEMPTIONS.—The provisions of this section
14 shall not apply to—

15 (1) any offer, request, invitation, agreement, or
16 acquisition exempted by the Commissioner for not
17 having been made or entered into for the purpose,
18 and not having the effect, of changing or influencing
19 the control of a national insurer, or as otherwise not
20 comprehended within the purposes of this section; or

21 (2) a merger, consolidation, or acquisition sub-
22 ject to section 1232.

23 (e) VOTING OF SECURITIES.—

24 (1) PROHIBITION.—No security which is the
25 subject of any agreement or arrangement regarding

1 acquisition, or which is acquired or to be acquired,
2 in contravention of the provisions of this section may
3 be voted at any shareholder meeting, or may be
4 counted for quorum purposes.

5 (2) EFFECT ON SHARES.—Any action of share-
6 holders requiring the affirmative vote of a percent-
7 age of shares may be taken as though the securities
8 described under paragraph (1) were not issued and
9 outstanding.

10 (3) INVALIDATION OF ACTION.—No action
11 taken at any meeting described under paragraph (1)
12 shall be invalidated by the voting of the securities,
13 unless—

14 (A) the action would affect control of the
15 national insurer; or

16 (B) such invalidation is ordered by a court.

17 (4) ACQUISITION IN CONTRAVENTION OF THIS
18 ACT.—If a national insurer or the Commissioner has
19 reason to believe that any security of the national in-
20 surer has been or is about to be acquired in con-
21 travention of the provisions of this section, the na-
22 tional insurer or the Commissioner may apply to the
23 United States district court for the judicial district
24 in which the main office of the national insurer is

1 located or the United States District Court for the
2 District of Columbia—

3 (A) to enjoin any offer, request, invitation,
4 agreement, or acquisition made in contravention
5 of this section;

6 (B) to enjoin the voting of any security so
7 acquired;

8 (C) to void any vote of the security already
9 cast at any meeting of shareholders; and

10 (D) for such other equitable relief as the
11 nature of the case and the interest of the na-
12 tional insurer's policyholders, the creditors and
13 shareholders of the national insurer or the pub-
14 lic may require.

15 (f) SEQUESTRATION OF VOTING SECURITIES.—

16 (1) IN GENERAL.—If a person has acquired or
17 is proposing to acquire any voting securities in viola-
18 tion of this section, the national insurer or the Com-
19 missioner may request the United States district
20 court for the judicial district in which the main of-
21 fice of the national insurer is located or the United
22 States District Court for the District of Columbia
23 to—

1 (A) seize or sequester any voting securities
2 of the national insurer owned directly or indi-
3 rectly by the person; and

4 (B) issue such order as may be appropriate
5 to carry out the provisions of this section.

6 (2) SITUS OF OWNERSHIP.—Notwithstanding
7 any other provision of law, for the purposes of this
8 section, the situs of ownership of the securities of a
9 national insurer shall be deemed to be the State in
10 which the main office of the national insurer is lo-
11 cated.

12 (g) CONFLICT WITH OTHER FEDERAL LAWS.—This
13 section shall be interpreted and applied so as not to con-
14 flict with or supersede the provisions of any other Federal
15 law or regulation governing the regulation of holding com-
16 panies, including financial holding companies (as defined
17 in section 2(p) of the Bank Holding Company Act of 1956
18 (12 U.S.C. 1841(p))).

19 (h) NO DELEGATION PERMITTED.—The Commis-
20 sioner may not delegate to any insurance self-regulatory
21 organization any authority conferred under this section
22 with respect to any merger or other acquisition of control
23 of a national insurer.

1 **SEC. 1232. MERGERS, CONSOLIDATIONS, AND ACQUIS-**
2 **TIONS OF NATIONAL INSURERS.**

3 (a) NATIONAL INSURER AS RESULTING INSURER.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, except as provided under subsection
6 (e), a national insurer may, with the approval of the
7 Commissioner, merge, consolidate with, acquire all
8 or substantially all the assets of, or assume all or
9 substantially all the liabilities of, another national
10 insurer or a State insurer in a transaction in which
11 a national insurer is the resulting insurer, the ac-
12 quiring insurer, or the assuming insurer, regardless
13 of whether the insurers involved in the transaction
14 are in stock form, mutual form, or fraternal form.

15 (2) MERGER, CONSOLIDATION, AND ACQUISI-
16 TION PROCEDURES.—The Commissioner shall estab-
17 lish, by regulation, procedures for—

18 (A) the merger or consolidation of a na-
19 tional insurer with another national insurer or
20 a State insurer in a transaction in which a na-
21 tional insurer is the resulting insurer; and

22 (B) the acquisition or assumption by a na-
23 tional insurer of all or substantially all the as-
24 sets or liabilities of another national insurer or
25 a State insurer in a transaction in which the

1 national insurer is the acquiring insurer or as-
2 suming insurer.

3 (3) EFFECT OF MERGER OR CONSOLIDATION.—

4 Upon the merger or consolidation of a national in-
5 surer with another national insurer or a State in-
6 surer under this section—

7 (A) the corporate existence of each of the
8 merging or consolidating insurers shall be
9 merged or consolidated into the resulting in-
10 surer, and the resulting insurer shall be deemed
11 to be the same corporation as each insurer par-
12 ticipating in the merger or consolidation;

13 (B) except as provided under subpara-
14 graph (D), the resulting insurer shall hold and
15 be subject to all rights, privileges, liabilities,
16 property interests, and other interests and obli-
17 gations that each insurer participating in the
18 merger or consolidation held or was subject to
19 immediately prior to the merger or consolida-
20 tion;

21 (C) the resulting insurer shall obtain, in
22 accordance with section 1203, a Federal license
23 for all lines of insurance that it sells, solicits,
24 negotiates, or underwrites, except for those
25 lines of insurance for which a national insurer

1 participating in the merger or consolidation
2 held a Federal license immediately before the
3 merger or consolidation; and

4 (D) the resulting insurer shall not hold any
5 State license to sell, solicit, negotiate, or under-
6 write insurance that was held by a State in-
7 surer participating in the merger or consolida-
8 tion.

9 (4) SPECIAL AUTHORITY.—The Commissioner
10 may, subject to such conditions as the Commissioner
11 shall prescribe, permit a national insurer resulting
12 from a merger or consolidation under this section to
13 retain, hold, or exercise such assets, liabilities, pow-
14 ers, and authorities that do not conform to the legal
15 requirements applicable to national insurers, as the
16 Commissioner determines appropriate.

17 (b) STATE INSURER AS RESULTING INSURER.—

18 (1) IN GENERAL.—Subject to applicable State
19 law and such notification procedures as the Commis-
20 sioner shall prescribe by regulation, a State insurer
21 may merge with, consolidate with, acquire assets of,
22 or assume liabilities of, a national insurer in a trans-
23 action in which a State insurer is the resulting in-
24 surer.

1 (2) SAVINGS PROVISION.—Nothing in this sub-
 2 section or in a transaction under this subsection
 3 shall abrogate any rights, privileges, liabilities, prop-
 4 erty interests, or other interests or obligations that
 5 the national insurer held or was subject to imme-
 6 diately before the transaction.

7 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the
 8 liabilities of a national insurer are assumed by another
 9 national insurer or a State insurer in accordance with this
 10 Act, the national insurer shall be released from all such
 11 liabilities upon their assumption by the other national in-
 12 surer or a State insurer.

13 (d) NO DELEGATION PERMITTED.—The Commis-
 14 sioner may not delegate to any insurance self-regulatory
 15 organization any authority conferred under this section
 16 with respect to any merger, consolidation, acquisition of
 17 assets, or assumption of liabilities involving a national in-
 18 surer.

19 (e) COORDINATION.—This section shall not apply to
 20 any bulk transfer (as defined in section 1233(a)(2)) that
 21 is subject to approval of the Commissioner in accordance
 22 with section 1233(b).

23 **SEC. 1233. BULK TRANSFERS.**

24 (a) DEFINITIONS.—In this section, the following defi-
 25 nitions shall apply:

1 (1) ASSUMING INSURER.—The term “assuming
2 insurer” means the insurer that purchases or other-
3 wise acquires existing insurance policies from an-
4 other insurer by bulk transfer.

5 (2) BLOCK OF BUSINESS.—The term “block of
6 business” means all those insurance policies of an
7 insurer under a particular policy form.

8 (3) BULK TRANSFER.—The term “bulk trans-
9 fer”—

10 (A) means the transfer by an insurer to
11 another insurer of existing insurance policies
12 constituting all or substantially all of 1 or more
13 of its lines of business or blocks of business;
14 and

15 (B) does not include—

16 (i) any sale in which the transferring
17 insurer retains direct or indirect control of
18 the assets supporting the transferred in-
19 surance policies;

20 (ii) any transaction effected by an
21 agreement under which the transferring in-
22 surer continues to remain directly liable to
23 the policyholders under the insurance poli-
24 cies;

1 (iii) the substitution of 1 insurer for
 2 another upon the expiration of insurance
 3 coverage pursuant to statutory or contrac-
 4 tual requirements and the issuance of a
 5 new policy of insurance by that insurer;

6 (iv) the transfer of policies of insur-
 7 ance pursuant to merger or consolidation
 8 of 2 or more insurers to the extent that
 9 those transactions are regulated by statute;

10 (v) any transaction effected by an in-
 11 surer subject to a judicial order of receiver-
 12 ship, liquidation, or rehabilitation; or

13 (vi) any transfer of liabilities from 1
 14 insurer to another under a single group in-
 15 surance policy upon the request of the
 16 group policyholder.

17 (4) PERMITTED NATIONAL INSURER.—The
 18 term “permitted national insurer” means—

19 (A) a State insurer that is converting to a
 20 national insurer under section 1206; or

21 (B) a national insurer that is being newly
 22 chartered under section 1201 and licensed
 23 under section 1203.

1 (5) TRANSFERRED INSURANCE POLICIES.—The
2 term “transferred insurance policies” means the in-
3 surance policies that are subject to the bulk transfer.

4 (6) TRANSFERRING INSURER.—The term
5 “transferring insurer” means the insurer in privity
6 of contract with the policyholders under the existing
7 insurance policies that are subject to the bulk trans-
8 fer.

9 (b) BULK TRANSFERS AUTHORIZED.—The following
10 bulk transfers are authorized:

11 (1) A State insurer as the transferring insurer
12 and a permitted national insurer as the assuming in-
13 surer.

14 (2) A permitted national insurer as the trans-
15 ferring insurer and a State insurer as the assuming
16 insurer.

17 (3) A national insurer as the transferring in-
18 surer and a national insurer as the assuming in-
19 surer.

20 (4) A State insurer as the transferring insurer
21 and a national insurer that is not a permitted na-
22 tional insurer as the assuming insurer.

23 (5) A national insurer that is not a permitted
24 national insurer as the transferring insurer and a
25 State insurer as the assuming insurer.

1 (c) COMMISSIONER APPROVAL.—

2 (1) IN GENERAL.—A national insurer shall not
3 effect a bulk transfer as either the transferring in-
4 surer or the assuming insurer as authorized under
5 paragraph (1), (2), (3), or (5) of subsection (b)
6 without the prior approval of the Commissioner, in
7 accordance with such regulations as the Commis-
8 sioner shall prescribe.

9 (2) STANDARD OF APPROVAL.—The Commis-
10 sioner shall approve a bulk transfer under paragraph
11 (1), after notice and a hearing, unless the Commis-
12 sioner determines that the bulk transfer is likely to
13 be hazardous to policyholders of transferred insur-
14 ance policies, policyholders of the transferring in-
15 surer, or policyholders of the assuming insurer.

16 (d) POLICYHOLDER CONSENT.—

17 (1) NO CONSENT REQUIRED.—Notwithstanding
18 any other provision of law, a national insurer may,
19 upon the approval of the Commissioner, effect a bulk
20 transfer under paragraph (1) or (2) of subsection
21 (b), as either the transferring insurer or the assum-
22 ing insurer, without obtaining policyholder consent.

23 (2) BETWEEN NATIONAL INSURERS.—Notwith-
24 standing any other provision of law, a national in-
25 surer may, upon the approval of the Commissioner,

1 effect a bulk transfer under subsection (b)(3) as ei-
2 ther the transferring insurer or the assuming in-
3 surer, in accordance with the requirements pre-
4 scribed by the Commissioner. Such requirements
5 shall specify whether policyholder consent to such a
6 bulk transfer is required and, if policyholder consent
7 is required, the form in which such consent is re-
8 quired to be given.

9 (3) ADDITIONAL PROVISIONS.—In addition to
10 any policyholder consent required by any other appli-
11 cable provision of law, the Commissioner may pre-
12 scribe, by regulation, whether policyholder consent is
13 required for a bulk transfer authorized under sub-
14 section (b)(5) and, if policyholder consent is re-
15 quired, the form in which such consent is required
16 to be given.

17 (e) RELEASE FROM LIABILITY.—Upon the comple-
18 tion of a bulk transfer under this section, the transferring
19 insurer shall be released from its obligations under the
20 transferred insurance policies.

21 (f) STATE LAW.—

22 (1) PROHIBITION.—Except as provided in para-
23 graph (2), a State may not, by statute, regulation,
24 order, interpretation, or otherwise—

1 (A) require a national insurer, a permitted
2 national insurer, or a State insurer to—

3 (i) obtain policyholder consent to a
4 bulk transfer; or

5 (ii) submit the bulk transfer to State
6 review or action (including approval and
7 nondisapproval); or

8 (B) prevent or significantly interfere with
9 a bulk transfer effected pursuant to this sec-
10 tion.

11 (2) CONSTRUCTION.—Paragraph (1) shall not
12 be construed to prohibit any State from—

13 (A) collecting, reviewing, and taking action
14 (including approval or disapproval) on applica-
15 tions and other documents or reports con-
16 cerning a proposed bulk transfer permitted
17 under—

18 (i) paragraph (2), (4), or (5) of sub-
19 section (b) to which a State insurer (other
20 than a permitted national insurer) domi-
21 ciled in that State is a party; or

22 (ii) paragraph (4) or (5) of subsection
23 (b) to which a State insurer (other than a
24 permitted national insurer), other than a
25 State insurer domiciled in that State, is a

1 party, if the review or action meets the
2 standards set forth in paragraph (3); or

3 (B) requiring policyholder consent of a
4 proposed bulk transfer permitted under para-
5 graph (4) or (5) of subsection (b).

6 (3) STANDARDS.—A review or action meets the
7 standards under this paragraph, if it—

8 (A) is based on standards that are not
9 more onerous than those imposed by the Com-
10 missioner;

11 (B) occurs within a reasonable time frame
12 that advances the purposes of this section;

13 (C) is made in close consultation and co-
14 operation with the Commissioner;

15 (D) is without bias or discrimination to-
16 ward either the transferring insurer or the as-
17 suming insurer;

18 (E) serves a legitimate State interest; and

19 (F) does not frustrate the proposed bulk
20 transfer.

21 (4) NOTICE OF FAILURE.—If the Commissioner
22 finds that any State review or action under para-
23 graph (2)(A) fails to meet any of the standards set
24 forth in paragraph (3), the Commissioner may pro-

1 vide the applicable State with notice of such failure
2 and the reasons for such failure.

3 (g) DIFFERENTIAL TREATMENT PROHIBITED.—A
4 State may not, by statute, regulation, order, interpreta-
5 tion, or otherwise, treat a national insurer, a permitted
6 national insurer, or a State insurer entering into a bulk
7 transfer agreement with a national insurer, a permitted
8 national insurer, a State insurer, or any affiliate or sub-
9 sidiary of such insurer, differently than any other insurer
10 operating in that State.

11 (h) NO DELEGATION PERMITTED.—The Commis-
12 sioner may not delegate to any insurance self-regulatory
13 organization any authority conferred under this section
14 with respect to any bulk transfer involving a national in-
15 surer.

16 **SEC. 1234. DOMESTICATION OF UNITED STATES BRANCH**
17 **OF A NON-UNITED STATES INSURER.**

18 (a) DOMESTICATION PERMITTED.—Notwithstanding
19 any other provision of law, any non-United States insurer
20 having its United States branch entered through a State
21 or established pursuant to section 1202, and owning bene-
22 ficially, directly or indirectly, all outstanding shares of a
23 national insurer may, upon the written approval by the
24 Commissioner, domesticate its United States branch by
25 agreeing in writing with such national insurer to the ac-

1 quisation of the business and assets, and the assumption
2 of all liabilities, of the United States branch, by the na-
3 tional insurer for no consideration except such assump-
4 tion.

5 (b) APPROVAL BY COMMISSIONER.—If the Commis-
6 sioner determines that the domestication of a United
7 States branch of a non-United States insurer complies
8 with the provisions of this section and that the interests
9 of policyholders and creditors of the United States branch
10 are not materially affected in an adverse manner by such
11 domestication, the Commissioner may approve the domes-
12 tication in accordance with this section.

13 (c) EFFECTIVE DATE OF DOMESTICATION.—

14 (1) IN GENERAL.—The domestication of the
15 United States branch shall be effective on the date
16 on which a certified copy of the instrument of trans-
17 fer and assumption is filed with the Commissioner.

18 (2) EFFECT OF DOMESTICATION.—On the date
19 described in paragraph (1)—

20 (A) all rights, franchises, and interests of
21 such United States branch in and to every spe-
22 cies of property, real, personal, and mixed, and
23 things in action belonging to such branch, shall
24 be deemed transferred to and vested in the ac-
25 quiring national insurer;

1 (B) the acquiring national insurer shall be
2 deemed to have assumed all liabilities of the
3 United States branch;

4 (C) all deposits of the United States
5 branch held by State officers or other State
6 regulatory agencies under State law shall be re-
7 leased; and

8 (D) the non-United States insurer and the
9 United States branch shall be released from all
10 liabilities so assumed.

11 (d) RELEASE OF DEPOSITS.—At the time of the do-
12 mestication of a United States branch under this section,
13 the Commissioner shall—

14 (1) transfer to the account of the acquiring na-
15 tional insurer the securities deposited by such
16 United States branch in compliance with the provi-
17 sions of this Act; and

18 (2) consent that the trustee of the trustee as-
19 sets deposited by such United States branch in com-
20 pliance with the provisions of this Act shall with-
21 draw from the trust and transfer and deliver to the
22 acquiring national insurer all assets held by such
23 trustee.

24 (e) WITHDRAWAL AND TRANSFER OF TRUSTEED AS-
25 SETS.—

1 (1) IN GENERAL.—At the time of the domes-
2 tication of a United States branch established under
3 State law, the trustee of any trustee assets depos-
4 ited by such United States branch in compliance
5 with applicable State law shall, with the consent of
6 the Commissioner—

7 (A) withdraw the trustee assets from the
8 trust; and

9 (B) transfer and deliver to the acquiring
10 national insurer all assets held by such trustee.

11 (2) LIMITATION.—No State may, by statute,
12 regulation, order, interpretation, or otherwise, pre-
13 vent, significantly interfere with, review, approve, or
14 disapprove the withdrawal of trustee assets or other
15 deposits of a United States branch established under
16 State law that is domesticated pursuant to this sec-
17 tion, if such withdrawal is made contemporaneously
18 with or subsequent to the consummation of a domes-
19 tication of the United States branch under this sec-
20 tion.

21 (f) NO DELEGATION PERMITTED.—The Commis-
22 sioner may not delegate to any insurance self-regulatory
23 organization any authority under this section with respect
24 to the domestication of a United States branch of a non-
25 United States insurer.

1 **SEC. 1235. MERGERS, CONSOLIDATIONS, AND ACQUI-**
2 **TIONS OF NATIONAL AGENCIES.**

3 (a) NATIONAL AGENCY RESULTING.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, a national agency may, with the ap-
6 proval of the Commissioner, merge, consolidate with,
7 acquire all or substantially all the assets of, or as-
8 sume all or substantially all the liabilities of, another
9 national agency or a State insurance agency in a
10 transaction in which a national agency is the result-
11 ing agency, the acquiring agency, or the assuming
12 agency.

13 (2) MERGER, CONSOLIDATION, AND ACQUI-
14 TION PROCEDURES.—The Commissioner is author-
15 ized, under such regulations as the Commissioner
16 may prescribe, to provide for—

17 (A) the merger or consolidation of a na-
18 tional agency with another national agency or a
19 State insurance agency in a transaction in
20 which a national agency is the resulting agency;
21 and

22 (B) the acquisition or assumption by a na-
23 tional agency of all or substantially all the as-
24 sets or all or substantially all the liabilities of
25 another national agency or a State insurance

1 agency in a transaction in which the national
2 agency is the acquiring or assuming agency.

3 (3) EFFECT OF MERGER OR CONSOLIDATION.—

4 Upon the merger or consolidation of a national
5 agency with another national agency or a State in-
6 surance agency under this section—

7 (A) the corporate existence of each of the
8 merging or consolidating agencies shall be
9 merged or consolidated into the resulting agen-
10 cy, and the resulting agency shall be deemed to
11 be the same corporation as each agency partici-
12 pating in the merger or consolidation; and

13 (B) except as provided under paragraph
14 (4), the resulting agency shall have all the
15 rights, privileges, liabilities, property interests,
16 and other interests and obligations that each
17 agency participating in the merger or consolida-
18 tion had immediately before the merger or con-
19 solidation.

20 (4) LIMITATION.—Upon a merger or consolida-
21 tion under this subsection, the resulting agency—

22 (A) shall not hold any State license to sell,
23 solicit, or negotiate insurance that was held by
24 a State agency participating in the merger or
25 consolidation; and

1 (B) shall obtain, in accordance with section
2 1301, appropriate licenses for all lines of insur-
3 ance that it sells, solicits, or negotiates except
4 for those lines of insurance for which a national
5 agency participating in the merger or consolida-
6 tion held a Federal producer's license imme-
7 diately before the merger or consolidation.

8 (5) SPECIAL AUTHORITY.—The Commissioner
9 may, subject to such regulations as the Commis-
10 sioner may prescribe, permit a national agency re-
11 sulting from a merger or consolidation under this
12 subsection to retain, hold, or exercise such assets, li-
13 abilities, powers, and authorities that do not con-
14 form to the legal requirements applicable to national
15 agencies as the Commissioner determines to be ap-
16 propriate.

17 (b) STATE INSURANCE AGENCY RESULTING.—

18 (1) IN GENERAL.—Subject to such notification
19 procedures as the Commissioner may prescribe by
20 regulation, a State insurance agency may merge,
21 consolidate with, acquire assets of, or assume liabil-
22 ities of, a national agency in a transaction in which
23 a State insurance agency is the resulting agency, in
24 accordance with applicable State law.

1 (2) SAVINGS PROVISION.—Nothing in this sub-
 2 section or in a transaction pursuant to this sub-
 3 section shall abrogate any rights, privileges, liabil-
 4 ities, property interests, other interests, or obliga-
 5 tions that the national agency had immediately be-
 6 fore the transaction.

7 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the
 8 liabilities of a national agency are assumed by another na-
 9 tional agency or a State insurance agency in accordance
 10 with the provisions of this Act, such national agency from
 11 whom the liabilities are assumed shall be released from
 12 all liabilities so assumed upon their assumption by the
 13 other national agency or a State insurance agency.

14 (d) NO DELEGATION PERMITTED.—The Commis-
 15 sioner may not delegate to any insurance self-regulatory
 16 organization any authority conferred under this section
 17 with respect to any merger, consolidation, or acquisition
 18 of assets or assumption of liabilities involving a national
 19 agency.

20 **Subtitle E—Conversions**

21 **SEC. 1241. DEFINITIONS.**

22 In this subtitle, the following definitions shall apply:

23 (1) ADOPTION DATE.—The term “adoption
 24 date” means the date on which the board of direc-

1 tors of the converting mutual insurer or converting
2 stock insurer adopts the plan of conversion.

3 (2) CONVERTED MUTUAL INSURER.—The term
4 “converted mutual insurer” means the national life
5 insurer in mutual form into which a stock life in-
6 surer has been converted in accordance with the pro-
7 visions of section 1242.

8 (3) CONVERTED STOCK INSURER.—The term
9 “converted stock insurer” means the national in-
10 surer in stock form into which a mutual insurer has
11 been converted in accordance with the provisions of
12 section 1243.

13 (4) CONVERTING MUTUAL INSURER.—The term
14 “converting mutual insurer” means the mutual in-
15 surer that is converting under a plan of conversion
16 under section 1243.

17 (5) CONVERTING STOCK INSURER.—The term
18 “converting stock insurer” means the stock life in-
19 surer that is converting under a plan of conversion
20 under section 1242.

21 (6) MEMBERSHIP INTERESTS.—The term
22 “membership interests”—

23 (A) means the interests of members and
24 policyholders of the mutual insurer arising

1 under the charter and bylaws of the mutual in-
2 surer or otherwise by applicable law;

3 (B) includes the right to vote for directors
4 of the mutual insurer and the right to vote on
5 any plan of merger or consolidation of the mu-
6 tual insurer; and

7 (C) does not include rights in surplus, if
8 any.

9 (7) MUTUAL INSURER.—The term “mutual in-
10 surer” means the State insurer in mutual form or
11 national insurer in mutual form that is converting to
12 a national insurer in stock form pursuant to a plan
13 of conversion adopted in accordance with section
14 1243.

15 (8) PLAN OF CONVERSION OR PLAN.—The
16 terms “plan of conversion” and “plan” mean a plan
17 of conversion adopted by a stock life insurer or a
18 mutual insurer in accordance with this subtitle.

19 (9) RIGHTS IN SURPLUS.—The term “rights in
20 surplus”—

21 (A) means rights, if any, of members or
22 policyholders of the mutual insurer to a return
23 of that portion of the surplus that has not been
24 apportioned or declared by the board of direc-
25 tors for policyholder dividends;

1 (B) includes rights of members or policy-
 2 holders of the mutual insurer to a distribution
 3 of surplus in liquidation or conservation of the
 4 insurer under applicable law, or in a dissolution
 5 or winding up; and

6 (C) does not include any right expressly
 7 conferred solely by the terms of an insurance
 8 policy.

9 (10) STOCK LIFE INSURER.—The term “stock
 10 life insurer” means the State life insurer in stock
 11 form or national life insurer in stock form that is
 12 converting to a national life insurer in mutual form
 13 pursuant to a plan of conversion adopted in accord-
 14 ance with section 1242.

15 **SEC. 1242. CONVERSION OF STOCK LIFE INSURER TO NA-**
 16 **TIONAL LIFE INSURER IN MUTUAL FORM.**

17 (a) AUTHORITY TO CONVERT.—Notwithstanding any
 18 other provision of law, a stock life insurer may convert
 19 to a national insurer in mutual form in accordance with
 20 a plan of conversion approved by the Commissioner under
 21 this section that meets the requirements of this section,
 22 and by complying with the requirements of this section
 23 and rules issued by the Commissioner under this Act.

24 (b) PLAN OF CONVERSION.—

1 (1) IN GENERAL.—The plan of conversion re-
2 quired by this section—

3 (A) shall be adopted by the board of direc-
4 tors of the converting stock insurer; and

5 (B) shall provide for the conversion of the
6 converting stock insurer into a national life in-
7 surer in mutual form.

8 (2) ISSUANCE OF STOCK AFTER ADOPTION
9 DATE.—No additional shares of capital stock shall
10 be issued after the adoption date, except that—

11 (A) stock options to purchase capital stock
12 may continue to be issued under existing con-
13 tracts; and

14 (B) outstanding options may continue to
15 be exercised until the effective date of the plan
16 of conversion.

17 (3) CONTENTS.—The plan of conversion shall
18 provide for—

19 (A) the purchase by the converting stock
20 insurer of all of its outstanding capital stock, at
21 a price either specified in the plan or to be de-
22 termined under a formula specified in the plan,
23 for cash or other consideration as set forth in
24 the plan; and

1 (B) the termination, upon terms specified
2 in the plan, of any contractual obligation incon-
3 sistent with the nature of a mutual insurer, in-
4 cluding any obligation to issue stock options or
5 issue capital stock upon exercise of options.

6 (c) APPROVAL OF PLAN BY COMMISSIONER.—The
7 Commissioner shall approve the plan of conversion re-
8 quired by this section, if the Commissioner finds, after a
9 hearing, that—

10 (1) the plan is fair and equitable to the policy-
11 holders, shareholders, and holders of options to ac-
12 quire capital stock of the converting stock insurer;

13 (2) the plan does not violate the law; and

14 (3) the converted mutual insurer will, after the
15 conversion, satisfy the requirements for the issuance
16 of a license to write the lines of insurance for which
17 it is licensed.

18 (d) VOTE ON APPROVAL OF PLAN.—

19 (1) STOCKHOLDERS.—The plan of conversion
20 shall be submitted to the holders of record on the
21 adoption date of the converting stock insurer's
22 shares entitled to vote thereon and shall be subject
23 to approval of the holders of a majority of such
24 shares.

25 (2) POLICYHOLDERS.—

1 (A) SUBMISSION.—The plan of conversion
2 shall be submitted to policyholders of the con-
3 verting stock insurer—

4 (i) who are insured for at least
5 \$1,000; and

6 (ii) whose policy of insurance is in
7 force—

8 (I) for a period of at least 1 year
9 before the adoption date;

10 (II) on the adoption date; and

11 (III) on the date of the meeting
12 of policyholders called for the purpose
13 of approving the plan of conversion.

14 (B) APPROVAL.—The plan of conversion
15 shall be subject to the approval of a majority of
16 the votes cast by the policyholders described in
17 subparagraph (A).

18 (e) EFFECT OF CONVERSION ON CONVERTED MU-
19 TUAL INSURERS.—

20 (1) IN GENERAL.—On the effective date of the
21 plan of conversion, the stock insurer shall become a
22 national life insurer in mutual form and share-
23 holders eligible to receive consideration under the
24 plan of conversion are entitled to receive the consid-
25 eration specified in the plan in exchange for their

1 shares of capital stock of the converting stock in-
2 surer.

3 (2) NO EFFECT ON EXISTING RIGHTS AND LI-
4 ABILITIES.—The converted mutual insurer is a con-
5 tinuation of the original stock life insurer, and the
6 conversion shall not annul, modify, or change any of
7 the original stock life insurer's existing suits, rights,
8 contracts, or liabilities, except as provided in the
9 plan of conversion.

10 (3) RIGHTS AFTER CONVERSION.—After con-
11 version, the converted mutual insurer shall—

12 (A) exercise all the rights and powers and
13 perform all the duties conferred or imposed by
14 law upon insurers writing the classes of insur-
15 ance written by the converted mutual insurer;
16 and

17 (B) retain the rights and contracts existing
18 prior to conversion, subject to the effect of the
19 plan.

20 (f) TIME LIMITS FOR PLAN ACTIONS.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of law, actions concerning any plan of con-
23 version or proposed plan of conversion under this
24 section or any acts taken or proposed to be taken
25 under this section shall be commenced not later than

9 (g) EFFECT ON STATE LAW.—No State may, by stat-
10 ute, regulation, order, interpretation, or otherwise, prevent
11 or interfere with a conversion under this section or impede
12 the activities of, take any action against, or apply any pro-
13 vision of law or regulation to, any such stock life insurer
14 because the stock life insurer plans to convert, or has con-
15 verted, to a national life insurer in mutual form under this
16 section.

21 SEC. 1243. CONVERSION OF MUTUAL INSURER TO NA-
22 TIONAL INSURER IN STOCK FORM.

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1 of conversion approved by the Commissioner under this
2 section that meets the requirements of this section, and
3 by complying with the requirements of this section and
4 the rules issued by the Commissioner under this Act.

5 (b) PLAN OF CONVERSION.—

6 (1) IN GENERAL.—The plan of conversion—

7 (A) shall be adopted by the board of direc-
8 tors of the converting mutual insurer;

9 (B) shall provide for the conversion of the
10 converting mutual insurer into a national in-
11 surer in stock form; and

12 (C) may provide for effecting the conver-
13 sion by merger of the mutual insurer with an-
14 other company.

15 (2) CONTENTS.—The plan of conversion shall
16 provide that—

17 (A) all membership interests and rights in
18 surplus are extinguished;

19 (B) each eligible person will receive, with-
20 out payment by the person, consideration that
21 is allocated among the eligible persons using a
22 fair and equitable formula; and

23 (C) eligible persons may receive 1 or more
24 kinds of consideration, including—

25 (i) cash;

1 (ii) shares of capital stock of the con-
2 verting mutual insurer;

3 (iii) shares of capital stock (or inter-
4 ests in shares of capital stock) of a cor-
5 poration that, after the conversion, directly
6 or indirectly, controls the converted stock
7 insurer;

8 (iv) premium credits;

9 (v) enhanced insurance benefits; or

10 (vi) in the case of a converting mutual
11 insurer that is a life insurer, credits to in-
12 surance policy account values, as set forth
13 in the plan.

14 (c) APPROVAL OF PLAN BY COMMISSIONER.—The
15 Commissioner shall approve the plan of conversion re-
16 quired by this section, if the Commissioner finds, after a
17 hearing, that—

18 (1) the plan is fair and equitable to the insurer
19 and its policyholders;

20 (2) the plan does not violate the law; and

21 (3) the converted stock insurer will, after the
22 conversion, satisfy the requirements for the issuance
23 of a license to write the line or lines of insurance for
24 which it is licensed.

1 (d) VOTE ON APPROVAL OF PLAN.—The plan of con-
 2 version shall be submitted to those persons who are eligible
 3 to vote on the plan and shall be subject to approval of
 4 a majority of the votes cast by such persons.

5 (e) EMPLOYEE STOCK PURCHASES; STOCK OP-
 6 TIONS.—Subject to regulations prescribed by the Commis-
 7 sioner, the converted insurer or a corporation that, after
 8 the conversion, directly or indirectly, controls the con-
 9 verted insurer, may establish stock option, incentive, and
 10 share ownership plans customary for publicly traded com-
 11 panies in the same and similar industries.

12 (f) EFFECT OF CONVERSION ON CONVERTED STOCK
 13 INSURERS.—

14 (1) IN GENERAL.—On the effective date of the
 15 plan of conversion—

16 (A) the mutual insurer shall become a na-
 17 tional insurer in stock form;

18 (B) all membership interests and rights in
 19 surplus shall be extinguished; and

20 (C) persons eligible to receive consideration
 21 under the plan of conversion shall be entitled to
 22 receive the consideration specified in the plan in
 23 exchange for membership interests and liquida-
 24 tion of rights in surplus.

1 (2) NO EFFECT ON EXISTING RIGHTS AND LI-
 2 ABILITIES.—The converted stock insurer is a con-
 3 tinuation of the original mutual insurer, and the
 4 conversion shall not annul, modify, or change any of
 5 the original mutual insurer's existing suits, rights,
 6 contracts, or liabilities, except as provided in the
 7 plan of conversion.

8 (3) RIGHTS AFTER CONVERSION.—After con-
 9 version, the converted stock insurer shall—

10 (A) exercise all the rights and powers and
 11 perform all the duties conferred or imposed by
 12 law upon insurers writing the classes of insur-
 13 ance written by the converted stock insurer;
 14 and

15 (B) retain the rights and contracts existing
 16 prior to conversion, subject to the effect of the
 17 plan.

18 (g) LIMITATIONS ON ACQUIRING CONVERTED STOCK
 19 INSURER.—

20 (1) IN GENERAL.—During the 5-year period be-
 21 ginning on the effective date of the plan of conver-
 22 sion, no person or group of persons acting in concert
 23 shall directly or indirectly offer to acquire, or ac-
 24 quire in any manner, the beneficial ownership of 5
 25 percent or more of any class of voting securities of

1 a converted insurer or of a person that controls the
2 converted insurer, without the prior consent of the
3 Commissioner.

4 (2) EFFECT OF VIOLATION.—Upon the viola-
5 tion of paragraph (1), or any action that, if con-
6 summated, would constitute such a violation, all vot-
7 ing securities of the converted insurer or of the per-
8 son acquired by any person in excess of the max-
9 imum amount permitted to be acquired by the per-
10 son under paragraph (1) shall be deemed to be non-
11 voting securities of the converted stock insurer or of
12 that person.

13 (3) ENFORCEMENT.—

14 (A) COMMENCEMENT.—A violation or ac-
15 tion described in paragraph (1) may be en-
16 forced or enjoined by appropriate proceeding
17 commenced by the converted stock insurer or
18 the Commissioner in—

19 (i) the United States district court for
20 the judicial district in which the main of-
21 fice of the converted stock insurer is lo-
22 cated;

23 (ii) the United States District Court
24 for the District of Columbia; or

1 (iii) any other court having jurisdic-
2 tion.

3 (B) ORDER.—The court may issue any
4 order it finds necessary to cure the violation or
5 to prevent the proposed action.

6 (h) TIME LIMITS FOR PLAN ACTIONS.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of law, actions concerning any plan of con-
9 version or proposed plan of conversion under this
10 section or any acts taken or proposed to be taken
11 under this section shall be commenced not later than
12 30 days after the date on which the plan of conver-
13 sion is approved by the Commissioner under sub-
14 section (c).

15 (2) PLAN WITHDRAWN.—If the plan of conver-
16 sion is withdrawn, the actions shall be commenced
17 not later than 30 days after the date on which the
18 board of directors approves a resolution to withdraw
19 the plan.

20 (i) EFFECT ON STATE LAW.—No State may, by stat-
21 ute, regulation, order, interpretation, or otherwise, prevent
22 or interfere with a conversion under this section or impede
23 the activities of, take any action against, or apply any pro-
24 vision of law or regulation to, any such mutual insurer
25 because that mutual insurer plans to convert, or has con-

1 verted, to a national insurer in stock form under this sec-
 2 tion.

3 (j) NO DELEGATION PERMITTED.—The Commis-
 4 sioner may not delegate to any insurance self-regulatory
 5 organization any authority under this section with respect
 6 to the conversion of a mutual insurer.

7 **Subtitle F—State Taxation**

8 **SEC. 1251. STATE TAXATION OF NATIONAL INSURERS.**

9 (a) STATE TAXATION RULE.—Except as provided in
 10 subsection (b) and section 1610, a national insurer doing
 11 business in any State shall be subject to all applicable
 12 State and local taxes, assessments, and charges including
 13 insurance retaliatory taxes or other similar taxes, and
 14 shall be entitled to all applicable tax credits, deductions,
 15 and offsets provided under State law, as well as all policy-
 16 holder surcharge provisions under State law, to the same
 17 extent and in the same manner as an insurer licensed to
 18 do business in such State and chartered in the State where
 19 the national insurer is considered domiciled under sub-
 20 section (c) or (d), except that, such national insurer shall
 21 not be subject to—

22 (1) any additional taxes, assessments, and
 23 charges imposed by such State (or local government)
 24 by reason of the failure of the national insurer to be

1 licensed or otherwise authorized to conduct business
 2 or write or sell insurance policies, by such State; or

3 (2) special assessments and charges that fund
 4 services that the State does not provide with respect
 5 to the national insurer.

6 (b) EXCEPTION.—No State shall have power to im-
 7 pose an insurance retaliatory tax on any national insurer,
 8 unless—

9 (1) for any tax purpose for which State of
 10 domicile is relevant, every national insurer is treated
 11 by such State as domiciled in the State designated
 12 by each national insurer under subsection (c); and

13 (2) the insurance retaliatory tax is imposed by
 14 such State on every national insurer to the same ex-
 15 tent and in the same manner as it is imposed on
 16 every insurer chartered in the State where the na-
 17 tional insurer is considered domiciled under sub-
 18 section (c).

19 (c) DESIGNATION OF DOMICILE.—

20 (1) IN GENERAL.—A national insurer may des-
 21 ignate, as its State of domicile, by filing such des-
 22 ignation in writing with the Commissioner—

23 (A) the State in which the national insur-
 24 er's principal place of business in the United
 25 States is located; or

1 (B) in the case of an insurer that has con-
2 verted from a State insurer to a national in-
3 surer under this Act, the State in which such
4 insurer was domiciled immediately before such
5 conversion.

6 (2) NO DESIGNATION BY NATIONAL INSURER.—

7 If a national insurer does not make a designation of
8 a State of domicile under this subsection, the na-
9 tional insurer shall be deemed to have designated as
10 its State of domicile the State in which its principal
11 place of business in the United States is located.

12 (d) CHANGE IN DOMICILE.—A national insurer may
13 change its State of domicile, with the approval of the Com-
14 missioner, to any other State meeting the requirements
15 under subsection (c).

16 (e) STATUS OF NATIONAL INSURER.—For purposes
17 of State taxation, a national insurer—

18 (1) shall not be considered a department, agen-
19 cy, or instrumentality of the Federal Government;
20 and

21 (2) except as provided in this section, a national
22 insurer shall not be exempt from any State tax or
23 subject to a lesser burden of any State tax, solely by
24 reason of its status as a national insurer under this
25 Act.

1 **SEC. 1252. STATE TAXATION OF NATIONAL AGENCIES.**

2 (a) STATE TAXATION RULE.—A national agency
3 shall be subject to all taxes imposed under any applicable
4 provision of State law, to the same extent and in the same
5 manner as an agency chartered in the State in which the
6 national agency is considered domiciled pursuant to sub-
7 section (b).

8 (b) STATE OF DOMICILE.—For purposes of this sec-
9 tion, the State of domicile of a national agency shall be
10 deemed to be the State in which the principal place of
11 business of the national agency in the United States is
12 located.

13 (c) STATUS OF NATIONAL AGENCY.—For purposes
14 of State taxation, a national agency shall not—

15 (1) be considered to be a department, agency,
16 or instrumentality of the Federal Government; and

17 (2) except as provided in this section, be ex-
18 empt from any State tax or subject to a lesser bur-
19 den of any State tax, solely by reason of its status
20 as a national agency under this Act.

21 **SEC. 1253. STATE TAXATION OF NON-ADMITTED AND SUR-**
22 **PLUS LINES INSURANCE.**

23 (a) IN GENERAL.—No State, other than the State in
24 which an insured maintains its principal place of business
25 or, in the case of an individual, maintains a principal resi-

1 dence, may require any Premium Tax for Non-Admitted
 2 Insurance or Surplus Lines Insurance.

3 (b) DEFINITION.—For purposes of this section, the
 4 term “Premium Tax for Non-Admitted or Surplus Lines
 5 Insurance” means any tax, fee, assessment, or other
 6 charge imposed by a State on an insured, either directly
 7 or through a producer that is based upon any payment
 8 made as consideration for Non-Admitted Insurance or
 9 Surplus Lines Insurance, and any other compensation
 10 given in consideration for a contract of insurance.

11 **TITLE III—INSURANCE PRODUCERS AND OTHER INSUR-**
 12 **ANCE SERVICING PERSONS**

14 **SEC. 1301. FEDERAL LICENSING OF INSURANCE PRO-**
 15 **DUCERS.**

16 (a) COMMISSION AUTHORITY.—The Commissioner—

17 (1) shall have authority to issue Federal pro-
 18 ducer licenses; and

19 (2) shall, by regulation—

20 (A) define the line or lines of insurance for
 21 which a person may obtain a Federal producer
 22 license, which shall include surplus lines of in-
 23 surance or non-admitted insurance; and

24 (B) specify educational and examination
 25 requirements for persons seeking a Federal pro-

1 ducer license, other than national agencies that
2 are subject to chartering criteria under section
3 1201.

4 (b) NATIONAL AGENCIES.—The Commissioner shall
5 issue a Federal producer license to a national agency upon
6 the issuance of a charter certificate to such Agency pursu-
7 ant to section 1201.

8 (c) AUTHORITY OF PERSON HOLDING A FEDERAL
9 PRODUCER LICENSE.—A Federal producer license issued
10 under this section authorizes the person to sell, solicit, or
11 negotiate insurance in any State for any line or lines of
12 insurance specified in such license, and exercise all such
13 incidental powers, as shall be necessary to carry out such
14 activities, including claims adjustments and settlement,
15 risk management, employee benefits advice, retirement
16 planning, and any other insurance-related consulting ac-
17 tivities.

18 (d) EXAMINATIONS AND REPORTS.—In addition to
19 the examination and reporting requirements applicable to
20 national agencies pursuant to sections 1124 and 1125, the
21 Commissioner may—

22 (1) provide for the examination of federally li-
23 censed insurance producers that are not national
24 agencies only in response to a complaint or any evi-

1 dence that the federally licensed insurance producer
2 has violated or is about to violate—

3 (A) a law, rule, or regulation;

4 (B) any condition imposed in writing by
5 the Commissioner in connection with issuing a
6 Federal producer license; or

7 (C) any written agreement entered into
8 with the Commissioner; and

9 (2) require federally licensed insurance pro-
10 ducers that are not national agencies to make such
11 reports, containing such information and in such
12 form, as the Commissioner may prescribe by regula-
13 tion, to the extent necessary to require compliance
14 with this Act.

15 (e) INFORMATION PRACTICES.—The Commissioner
16 may, by regulation, provide that there shall be no civil li-
17 ability imposed on and no cause of action shall arise from
18 a national insurer or national agency, an insurer-affiliated
19 party, or a federally licensed insurance producer submit-
20 ting any statement or information required under this Act
21 or any regulation thereunder or requested in writing by
22 the Commissioner relating to the conduct of a federally
23 licensed insurance producer, provided that—

24 (1) this protection may not apply to false state-
25 ments made with actual malice; and

1 (2) such regulation shall not abrogate or modify
2 any existing common law or statutory privileges or
3 immunities.

4 (f) **AUTHORITY OF STATE LICENSED INSURANCE**
5 **PRODUCER.**—An insurance producer licensed by a State
6 may sell, solicit, or negotiate insurance in such State on
7 behalf of a national insurer without a Federal producer
8 license.

9 **SEC. 1302. PRODUCER DATABASE.**

10 (a) **IN GENERAL.**—The Commissioner shall adopt
11 regulations for the development of an electronic database
12 consisting of information relating to federally licensed in-
13 surance producers and an electronic communication net-
14 work that links the Commissioner with State insurance
15 regulators and insurers for an electronic exchange of such
16 information.

17 (b) **MAINTENANCE.**—The Commissioner, by rule or
18 order, may delegate authority over the maintenance of
19 each database described in subsection (a) to an insurance
20 self-regulatory organization. In making any such rule or
21 entering any such order, the Commissioner shall take into
22 consideration the regulatory capabilities and procedures of
23 the insurance self-regulatory organization, availability of
24 staff, convenience of location, avoidance of unnecessary
25 regulatory duplication, and any other factors the Commis-

1 sioner may consider appropriate to the protection of pol-
 2 icyholders, the efficiency of the producer licensing system,
 3 and the cooperation and coordination among regulatory
 4 organizations.

5 **SEC. 1303. SUPERVISION AND OVERSIGHT OF FEDERALLY**
 6 **LICENSED INSURANCE PRODUCERS.**

7 (a) PURPOSE.—The purpose of this section is to es-
 8 tablish when a national insurer, national agency, or other
 9 federally licensed insurance producer has a duty to super-
 10 vise a federally licensed insurance producer who is an indi-
 11 vidual. The duty to supervise as required in this section
 12 shall be in addition to the authority of the Commissioner
 13 to exercise its powers under section 1102(b).

14 (b) DUTY TO SUPERVISE.—

15 (1) NATIONAL INSURERS.—A national insurer
 16 shall have a duty to supervise the sales and mar-
 17 keting practices of a federally licensed insurance
 18 producer who is an individual with respect to the
 19 sale, solicitation, or negotiation of insurance policies
 20 of such national insurer, if—

21 (A) such producer is an—

22 (i) employee of the national insurer;

23 or

24 (ii) agent of the national insurer; and

1 (B) the entire or principal business activity
2 of such producer is devoted to the sale, solicita-
3 tion, or negotiation of insurance policies for
4 such insurer, the supervision of the agents for
5 such insurer, or both.

6 (2) NATIONAL AGENCIES AND OTHER FEDER-
7 ALLY LICENSED PRODUCERS.—A national agency or
8 other federally licensed insurance producer has a
9 duty to supervise the sales and marketing practices
10 of a federally licensed insurance producer who is an
11 individual with respect to the sale, solicitation, or
12 negotiation of insurance policies, if such producer—

13 (A) is an employee of such agency or other
14 producer, and the sale, solicitation, and negotia-
15 tion of insurance is within the scope of employ-
16 ment of the producer; or

17 (B) is an agent of such agency or other
18 producer, and the sale, solicitation, and negotia-
19 tion of insurance is pursuant to the terms of an
20 agreement between the agent and such national
21 agency or other producer.

22 (3) STANDARDS FOR SUPERVISION.—The Com-
23 missioner shall, by regulation, establish standards
24 for the duties established in paragraphs (1) and (2).
25 Such standards shall not conflict with the rules

1 adopted by any self-regulatory organization approved
2 by the Securities and Exchange Commission pursu-
3 ant to its authority under section 19(b)(1) of the Se-
4 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))
5 for broker-dealer supervision of registered represent-
6 atives.

7 (4) EXEMPTION.—The Commissioner may, by
8 regulation, exempt any class of persons from the du-
9 ties established under paragraphs (1) and (2), if the
10 Commissioner determines that, given the nature of
11 the business relationship with the federally licensed
12 insurance producer who is an individual, it would be
13 unreasonable or inappropriate to require the class
14 member to supervise such producer.

15 (5) NO DUTY.—A national insurer, national
16 agency, or other federally licensed insurance pro-
17 ducer shall not have a duty to supervise the sales
18 and marketing practices of persons not described in
19 paragraph (1) or (2).

20 (6) OVERSIGHT OF INDIVIDUAL INDEPENDENT
21 FEDERALLY LICENSED INSURANCE PRODUCERS.—

22 (A) IN GENERAL.—The sales and mar-
23 keting practices of a federally licensed insur-
24 ance producer who is an individual with respect
25 to the sale, solicitation, or negotiation of insur-

1 ance policies shall be subject to the direct over-
2 sight of the Commissioner, if such producer is
3 not a person subject to supervision under the
4 terms of paragraph (1) or (2).

5 (B) STANDARDS AND PROCEDURES.—The
6 Commissioner shall, by regulation, establish
7 standards and procedures for the direct over-
8 sight of the sales and marketing practices of
9 federally licensed insurance producers described
10 in subparagraph (A).

11 (c) WHOLESALE LIFE INSURANCE BROKERAGE
12 AGENCIES.—This section shall not apply to any wholesale
13 life insurance brokerage agency, as that term is defined
14 by the Commissioner.

15 **SEC. 1304. RELATIONSHIP TO STATE LAW.**

16 (a) NO STATE RESTRICTIONS.—No State may, by
17 statute, regulation, order, interpretation, or otherwise,
18 prevent or restrict a national insurer from engaging in the
19 acts described in subsection (b) for any person, or from
20 engaging the services of a person who engages in such acts
21 for the national insurer, nor shall any State require that
22 a person be licensed by reason of engaging in such acts
23 for a national insurer.

1 (b) ACTS PROTECTED FROM STATE RESTRIC-
2 TIONS.—The acts referred to in subsection (a) are the fol-
3 lowing:

4 (1) Investigating, evaluating, ascertaining, or
5 determining the amount of or negotiating, settling,
6 or adjusting or otherwise participating in the dis-
7 posal of claims, losses, or damages arising under in-
8 surance policies written by a national insurer,
9 whether the person performing the act is called an
10 adjuster, independent adjuster, or another name.

11 (2) Soliciting, negotiating, or placing reinsur-
12 ance cessions or retrocessions on behalf of a ceding
13 national insurer without the authority or power to
14 bind reinsurance on behalf of such national insurer,
15 whether the person performing the act is called a re-
16 insurance intermediary or another name.

17 (3) Having authority to bind or manage all or
18 part of the assumed reinsurance business of a na-
19 tional insurer that is a reinsurer (including the man-
20 agement of a separate division, department, or un-
21 derwriting office) and acting as an agent for such
22 reinsurer, whether the person performing the act is
23 called a reinsurance intermediary-manager, man-
24 ager, or another name.

1 (4) Directly or indirectly underwriting, col-
2 lecting charges or premiums, or adjusting or settling
3 claims, in connection with policies of insurance writ-
4 ten by a national insurer.

5 (c) ACTIVITIES OF FEDERALLY LICENSED INSUR-
6 ANCE PRODUCERS.—No State may—

7 (1) by statute, regulation, order, interpretation,
8 or otherwise, prevent or restrict a federally licensed
9 insurance producer from engaging in any activity
10 within the scope of authority granted under section
11 1301(c); or

12 (2) require such producer to be licensed by rea-
13 son of engaging in such acts on behalf of a national
14 insurer, State insurer, or a United States branch of
15 a non-United States insurer.

16 (d) ACTIVITIES OF STATE PRODUCERS.—No State
17 may, by statute, regulation, order, interpretation, or other-
18 wise, prevent or restrict an insurance producer licensed
19 by such State from selling, soliciting, or negotiating insur-
20 ance in such State on behalf of a national insurer.

21 **SEC. 1305. LICENSING COMMENCEMENT DATE.**

22 (a) FEDERALLY LICENSED INSURANCE PRO-
23 DUCERS.—The Commissioner shall not license a Federal
24 insurance producer until after the following regulations
25 have been published in final form or interim final form:

1 (1) The fee and assessment regulations required
2 by section 1122.

3 (2) The reporting regulations required by sec-
4 tion 1124.

5 (3) The market conduct regulations required by
6 section 1216.

7 (4) The producer licensing regulations required
8 by section 1301.

9 (5) Such other regulations that the Commis-
10 sioner determines, at the discretion of the Commis-
11 sioner, to be necessary prior to the initial licensing
12 of Federal insurance producers.

13 (b) TIMING AND NOTICE.—

14 (1) TIMING.—The regulations described in sub-
15 section (a) shall be published in final form, not later
16 than 2 years after the initial appointment and con-
17 firmation of the Commissioner.

18 (2) NOTICE.—At such time as the regulations
19 described in subsection (a) have been issued in final
20 form, the Commissioner shall publish a notice in the
21 Federal Register announcing that the Office is pre-
22 pared to act on licensing applications under this
23 title.

1 **TITLE IV—HOLDING COMPANIES**

2 **SEC. 1401. DEFINITIONS.**

3 In this title, the following definitions shall apply:

4 (1) EXTRAORDINARY DIVIDEND OR DISTRIBUTION.—Except as may otherwise be specified by the
5 Commissioner by regulation, the term “extraor-
6 dinary dividend or distribution” means a dividend or
7 distribution of cash or other property on its out-
8 standing shares (excluding pro rata distributions of
9 any class of the national insurer’s own shares),
10 whose fair market value, together with that of other
11 dividends or distributions made within the prior 12
12 months, exceeds the greater of—

14 (A) 10 percent of the policyholder surplus
15 of the national insurer, as of the prior Decem-
16 ber 31; or

17 (B) the net income of the national insurer
18 for the 12-month period ending on the prior
19 December 31.

20 (2) INSURANCE HOLDING COMPANY SYSTEM.—
21 The term “insurance holding company system”
22 means 2 or more affiliated persons, 1 or more of
23 which is a national insurer.

1 **SEC. 1402. REGISTRATION.**

2 (a) REGISTRATION.—Each national insurer that is a
3 member of an insurance holding company system shall
4 register with the Commissioner.

5 (b) REGISTRATION STATEMENT.—The Commissioner
6 shall, by regulation, prescribe—

7 (1) the form and content of the registration
8 statement to be filed pursuant to subsection (a); and

9 (2) the time and place where the registration
10 statement is required to be filed with the Commis-
11 sioner.

12 (c) TERMINATION OF REGISTRATION.—The Commis-
13 sioner shall terminate the registration of any national in-
14 surer which demonstrates that it no longer is a member
15 of an insurance holding company system.

16 (d) CONSOLIDATED REGISTRATION STATEMENT.—
17 The Commissioner may require or allow 2 or more affili-
18 ated national insurers to file a consolidated registration
19 statement.

20 (e) EXEMPTIONS.—The provisions of this section
21 shall not apply to any national insurer, information, or
22 transaction if, and to the extent that, the Commissioner
23 by regulation or order, exempts such insurer, information,
24 or transaction from the provisions of this section.

25 (f) DISCLAIMER.—Any person may file with the Com-
26 missioner a disclaimer of affiliation with any national in-

1 surer or a disclaimer may be filed by the national insurer
 2 or any member of an insurance holding company system.
 3 The disclaimer shall fully disclose all material relation-
 4 ships and bases for affiliation between the person and the
 5 national insurer as well as the basis for disclaiming the
 6 affiliation. After a disclaimer has been filed, the national
 7 insurer shall be relieved of any duty to register or report
 8 under this section which may arise out of the national in-
 9 surer's relationship with the person unless and until the
 10 Commissioner disallows the disclaimer. The Commissioner
 11 shall disallow a disclaimer only after furnishing all parties
 12 in interest with notice and opportunity to be heard and
 13 after making specific findings of fact to support the dis-
 14 allowance.

15 **SEC. 1403. STANDARDS AND MANAGEMENT OF A NATIONAL**
 16 **INSURER WITHIN AN INSURANCE HOLDING**
 17 **COMPANY SYSTEM.**

18 (a) TRANSACTIONS WITHIN AN INSURANCE HOLDING
 19 COMPANY SYSTEM.—

20 (1) STANDARDS.—Transactions within an in-
 21 surance holding company system to which a national
 22 insurer subject to registration under section 1402 is
 23 a party shall be subject to the following standards:
 24 (A) The terms shall be fair, reasonable,
 25 and at least as favorable to the national insurer

1 as those that would be offered to, or would
2 apply to, a nonaffiliate.

3 (B) Charges or fees for services performed
4 shall be reasonable and at least as favorable to
5 the national insurer as those that would be of-
6 fered to, or would apply to, a nonaffiliate.

7 (C) Expenses incurred and payment re-
8 ceived shall be allocated to the national insurer
9 in conformity with customary insurance ac-
10 counting practices consistently applied.

11 (D) The books, accounts, and records of
12 each party to all such transactions shall be so
13 maintained as to clearly and accurately disclose
14 the nature and details of the transactions in-
15 cluding such accounting information as is nec-
16 essary to support the reasonableness of the
17 charges or fees to the respective parties.

18 (E) The national insurer's surplus fol-
19 lowing any dividends or distributions to share-
20 holders shall be reasonable in relation to the
21 outstanding liabilities of the national insurer
22 and adequate to meet its financial needs.

23 (2) APPROVAL OF CERTAIN TRANSACTIONS.—

24 The Commissioner shall, by regulation, specify cer-
25 tain transactions involving a national insurer and

1 any person in its insurance holding company system
2 that are not permissible for a national insurer unless
3 the national insurer has notified the Commissioner
4 in writing of its intention to enter into the trans-
5 action and the Commissioner either has approved or
6 not disapproved the transaction within a specified
7 time period.

8 (3) COMPLIANCE WITH STANDARDS.—The
9 Commissioner, in reviewing any transaction for
10 which notice is required pursuant to paragraph (2),
11 shall consider whether the transaction complies with
12 the standards set forth in paragraph (1) and wheth-
13 er the transaction may adversely affect the interests
14 of policyholders.

15 (b) EXTRAORDINARY DIVIDENDS.—

16 (1) IN GENERAL.—No national insurer that is
17 a member of an insurance holding company system
18 shall pay any extraordinary dividend or distribution
19 to its shareholders until 30 days after the Commis-
20 sioner has received notice of the declaration in a
21 form prescribed by the Commissioner.

22 (2) CONDITIONAL DIVIDEND OR DISTRIBUTION.—A national insurer that is a member of an
23 insurance holding company system may declare an
24 extraordinary dividend or distribution which is con-
25

1 ditional upon the Commissioner's approval, and the
2 declaration shall confer no rights upon shareholders
3 unless—

4 (A) the Commissioner has approved the
5 payment of the dividend or distribution; or

6 (B) the Commissioner has not disapproved
7 payment within the 30-day period referred to in
8 paragraph (1).

9 **SEC. 1404. RELATIONSHIP TO STATE LAW.**

10 (a) PERMITTED AFFILIATION.—A national insurer
11 that is part of an insurance holding company system may
12 be affiliated with an insurer or agency that is not char-
13 tered or licensed under this Act.

14 (b) REINSURANCE POOLING AGREEMENTS.—The
15 Commissioner shall have exclusive jurisdiction over rein-
16 surance pooling agreements to which 1 or more national
17 property/casualty insurers and affiliated State property/
18 casualty insurers, or agency are parties under which poli-
19 cies of insurance sold, solicited, negotiated, and under-
20 written by and reinsurance assumed by affiliated national
21 property/casualty insurers and State property/casualty in-
22 surers are pooled.

23 **SEC. 1405. CONFLICT WITH OTHER FEDERAL LAWS.**

24 This title shall be interpreted and applied so as not
25 to conflict with or supersede the provisions of any other

1 Federal law or regulation governing the regulation of hold-
 2 ing companies, including financial holding companies, as
 3 defined in section 2 of the Bank Holding Company Act
 4 of 1956 (12 U.S.C. 1841), and saving and loan holding
 5 companies, as defined in section 10 of the Homeowners'
 6 Loan Act (12 U.S.C. 1467a).

7 **SEC. 1406. NO DELEGATION PERMITTED.**

8 The Commissioner may not delegate to any insurance
 9 self-regulatory organization any authority conferred under
 10 this title with respect to regulation of a national insurer
 11 that is a member of an insurance holding company system.

12 **TITLE V—RECEIVERSHIP**

13 **SEC. 1501. APPOINTMENT OF OFFICE AS RECEIVER.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
 15 sion of Federal or State law, if any of the grounds under
 16 subsection (c) exist, at the discretion of the Commissioner,
 17 the Commissioner may establish a receivership for a na-
 18 tional insurer for the purpose of rehabilitation or liquida-
 19 tion, as appropriate.

20 (b) APPOINTMENT.—In any receivership established
 21 under this title, the Commissioner shall appoint the Office
 22 as receiver.

23 (c) GROUNDS FOR APPOINTMENT.—The grounds for
 24 establishing a receivership for the purpose of rehabili-
 25 tating or liquidating a national insurer are as follows:

1 (1) INSOLVENCY.—The national insurer is in-
2 solvent.

3 (2) SUBSTANTIAL DISSIPATION.—The national
4 insurer has substantial dissipation of assets or earn-
5 ings due to—

6 (A) any violation of any provision of Fed-
7 eral or State law; or

8 (B) any hazardous practice.

9 (3) HAZARDOUS CONDITION.—The national in-
10 surer is in such condition that the further trans-
11 action of business would be hazardous, financially or
12 otherwise, to policyholders, creditors, or the public.

13 (4) CEASE-AND-DESIST ORDERS.—The national
14 insurer has willfully violated a cease-and-desist order
15 that has become final.

16 (5) CONCEALMENT.—The national insurer has
17 concealed the books, papers, records, or assets of the
18 national insurer, or has refused to submit the books,
19 papers, records, or affairs of the national insurer,
20 for inspection to any examiner or to any lawful
21 agent of the Commissioner.

22 (6) INABILITY TO MEET OBLIGATIONS.—The
23 national insurer is likely to be unable to pay its obli-
24 gations or meet the demands of its creditors in the
25 normal course of business.

1 (7) VIOLATIONS OF LAW.—The national insurer
2 has willfully and continuously violated any law or
3 regulation, or committed any hazardous practice or
4 condition, that is likely to—

5 (A) cause insolvency or substantial dissipa-
6 tion of assets or earnings; or

7 (B) weaken the condition of the national
8 insurer.

9 (8) CONSENT.—The national insurer, by resolu-
10 tion of its board of directors or its shareholders or
11 members, consents to the appointment.

12 (9) MONEY LAUNDERING.—The Attorney Gen-
13 eral notifies the Commissioner in writing that the
14 national insurer has been found guilty of a criminal
15 offense under section 1956 or 1957 of title 18,
16 United States Code, or section 5322 or 5324 of title
17 31, United States Code.

18 (d) DIRECTORS NOT LIABLE.—The members of the
19 board of directors of a national insurer shall not be liable
20 to the shareholders, members, policyholders, or creditors
21 of the insurer for acquiescing in, or consenting in good
22 faith to, the appointment of the Office as a receiver.

23 (e) OFFICE NOT SUBJECT TO ANY OTHER FEDERAL
24 AGENCY.—When acting as receiver, the Office shall not
25 be subject to the direction or supervision of any other

1 agency of the United States or any State in the exercise
2 of the rights, powers, and privileges of the Office.

3 **SEC. 1502. EFFECT OF RECEIVERSHIP PROCEEDING.**

4 Any order issued placing a national insurer into a re-
5 ceivership under this title for purposes of liquidation shall
6 be deemed to be and have the effect of an order of liquida-
7 tion by a court of competent jurisdiction with a finding
8 of insolvency against the insurer for purposes of any provi-
9 sion of State law relating to guaranty associations.

10 **SEC. 1503. POWERS AND DUTIES.**

11 (a) IN GENERAL.—The Office, as receiver, shall have
12 all of the powers of the directors, officers, and managers
13 of the national insurer, whose authority shall be sus-
14 pended, except as they are redelegated by the receiver.

15 (b) SPECIFIC POWERS.—In addition to those powers
16 otherwise provided by this title, the Office, as receiver,
17 shall have the power to—

18 (1) use, sell, or lease property of the insurer;

19 (2) after notice and a hearing, borrow money
20 on the security of the national insurer's assets, bor-
21 row money without security, and execute and deliver
22 all documents necessary to such transaction for the
23 purpose of facilitating the receiver;

24 (3) collect all debts and monies due and claims
25 belonging to the national insurer, wherever located;

1 (4) institute and pursue legal actions and to
2 continue any pending action, in any jurisdiction;

3 (5) suspend, limit, or permit insurance policy
4 withdrawals in connection with insurance policies;

5 (6) do other acts as are necessary or expedient
6 to collect, marshal, or protect the assets or property,
7 including the power to sell, compound, compromise,
8 or assign debts for purposes of collection upon such
9 terms and conditions as the receiver considers best
10 and that are consistent with this title;

11 (7) enter into contracts necessary to carry out
12 the order of rehabilitation or liquidation;

13 (8) hold hearings, subpoena witnesses to compel
14 their attendance, administer oaths, examine a person
15 under oath, and compel a person to subscribe to the
16 person's testimony after it has been correctly re-
17 duced to writing and, in connection with these pow-
18 ers, require the production of books, papers, records,
19 or other documents that the receiver considers rel-
20 evant to the inquiry; and

21 (9) exercise all powers held or conferred upon
22 receivers by the laws of the United States that are
23 not inconsistent with the provisions of this title.

1 **SEC. 1504. RULEMAKING.**

2 (a) IN GENERAL.—The Commissioner shall establish,
3 by regulation, standards and procedures for receivership
4 proceedings commenced under this title, including provi-
5 sions regarding automatic stays and other stays of pro-
6 ceedings, procedures, and priorities for the allowance or
7 disallowance of claims, standards for the treatment of re-
8 insurance, and such other matters as the Commissioner
9 determines appropriate.

10 (b) MODEL.—Except as otherwise provided in this
11 title, the regulations issued by the Commissioner under
12 subsection (a) shall be substantially similar to the cor-
13 responding provisions of the Uniform Receivership Law
14 adopted by the Interstate Insurance Receivership Compact
15 Commission in September 1998.

16 (c) RULES REGARDING COORDINATION WITH STATE
17 GUARANTY ASSOCIATIONS.—In order to facilitate insol-
18 vency protection of consumers pursuant to title VI, the
19 regulations issued by the Commissioner under subsection
20 (a) shall contain provisions that are substantially similar
21 to sections 8I, 8J, 8K, and 14C of the Life and Health
22 Insurance Guaranty Association Model Act, as promul-
23 gated by the NAIC, and in effect on May 24, 2007, and
24 provisions substantially similar to sections 405 and 612
25 of the Insurer Receivership Model Act, promulgated by the
26 NAIC in December 2005.

1 **SEC. 1505. JUDICIAL REVIEW.**

2 (a) NATIONAL INSURERS.—

3 (1) IN GENERAL.—Whenever the Office is ap-
4 pointed as a receiver for a national insurer, the na-
5 tional insurer may, within 30 days of such appoint-
6 ment, bring an action in the United States District
7 Court for the judicial district in which the principal
8 place of business of such insurer is located, or in the
9 United States District Court for the District of Co-
10 lumbia, for an order requiring the Office to remove
11 itself as receiver.

12 (2) REVIEW.—Upon the filing of an action
13 under paragraph (1), the court shall, upon the mer-
14 its dismiss such action or direct the Office to remove
15 itself as such receiver.

16 (b) CLAIMANTS.—If the Office, acting as a receiver,
17 disallows a claim against the receivership, a claimant may,
18 within 60 days of the notice of disallowance, bring an ac-
19 tion in the United States District Court for the judicial
20 district in which the principal place of business of the na-
21 tional insurer is located, or in the United States District
22 Court for the District of Columbia, to challenge the dis-
23 allowance.

TITLE VI—INSOLVENCY PROTECTION

SEC. 1601. PARTICIPATION IN GUARANTY ASSOCIATIONS.

(a) PARTICIPATION IN STATE GUARANTY ASSOCIATIONS.—

(1) NATIONAL INSURERS.—A national insurer shall become and continue as a member of a qualified association, as provided in section 1602, for each line of insurance covered in each State in which the national insurer is doing business.

(2) ASSESSMENTS.—Qualified associations shall be authorized to levy assessments on national insurers. National insurers shall be obligated to pay such assessments, to the extent that they are levied on the same terms that State insurers are obligated to pay assessments to the association or fund under applicable State law.

(b) PARTICIPATION IN NATIONAL INSURANCE GUARANTY CORPORATION.—A national insurer or a State insurer that offers a line of insurance in a State that does not have a qualified association for such line of insurance shall become and continue to be a member of the Corporation, if such line of insurance is the subject of coverage by the Corporation.

1 **SEC. 1602. QUALIFIED AND NONQUALIFIED ASSOCIATIONS.**

2 (a) QUALIFIED ASSOCIATION.—In this title, the term
3 “qualified association” means a State insurance guaranty
4 association or State insurance guaranty fund that—

5 (1) admits as members both State and national
6 insurers;

7 (2) in the event that a member is placed into
8 receivership, provides benefits or coverage to the pol-
9 icyholders of such member that are not less than the
10 benefits or coverage described in section 1604 (for
11 life and health insurance guaranty associations or
12 funds) or section 1605 (for property and casualty
13 guaranty funds); and

14 (3) has a board of directors that is—

15 (A) representative of insurers on a basis
16 that does not unfairly discriminate against na-
17 tional insurers; and

18 (B) fairly representative of insurers of dif-
19 ferent sizes and lines of insurance written.

20 (b) DETERMINATION, ELECTION, AND RECERTIFI-
21 CATION.—

22 (1) DETERMINATION.—Before the third anni-
23 versary of the date of enactment of this Act (re-
24 ferred to in this section as the “pre-publication pe-
25 riod”), the Commissioner shall—

1 (A) review all existing State insurance
2 guaranty associations and State insurance
3 guaranty funds;

4 (B) publish a list of those associations and
5 funds that the Commissioner has determined to
6 be qualified associations in accordance with the
7 requirements of subsection (a); and

8 (C) give the reasons why any State insur-
9 ance association or State insurance guaranty
10 fund is not determined to be a qualified associa-
11 tion, in accordance with the requirements of
12 subsection (a).

13 (2) PETITION AND ELECTION.—After the pre-
14 publication period, any association or fund—

15 (A) that is not identified on the list pub-
16 lished pursuant to paragraph (1) may petition
17 the Commissioner for a determination that the
18 association or fund is a qualified association,
19 and the Commissioner shall make such a deter-
20 mination if the association or fund establishes
21 to the satisfaction of the Commissioner that the
22 requirements of subsection (a) have been met;
23 and

24 (B) that is named on the list published
25 pursuant to paragraph (1) shall have an addi-

1 tional 1-year period of time following the pre-
 2 publication period (referred to in this section as
 3 the “post-publication period”) in which to no-
 4 tify the Commissioner of the decision of the as-
 5 sociation or fund to be a nonqualified associa-
 6 tion, as defined in subsection (d).

7 (3) PREEMPTION.—Any association or fund
 8 that elects to be a nonqualified association shall be
 9 subject to Federal preemption according to sub-
 10 sections (e) and (f).

11 (4) RECONSIDERATION.—

12 (A) LETTER TO COMMISSIONER.—A State
 13 insurance guaranty association or State insur-
 14 ance guaranty fund may seek qualification as a
 15 qualified association by letter to the Commis-
 16 sioner, if the Commissioner—

17 (i) determines that a State insurance
 18 guaranty association or State insurance
 19 guaranty fund does not meet the require-
 20 ments of subsection (a), after the reasons
 21 for such denial have been addressed; or

22 (ii) revokes the status of a State in-
 23 surance guaranty association or State in-
 24 surance guaranty fund as a qualified asso-
 25 ciation pursuant to subsection (c), after

1 the reasons for such revocation have been
2 addressed.

3 (B) OTHER ELECTIONS.—An association
4 or fund may seek qualification as a qualified as-
5 sociation by letter to the Commissioner after it
6 meets the terms of the definition of a qualified
7 association, as set forth in subsection (a), in
8 any case in which a State insurance guaranty
9 association or State insurance guaranty fund—

10 (i) elects to be a nonqualified associa-
11 tion pursuant to paragraph (2)(B); or

12 (ii) refuses to assume responsibilities
13 of a qualified association pursuant to sub-
14 section (f).

15 (c) REVOCATION.—The Commissioner shall revoke a
16 determination that an association or fund is a qualified
17 association, if, at any time, the Commissioner determines
18 that the association or fund fails to satisfy the terms of
19 the definition of a qualified association, as set forth in
20 subsection (a). In such event, the Commissioner shall pro-
21 vide a written notice of the revocation to the affected asso-
22 ciation or fund, and the relevant State insurance regu-
23 lator, and the association or fund or the State insurance
24 regulator may seek a review of the revocation under the
25 terms of section 1706.

1 (d) NONQUALIFIED ASSOCIATION.—For purposes of
2 this title, any State insurance guaranty association or
3 State insurance guaranty fund that is not a qualified asso-
4 ciation shall be a “nonqualified association”.

5 (e) PREEMPTION.—

6 (1) CONSERVATION, REHABILITATION, OR LIQ-
7 UIDATION.—Except as provided in paragraph (2)
8 and in subsection (f), a nonqualified association may
9 not levy an assessment upon a national insurer or
10 State insurer to pay claims for a member insurer
11 that is subject to an order of conservation, rehabili-
12 tation, or liquidation.

13 (2) EXCEPTION.—In the event that a conserva-
14 tion, rehabilitation, or liquidation of a national in-
15 surer or State insurer referred to in paragraph (1)
16 commences at a time when a State insurance guar-
17 anty association or State insurance guaranty fund is
18 a qualified association, but such association or fund
19 subsequently becomes a nonqualified association,
20 such association or fund shall be entitled to levy as-
21 sessments in respect of such pending conservation,
22 rehabilitation, or liquidation on all companies doing
23 business in the State where the association or fund
24 resides as if the association or fund remained a
25 qualified association, unless the Commissioner finds

1 that such association or fund has failed to provide
2 protection to consumers in accordance with State
3 law or is unfairly discriminating in coverage or as-
4 sessments between national insurers and State in-
5 surers (in which case the Commissioner may, by
6 order, transfer all coverage responsibilities and as-
7 sessment powers of the association or fund to the
8 Corporation).

9 (3) CORPORATION AUTHORITY.—The Corpora-
10 tion may contract with a nonqualified association de-
11 scribed in paragraph (2) for the purpose of assum-
12 ing the responsibilities of such nonqualified associa-
13 tion. The Corporation also may contract with a
14 State insurance guaranty association or State insur-
15 ance guaranty fund that has been determined to be
16 a qualified association pursuant to subsection (b)(4)
17 for the purpose of permitting such association or
18 fund to assume the responsibilities of the Corpora-
19 tion in a State where the association or fund resides
20 in respect to a conservation, rehabilitation, or liq-
21 uidation that commenced at a time when such asso-
22 ciation or fund was a nonqualified association.

23 (f) TEMPORARY PERIOD.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), in the event of a conservation, rehabilita-

1 tion, or liquidation of a State insurer or national in-
2 surer during the temporary period, a State insur-
3 ance guaranty association or State insurance guar-
4 anty fund, in addition to its existing powers under
5 State law, may—

6 (A) assess national insurers in an insol-
7 vency of a State insurer; and

8 (B) assess State insurers and national in-
9 surers in an insolvency of a national insurer.

10 (2) EXCEPTION.—Assessments may not be
11 made under paragraph (1) if, not later than 6
12 months after the date of enactment of this Act or
13 on the date of levying any such assessment, which-
14 ever occurs first, the State association or fund pro-
15 vides notice to the Commissioner that it does not in-
16 tend to levy such assessments or provide coverage or
17 benefits to persons holding insurance policies issued
18 by national insurers. If a State association or fund
19 provides such notice and does not withdraw the no-
20 tice during the temporary period, the Corporation
21 shall provide coverage or benefits in respect to any
22 conservation, rehabilitation, or liquidation that
23 would have otherwise been the responsibility of the
24 State association or fund during the temporary pe-
25 riod.

1 (3) DEFINITION.—In this subsection, the term
 2 “temporary period” means the 4-year period begin-
 3 ning on the date of enactment of this Act.

4 **SEC. 1603. ESTABLISHMENT OF THE NATIONAL INSURANCE**
 5 **GUARANTY CORPORATION.**

6 (a) ESTABLISHMENT OF THE CORPORATION.—

7 (1) IN GENERAL.—In the event that the list
 8 published under section 1602(b)(1) indicates that in
 9 any State, the principal life and health or property
 10 and casualty guaranty association or fund (or both)
 11 in such State has not been determined to be a quali-
 12 fied association, and if the Commissioner has not
 13 granted any petition to reconsider any such deter-
 14 mination before the end of the 4-year period begin-
 15 ning on the date of enactment of this Act, the Com-
 16 missioner shall establish the National Insurance
 17 Guaranty Corporation (in this section referred to as
 18 the “Corporation”), in accordance with this section.

19 (2) NONPROFIT AND SUCCESSION.—The Cor-
 20 poration shall be a nonprofit corporation and shall
 21 have succession until dissolved by an Act of Con-
 22 gress.

23 (3) APPLICATION OF DISTRICT OF COLUMBIA
 24 NONPROFIT CORPORATION ACT.—The Corporation
 25 shall, except as otherwise provided in this title, be

1 subject to, and have all the powers conferred upon
2 a nonprofit corporation by the District of Columbia
3 Nonprofit Corporation Act (D.C. Code, 29–301.01
4 et seq., or any successor thereto).

5 (b) MEMBERSHIP OF THE CORPORATION.—

6 (1) IN GENERAL.—The membership of the Cor-
7 poration shall consist of member insurers.

8 (2) DEFINITION.—In this title, the term “mem-
9 ber insurer”—

10 (A) means any national insurer or a State
11 insurer that operates in a State that does not
12 have a qualified association for the line of in-
13 surance offered by such national insurer or
14 State insurer in such State, if such line of in-
15 surance is the subject of coverage by the Cor-
16 poration; and

17 (B) does not include—

18 (i) a hospital or medical service orga-
19 nization, whether for profit or not-for-prof-
20 it;

21 (ii) a health maintenance organiza-
22 tion;

23 (iii) a fraternal benefit society;

24 (iv) a mandatory or voluntary State
25 pooling plan;

1 (v) a mutual assessment company or
2 other person that operates on an assess-
3 ment basis;

4 (vi) a surplus lines carrier, a risk re-
5 tention group, or a State insurer writing
6 business on a non-admitted or unlicensed
7 basis;

8 (vii) an organization whose lines of
9 business include only charitable gift annu-
10 ities; or

11 (viii) an entity similar to any entity
12 described in any of clauses (i) through
13 (vii).

14 (c) CORPORATE GOVERNANCE.—

15 (1) GOVERNING BODY.—The board of directors
16 of the Corporation shall be the governing body of the
17 Corporation and shall be vested with all powers nec-
18 essary for the management and administration of
19 the affairs of the Corporation and the promotion of
20 the purposes of the Corporation, as authorized by
21 this Act. The authority of the board of directors
22 shall be specified in the bylaws of the Corporation.

23 (2) ELECTION OR APPOINTMENT.—The initial
24 board of directors of the Corporation shall be elected
25 by the membership of the Corporation, provided that

1 if the membership fails to elect the initial board of
2 the Corporation on or before the end of the 4-year
3 period specified in section 1602(f), then the initial
4 board shall be appointed from among the member-
5 ship by the Commissioner. Membership on the board
6 of directors shall be fairly representative of members
7 of differing size and lines of business written.

8 (3) INITIAL BYLAWS AND RULES.—The Com-
9 missioner shall prescribe the initial bylaws and rules
10 governing the Corporation, which shall set forth the
11 composition of the board of directors, the term of
12 board members, filling of board vacancies, board
13 compensation, election of officers and procedures to
14 call board meetings, and all matters necessary for
15 the governance of the Corporation not addressed by
16 the District of Columbia Nonprofit Corporation Act
17 (D.C. Code, 29–301.01 et seq.).

18 (4) AMENDMENTS TO BYLAWS AND RULES.—
19 An amendment to the bylaws and rules of the Cor-
20 poration following the establishment of the initial by-
21 laws and rules as provided in paragraph (3) shall be
22 adopted by the board of directors of the Corporation
23 following the approval of the amendment by the
24 Commissioner.

1 (d) RELATIONSHIP OF CORPORATION TO THE FED-
2 ERAL GOVERNMENT.—

3 (1) SUPERVISION AND OVERSIGHT.—The Cor-
4 poration shall be subject to supervision and over-
5 sight by the Commissioner.

6 (2) NOT AN AGENCY OR INSTRUMENTALITY OF
7 THE FEDERAL GOVERNMENT.—The Corporation
8 shall not be an agency or instrumentality of the
9 United States Government.

10 (3) FULL FAITH AND CREDIT.—The obligations
11 of the Corporation shall not be backed, directly or
12 indirectly, by the full faith and credit of the United
13 States. The Corporation shall receive no financial as-
14 sistance from or have any authority to borrow from
15 the United States.

16 (4) FUNDS NOT INCLUDED IN THE FEDERAL
17 BUDGET.—Funds held by or due to the Corporation
18 shall not be included in the budget of the United
19 States, nor may the United States borrow or pledge
20 such funds.

21 (e) CONTRACTING WITH PERSON TO ADMINISTER
22 BENEFITS.—The Corporation may contract, with the ap-
23 proval of the Commissioner, with another person to ad-
24 minister the benefits to be provided by the Corporation,

1 or otherwise as necessary to fulfill the responsibilities of
 2 the Corporation under this title.

3 (f) ACCOUNTS FOR ADMINISTRATION AND ASSESS-
 4 MENTS.—For purposes of administration and assess-
 5 ments, the Corporation shall establish and separately
 6 maintain 6 accounts as follows:

7 (1) A life insurance account.

8 (2) An annuity account.

9 (3) A health account.

10 (4) A workers' compensation account.

11 (5) An automobile insurance account.

12 (6) An account for all other lines of property/
 13 casualty insurance to which this title applies.

14 **SEC. 1604. BENEFITS FOR POLICYHOLDERS OF NATIONAL**
 15 **LIFE INSURERS.**

16 (a) IN GENERAL.—If a national life insurer or State
 17 life insurer is doing business in a State that does not have
 18 a qualified association, as defined in section 1602, for the
 19 line of insurance offered by such national life insurer or
 20 State life insurer in such State (and if such line of insur-
 21 ance is covered by the Corporation), and such national life
 22 insurer or State life insurer is placed into receivership for
 23 purposes of liquidation, the Corporation shall provide ben-
 24 efits as specified in subsections (b) and (c).

1 (b) COVERED PERSONS.—Benefits shall be made
2 available as follows:

3 (1) To persons who, regardless of where the
4 persons reside, are the beneficiaries, assignees, or
5 payees of the persons covered under paragraph (2).

6 (2) To persons who are owners of or certificate
7 holders under the insurance policies, and in each
8 case who are residents of the State in which the
9 nonqualified association is located.

10 (3) This title shall not provide coverage to a
11 person who is a payee (or beneficiary) of a policy
12 owner, if the payee (or beneficiary) is afforded any
13 coverage by a qualified association.

14 (4) This title is intended to provide coverage to
15 persons who are residents of States in which non-
16 qualified associations are located and, in special cir-
17 cumstances, to persons who are not residents of such
18 States. In order to avoid duplicate coverage, if a per-
19 son who would otherwise receive coverage under this
20 title is provided coverage under the laws of any
21 State other than the State in which the nonqualified
22 association is located, the person shall not be pro-
23 vided coverage under this title. In determining the
24 application of the provisions of this paragraph in sit-
25 uations where a person could be covered by the asso-

1 ciation of more than 1 State, whether as a policy
2 owner, payee, beneficiary, or assignee, this title shall
3 be construed in conjunction with the laws of such
4 States to result in coverage by only 1 association or
5 by the Corporation.

6 (c) INSURANCE POLICIES COVERED AND COVERAGE
7 LIMITS.—

8 (1) REGULATION.—The Commissioner shall es-
9 tablish, by regulation, the lines of insurance covered,
10 the scope of coverage, defenses, exclusions, and the
11 coverage limits on benefits for policyholders.

12 (2) NAIC MODEL.—The regulations described
13 in paragraph (1) shall be substantially similar to the
14 “Life and Health Insurance Guaranty Association
15 Model Act” of the NAIC in effect on May 24, 2007,
16 subject to the exclusions and benefits described in
17 paragraphs (3) and (4), respectively.

18 (3) EXCLUSIONS FROM COVERAGE.—There
19 shall be excluded from coverage under this title—

20 (A) any portion of a policy or contract not
21 guaranteed by the insurer, or under which the
22 risk is borne by the policy or contract owner;

23 (B) any policy or contract of reinsurance,
24 unless assumption certificates have been issued
25 pursuant to the reinsurance policy or contract;

1 (C) any portion of a policy or contract, to
2 the extent that the rate of interest on which it
3 is based—

4 (i) averaged over the period of 4 years
5 prior to the date on which the Corporation
6 becomes obligated with respect to the pol-
7 icy or contract, exceeds a rate of interest
8 determined by subtracting 2 percentage
9 points from the average corporate bond
10 yield, as determined by the Commissioner,
11 averaged for that same 4-year period or for
12 such lesser period, if the policy or contract
13 was issued less than 4 years before the
14 Corporation became so obligated; and

15 (ii) on and after the date on which the
16 Corporation becomes obligated with respect
17 to the policy or contract, exceeds the rate
18 of interest determined by subtracting 3
19 percentage points from the average cor-
20 porate bond yield, as most recently avail-
21 able, as determined by the Commissioner;

22 (D) any portion of a policy or contract
23 issued to a plan or program of an employer, as-
24 sociation, or other person to provide life, health,
25 or annuity benefits to its employees, members,

1 or others, to the extent that the plan or pro-
2 gram is self-funded or uninsured, including ben-
3 efits payable by an employer, association, or
4 other person under—

5 (i) a multiple employer welfare ar-
6 rangement, as defined in section 514 of the
7 Employee Retirement Income Security Act
8 of 1974;

9 (ii) a minimum premium group insur-
10 ance plan;

11 (iii) a stop-loss group insurance plan;

12 or

13 (iv) an administrative services only
14 contract;

15 (E) any portion of a policy or contract, to
16 the extent that it provides for—

17 (i) dividends or experience rating
18 credits;

19 (ii) voting rights; or

20 (iii) payment of any fees or allowances
21 to any person, including the policy or con-
22 tract owner, in connection with the service
23 to or administration of the policy or con-
24 tract;

1 (F) any portion of a policy or contract, to
 2 the extent that the assessments required by sec-
 3 tion 1608 with respect to the policy or contract
 4 are preempted by Federal or State law;

5 (G) any obligation that does not arise
 6 under the express written terms of the policy or
 7 contract issued by the insurer to the contract
 8 owner or policy owner, including—

9 (i) claims based on marketing mate-
 10 rials;

11 (ii) claims based on side letters, rid-
 12 ers, or other documents that were issued
 13 by the insurer without meeting applicable
 14 policy form filing or approval require-
 15 ments;

16 (iii) misrepresentations of or regard-
 17 ing policy benefits;

18 (iv) extra-contractual claims; or

19 (v) a claim for penalties or consequen-
 20 tial or incidental damages;

21 (H) any contractual agreement that estab-
 22 lishes the obligations of the member insurer to
 23 provide a book value accounting guaranty for
 24 defined contribution benefit plan participants
 25 by reference to a portfolio of assets that is

owned by the benefit plan or its trustee, which
in each case is not an affiliate of the member
insurer;

(I) any unallocated annuity contract; and

(J) any funding agreement.

(4) COVERAGE BENEFITS.—The benefits provided under this title shall in no event exceed the lesser of—

(A) the contractual obligations for which the insurer is liable, or would have been liable if it were not an impaired or insolvent insurer; or

(B) with respect to—

(i) 1 life, regardless of the number of insurance policies—

(I) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(II) in health insurance benefits—

(aa) \$100,000 for long-term care; or

1 (bb) \$300,000 for disability
2 insurance; or

3 (III) \$100,000 in the present
4 value of annuity benefits, including
5 net cash surrender and net cash with-
6 drawal values; and

7 (ii) each payee of a structured settle-
8 ment annuity (or beneficiary or bene-
9 ficiaries of the payee if deceased),
10 \$100,000 in present value annuity bene-
11 fits, in the aggregate, including net cash
12 surrender and net cash withdrawal values,
13 if any, except that, in no event shall bene-
14 fits exceed—

15 (I) an aggregate of \$300,000 in
16 benefits with respect to any 1 life
17 under clause (i) and this clause; or

18 (II) with respect to 1 policy
19 owner of multiple nongroup insurance
20 policies of life insurance, or 1 policy
21 owner of 1 or more group insurance
22 policies of life insurance insuring the
23 lives of multiple insureds, where the
24 policy owner (or any benefit plan,
25 trust, or other entity sponsored or

1 controlled by the policy owner) is also
2 the beneficiary, whether the policy
3 owner is an individual, firm, corpora-
4 tion, or other person, and whether the
5 individuals insured are officers, man-
6 agers, employees, or other individuals,
7 more than \$5,000,000 in benefits, re-
8 gardless of the number of such poli-
9 cies held by the policy owner.

10 (5) RULE OF CONSTRUCTION.—The limitations
11 set forth in this subsection are limitations on bene-
12 fits under this title before taking into account either
13 the subrogation and assignment rights or the extent
14 to which those benefits could be provided out of the
15 assets of the impaired or insolvent insurer attrib-
16 utable to covered policies.

17 (6) USE OF ASSETS.—The obligations for bene-
18 fits under this title may be met by the use of assets
19 attributable to covered policies or reimbursed to the
20 Corporation pursuant to the subrogation and assign-
21 ment rights in section 1607.

22 (d) OTHER EXCLUSIONS.—The Corporation shall not
23 be required to guarantee, assume, reinsure, or perform or
24 cause to be guaranteed, assumed, reinsured, or performed,
25 the contractual obligations of the insolvent or impaired in-

1 surer under a covered policy that do not materially affect
 2 the economic values or economic benefits of the covered
 3 policy.

4 **SEC. 1605. CLAIMS COVERED FOR POLICYHOLDERS OF NA-**
 5 **TIONAL PROPERTY/CASUALTY INSURERS.**

6 (a) DEFINITIONS.—For purposes of this section, the
 7 following definitions shall apply:

8 (1) ASSOCIATION.—The term “Association”
 9 means any property/casualty insurance guaranty as-
 10 sociation created under the laws of the relevant
 11 State, no matter how denominated, which performs
 12 the role of an association or fund paying certain
 13 property/casualty claims made under policies of an
 14 insolvent insurer to or on behalf of policyholders re-
 15 siding in the State.

16 (2) CLAIMANT.—The term “claimant” means
 17 any insured making a first party claim or any per-
 18 son instituting a liability claim, except that no per-
 19 son who is an affiliate of the insolvent insurer may
 20 be a claimant.

21 (3) COVERED CLAIM.—The term “covered
 22 claim”—

23 (A) means an unpaid claim, including one
 24 for unearned premiums, submitted by a claim-
 25 ant, which arises out of and is within the cov-

1 erage and is subject to the applicable limits of
2 an insurance policy to which this title applies
3 issued by a member insurer, if—

4 (i) such member insurer becomes an
5 insolvent insurer after the effective date of
6 this title; and

7 (ii) either—

8 (I) the claimant or insured is a
9 resident of a State that does not have
10 a qualified association covering the
11 type of risk insured at the time of the
12 insured event (for which purpose, in
13 the case of an entity other than an in-
14 dividual, the residence of a claimant,
15 insured, or policyholder is the State in
16 which its principal place of business is
17 located at the time of the insured
18 event); or

19 (II) the claim is a first party
20 claim for damage to property with a
21 permanent location in the State; and

22 (B) does not include—

23 (i) any amount awarded as punitive or
24 exemplary damages;

1 (ii) any amount sought as a return of
2 premium under any retrospective rating
3 plan;

4 (iii) any amount due any reinsurer,
5 insurer, insurance pool, underwriting asso-
6 ciation, health maintenance organization,
7 hospital plan corporation, professional
8 health service corporation, or self-insurer
9 as subrogation recoveries, reinsurance re-
10 coveries, contribution, indemnification, or
11 otherwise, and no such claim for any
12 amount due any reinsurer, insurer, insur-
13 ance pool, underwriting association, health
14 maintenance organization, hospital plan
15 corporation, or self-insurer may be as-
16 serted against a person insured under a
17 policy issued by an insolvent insurer, other
18 than to the extent that such claim exceeds
19 the obligation limitations of the Corpora-
20 tion set forth in this Act;

21 (iv) any first party claim by an in-
22 sured whose net worth exceeds
23 \$25,000,000 on December 31 of the year
24 prior to the year in which the member in-
25 surer becomes an insolvent insurer (for

1 which purpose, the net worth of the in-
2 sured on that date shall be deemed to in-
3 clude the aggregate net worth of the in-
4 sured and all of its affiliates and subsidi-
5 aries, as calculated on a consolidated
6 basis); or

7 (v) any first party claim by an insured
8 which is an affiliate of the insolvent in-
9 surer.

10 (4) INSOLVENT INSURER.—The term “insolvent
11 insurer” means an insurer with a line of business
12 covered by the Corporation and doing business in a
13 State without a qualified association, covering the
14 type of risk insured, and against whom a final order
15 of liquidation with a finding of insolvency has been
16 issued pursuant to title V and the regulations pro-
17 mulgated thereunder.

18 (b) IN GENERAL.—If a national property and cas-
19 ualty insurer or a State property and casualty insurer is
20 doing business in a State that does not have a qualified
21 association for the line of insurance offered by such in-
22 surer in such State (and if such line of insurance is cov-
23 ered by the Corporation), and such insurer is placed into
24 receivership for purposes of liquidation, the Corporation
25 shall provide benefits as specified in this section.

1 (c) INSURANCE LINES INCLUDED.—This title shall
 2 provide coverage for covered claims on all lines of direct
 3 insurance (other than those specified in subsection (d))—

4 (1) existing prior to the order of liquidation;

5 (2) arising not later than 30 days after the
 6 order of liquidation;

7 (3) arising before the insurance policy expira-
 8 tion date, if earlier than 30 days after the order or
 9 liquidation; or

10 (4) arising before the insured replaces the in-
 11 surance policy or causes its cancellation, if the in-
 12 sured does so not later than 30 days after the order
 13 of liquidation.

14 (d) INSURANCE LINES EXCLUDED.—This title shall
 15 not provide coverage on claims for—

16 (1) life, annuity, health, or disability insurance
 17 (except as provided in section 1604);

18 (2) mortgage guaranty, financial guaranty, or
 19 other forms of insurance offering protection against
 20 investment risks;

21 (3) fidelity or surety bonds, or any other bond-
 22 ing obligations;

23 (4) credit insurance, vendors single interest in-
 24 surance, or collateral protection insurance or any

1 similar insurance protecting the interests of the
2 creditor arising out of a creditor-debtor transaction;

3 (5) insurance of warranties or service contracts
4 including insurance that provides for the repair, re-
5 placement, or service of goods or property, indem-
6 nification for repair, replacement, or service for the
7 operational or structural failure of the goods or
8 property due to a defect in materials, workmanship,
9 or normal wear and tear, or provides reimbursement
10 for the liability incurred by the issuer of agreements
11 or service contracts that provide such benefits;

12 (6) title insurance;

13 (7) ocean marine insurance;

14 (8) any transaction or combination of trans-
15 actions between a person (including affiliates of such
16 person) and an insurer (including affiliates of such
17 insurer) which involves the transfer of investment or
18 credit risk unaccompanied by transfer of insurance
19 risk; or

20 (9) any insurance provided by or guaranteed by
21 any State or the Federal Government.

22 (e) COVERAGE LIMITATIONS.—

23 (1) IN GENERAL.—The obligation to a claimant
24 under this section shall be satisfied by paying to the
25 claimant—

1 (A) the full amount of a covered claim for
2 the benefits under a workers' compensation in-
3 surance coverage;

4 (B) an amount not exceeding \$10,000 per
5 policy for a covered claim for return of un-
6 earned premiums, less a deductible of \$100;
7 and

8 (C) an amount not exceeding \$300,000 per
9 claim for all other covered claims, except that
10 for purposes of such limitation, all claims of
11 any kind whatsoever arising out of, or related
12 to, bodily injury or death to any 1 person shall
13 constitute a single claim, regardless of the num-
14 ber of insurance policies issued by the insolvent
15 insurer, the number of claims made, or the
16 number of claimants.

17 (2) LIMITATION.—In no event shall a claimant
18 be entitled to an amount in excess of the obligation
19 of the insolvent insurer under the policy or coverage
20 from which the claim arises.

21 (3) EXCLUSIONS.—Notwithstanding any other
22 provisions of this title, for purposes of this sub-
23 section, a covered claim shall not include—

24 (A) a claim filed more than 18 months
25 after the entry of the order of liquidation or the

1 final date set for the filing of claims against the
2 liquidator or receiver of the insolvent insurer
3 pursuant to title V and the regulations promul-
4 gated thereunder, whichever date occurs first;
5 or

6 (B) any claim filed with the Corporation or
7 the receiver for losses incurred but not reported
8 under the policy of the insured.

9 (f) EXHAUSTION OF OTHER COVERAGE.—

10 (1) IN GENERAL.—Any person having a claim
11 under an insurance policy, whether or not it is a pol-
12 icy issued by a member insurer, and the claim under
13 such other policy arises from the same facts, injury,
14 or loss that gave rise to a covered claim against the
15 Corporation, shall be required first to exhaust all
16 coverage provided by any such policy.

17 (2) REDUCTIONS.—Any amount payable on a
18 covered claim under this title shall be reduced by the
19 full applicable limits stated in such other insurance
20 policy, and the Corporation shall receive a full credit
21 for such stated limits, or, where there are no appli-
22 cable stated limits, the claim shall be reduced by the
23 total recovery.

24 (3) LIMITATION.—Notwithstanding paragraphs
25 (1) and (2)—

1 (A) no person shall be required to exhaust
2 any right under the policy of an insolvent in-
3 surer;

4 (B) a claim under a policy providing liabil-
5 ity coverage to a person who may be jointly and
6 severally liable with or a joint tortfeasor with
7 the person covered under the policy of the insol-
8 vent insurer that gives rise to the covered claim
9 shall be considered to be a claim arising from
10 the same facts, injury, or loss that gave rise to
11 the covered claim against the Corporation;

12 (C) a claim under an insurance policy shall
13 also include, for purposes of this section—

14 (i) a claim against a health mainte-
15 nance organization, a hospital plan cor-
16 poration, or a professional health service
17 corporation; and

18 (ii) any amount payable by or on be-
19 half of a self-insurer; and

20 (D) to the extent that the obligation of the
21 Corporation is reduced by the application of
22 this section, the liability of the person insured
23 by the policy of the insolvent insurer for the
24 claim shall be reduced in the same amount.

1 (4) ORDER OF RECOVERY.—Any person having
2 a claim which may be recovered under more than 1
3 qualified association shall seek recovery first, from
4 the qualified association of the place of residence of
5 the insured (or the Corporation, if the place of resi-
6 dence is a State that does not have a qualified asso-
7 ciation), except that if it is a first party claim for
8 damage to property with a permanent location, the
9 person shall seek recovery first from the qualified
10 association (or the Corporation, if applicable) of the
11 location of the property, and if it is a workers' com-
12 pensation claim, the person shall seek recovery first
13 from the qualified association (or the Corporation, if
14 applicable) of the residence of the claimant. Any re-
15 covery under this Act shall be reduced by the
16 amount of recovery from any other insurance guar-
17 anty association or its equivalent.

18 (g) RIGHT TO RECOVER.—The Corporation shall
19 have the right to recover all amounts paid the Corporation
20 on behalf of a person, whether for indemnity, defense, or
21 otherwise, in the case of—

22 (1) any insured whose net worth on December
23 31 of the year immediately preceding the date on
24 which the insurer becomes an insolvent insurer ex-
25 ceeds \$25,000,000 (and for such purpose, the net

1 worth of an insured on such date shall be deemed
 2 to include the aggregate net worth of the insured
 3 and all of its subsidiaries and affiliates, as calculated
 4 on a consolidated basis); and

5 (2) any person who is an affiliate of the insol-
 6 vent insurer.

7 (h) PAYMENT OF CLAIMS.—Payment of claims under
 8 this title by the Corporation shall be made from the appro-
 9 priate property and casualty account established pursuant
 10 to section 1603.

11 **SEC. 1606. POWERS AND DUTIES OF THE CORPORATION.**

12 (a) POWERS AND DUTIES RELATED TO CERTAIN NA-
 13 TIONAL LIFE INSURERS AND STATE LIFE INSURERS.—

14 (1) NATIONAL LIFE INSURERS AND STATE LIFE
 15 INSURERS WHO ARE MEMBER INSURERS SUBJECT TO
 16 REHABILITATION.—Subject to the provisions of this
 17 title, if a national life insurer or a State life insurer
 18 is a member insurer placed into receivership for pur-
 19 poses of rehabilitation, the Corporation may, in its
 20 discretion, and subject to any conditions imposed by
 21 the Corporation that do not impair the contractual
 22 obligations of the national life insurer or State life
 23 insurer, and that are approved by the Commis-
 24 sioner—

1 (A) guarantee, assume, or reinsure, or
 2 cause to be guaranteed, assumed, or reinsured,
 3 any or all of the insurance policies of the na-
 4 tional life insurer or State life insurer; or

5 (B) provide such monies, pledges, loans,
 6 notes, guarantees, or other means as are proper
 7 to effectuate subparagraph (A) and assure pay-
 8 ment of the contractual obligations of the na-
 9 tional life insurer or State life insurer, pending
 10 action under subparagraph (A).

11 (2) NATIONAL LIFE INSURERS AND STATE LIFE
 12 INSURERS WHO ARE MEMBER INSURERS SUBJECT TO
 13 LIQUIDATION.—

14 (A) IN GENERAL.—Subject to the provi-
 15 sions of this title, if a national life insurer or
 16 a State life insurer is a member insurer placed
 17 into receivership for purposes of liquidation, the
 18 Corporation shall, in its discretion, take either
 19 the actions specified in subparagraph (B) or the
 20 actions specified in subparagraph (C).

21 (B) ASSUMPTION OF OBLIGATIONS OF NA-
 22 TIONAL LIFE INSURER OR STATE LIFE INSURER
 23 WHO IS A MEMBER INSURER.—The Corpora-
 24 tion—

25 (i) shall—

1 (I) guarantee, assume, or rein-
 2 sure, or cause to be guaranteed, as-
 3 sumed, or reinsured, the insurance
 4 policies of the national life insurer or
 5 State life insurer; or

6 (II) assure payment of the con-
 7 tractual obligations of the national life
 8 insurer or State life insurer; and

9 (ii) shall provide monies, pledges,
 10 loans, notes, guarantees, or other means
 11 reasonably necessary to discharge the du-
 12 ties imposed by this section.

13 (C) PROVISION OF BENEFITS TO POLICY-
 14 HOLDERS.—The Corporation—

15 (i) with respect to life insurance poli-
 16 cies and annuities, shall assure payment of
 17 benefits for premiums identical to the pre-
 18 miums and benefits (except for terms of
 19 conversion and renewability) that would
 20 have been payable under the insurance
 21 policies of the national life insurer or State
 22 life insurer who is a member insurer, for
 23 claims incurred—

24 (I) with respect to group insur-
 25 ance policies, not later than the ear-

1 lier of the next renewal date under
2 those insurance policies or 45 days,
3 but not less than 30 days, after the
4 date on which the Corporation be-
5 comes obligated under this section
6 with respect to such policies; and

7 (II) with respect to nongroup in-
8 surance policies, not later than the
9 earlier of the next renewal date (if
10 any) under the insurance policies or 1
11 year, but not less than 30 days, from
12 the date on which the Corporation be-
13 comes obligated under this section
14 with respect to such policies;

15 (ii) shall make diligent efforts to pro-
16 vide all known insureds or annuitants (for
17 nongroup insurance policies), or group pol-
18 icyholders with respect to group insurance
19 policies, 30 days advance notice of the ter-
20 mination (pursuant to clause (i)) of the
21 benefits provided;

22 (iii) with respect to nongroup insur-
23 ance policies covered by this title, shall
24 make available to each known insured or
25 annuitant and to each individual formerly

1 insured or formerly an annuitant under a
2 group policy who is not eligible for replace-
3 ment group coverage, substitute coverage
4 on an individual basis in accordance with
5 the provisions of clause (iv), if the insured
6 or annuitants had a right under law or the
7 terminated policy or annuity to convert
8 coverage to individual coverage or to con-
9 tinue an individual policy or annuity in
10 force until a specified age or for a specified
11 time, during which the national life insurer
12 or State life insurer had no right unilater-
13 ally to make changes in any provision of
14 the policy or had a right only to make
15 changes in premium by class;

16 (iv) in providing the substitute cov-
17 erage required under clause (iii), may offer
18 either to reissue the terminated coverage
19 or to issue an alternative policy, which al-
20 ternative or reissued insurance policies—

21 (I) shall be offered without re-
22 quiring evidence of insurability;

23 (II) may not provide for any
24 waiting period or exclusion that would

1 not have applied under the terminated
2 policy; and

3 (III) may be reinsured by the
4 Corporation; and

5 (v) shall obtain the approval of the
6 Commissioner of all alternative policies
7 adopted or issued by the Corporation
8 under this paragraph.

9 (D) TERMINATION OF BENEFITS.—Bene-
10 fits under this title with respect to coverage
11 under any policy of an insolvent national life in-
12 surer or under any reissued or alternative policy
13 shall cease on the date on which the coverage
14 or policy is replaced by another similar policy
15 by the policyholder, the insured, or the Cor-
16 poration.

17 (3) TREATMENT OF PREMIUMS.—

18 (A) NONPAYMENT OF PREMIUMS.—The
19 nonpayment of premiums within 31 days after
20 the date required under the terms of any guar-
21 anteed, assumed, alternative, or reissued policy
22 or substitute coverage provided pursuant to
23 paragraphs (1) or (2) shall terminate benefits
24 under this title with respect to the policy, ex-
25 cept with respect to any claims incurred or any

1 net cash surrender value that may be due in ac-
2 cordance with the provisions of this title.

3 (B) PREMIUMS DUE AFTER LIQUIDATION
4 INITIATED.—Premiums due for coverage under
5 covered policies after the Commissioner has ini-
6 tiated the liquidation of a national life insurer
7 or a State life insurer who is a member insurer
8 shall belong to and be payable at the direction
9 of the Corporation, and the Corporation shall
10 be liable for unearned premiums due to the pol-
11 icyholders under the covered policies.

12 (4) PERMANENT AND TEMPORARY LIENS.—In
13 carrying out the duties under paragraph (2), the
14 Corporation may, subject to the approval of the
15 Commissioner—

16 (A) impose permanent policy liens in con-
17 nection with a guarantee, assumption, or rein-
18 surance contract, if the Corporation finds that
19 the amounts which can be assessed under this
20 title are less than the amounts needed to assure
21 full and prompt performance of the protections
22 provided under this title, or that the economic
23 or financial conditions as they affect the insur-
24 ance industry are sufficiently adverse to render

1 the imposition of such permanent policy liens to
2 be in the public interest; or

3 (B) impose temporary moratoriums or
4 liens on payments of cash values and policy
5 loans, or any other right to withdraw funds on
6 payments of cash values and policy loans, or
7 any other right to withdraw funds held in con-
8 junction with insurance policies, in addition to
9 any contractual provisions for deferral of cash
10 or policy loan value.

11 (5) INDEXED INSURANCE POLICIES.—

12 (A) IN GENERAL.—In carrying out its du-
13 ties in connection with paragraphs (1) or (2),
14 the Corporation may, subject to the approval of
15 the Commissioner, issue substitute coverage for
16 an insurance policy that provides an interest
17 rate, crediting rate, or similar factor deter-
18 mined by use of an index or other external ref-
19 erence stated in the insurance policy employed
20 in calculating returns or changes in value by
21 issuing an alternative insurance policy in ac-
22 cordance with subparagraph (B).

23 (B) APPLICABILITY.—Subparagraph (A)
24 shall apply in any case in which—

(i) in lieu of the index or other external reference provided for in the original insurance policy, the alternative insurance policy provides for—

(I) a fixed interest rate;

(II) payment of dividends with minimum guarantees; or

(III) a different method for calculating interest or changes in value;

(ii) there is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced insurance policy; and

(iii) the alternative insurance policy is substantially similar to the replaced insurance policy in all other material terms.

(b) POWERS AND DUTIES RELATED TO NATIONAL PROPERTY/CASUALTY INSURERS AND STATE PROPERTY/CASUALTY INSURERS WHO ARE MEMBER INSURERS WITH RESPECT TO COVERED CLAIMS.—

(1) IN GENERAL.—Subject to the terms of this title, when a national property/casualty insurer or a State property/casualty insurer is a member insurer placed into receivership for purposes of liquidation,

1 the Corporation shall exercise the powers and duties
2 specified in this subsection.

3 (2) ASSUMPTION OF OBLIGATIONS.—The Cor-
4 poration shall be deemed the insurer to the extent
5 of its obligation on covered claims and to that ex-
6 tent, shall have all rights, duties, and obligations of
7 the insolvent national property/casualty insurer or
8 State property/casualty insurer, as if such insurer
9 had not become insolvent, including the right to pur-
10 sue and retain salvage and subrogation recoverable
11 on covered claims obligations to the extent paid by
12 the Corporation.

13 (3) INVESTIGATION AND PAYMENT OF
14 CLAIMS.—The Corporation shall investigate claims
15 brought against the Corporation and adjust, com-
16 promise, settle, and pay covered claims, to the extent
17 of the obligations of the Corporation. The Corpora-
18 tion shall pay claims in any order that it determines
19 reasonable, including the payment of claims as they
20 are received from the claimants or in groups or cat-
21 egories of claims. The Corporation may review set-
22 tlements, releases, and adjustments to which the in-
23 solvent national property/casualty insurer or State
24 property/casualty insurer or its insured were parties
25 to determine the extent to which the settlements, re-

1 leases, and judgments may be properly contested.
2 The Corporation shall have the right to appoint or
3 substitute and to direct legal counsel retained under
4 liability insurance policies for the defense of covered
5 claims.

6 (c) OTHER CORPORATION POWERS.—In addition to
7 the rights and powers provided elsewhere in this title, the
8 Corporation may—

9 (1) enter into such contracts as are necessary
10 or proper to carry out the provisions and purposes
11 of this title;

12 (2) sue or be sued, including taking any legal
13 actions necessary or proper to recover any unpaid
14 assessments under section 1608 and to settle claims
15 or potential claims against the Corporation;

16 (3) borrow money to effect the purposes of this
17 title (and any notes or other evidence of indebted-
18 ness of the Corporation not in default shall be legal
19 investments for national insurers and may be carried
20 as assets);

21 (4) employ or retain such persons as are nec-
22 essary or appropriate to handle the financial trans-
23 actions of the Corporation and to perform such
24 other functions as become necessary or proper under
25 this title;

1 (5) take such legal action as may be necessary
2 or appropriate to avoid or recover payment of im-
3 proper claims;

4 (6) exercise, for the purposes of this title and
5 to the extent approved by the Commissioner, the
6 powers of a national insurer, except that the Cor-
7 poration may not issue insurance policies or annuity
8 contracts other than those issued to provide the pro-
9 tections under this title;

10 (7) request information from a person seeking
11 protection under this title in order to aid the Cor-
12 poration in determining its obligations under this
13 title with respect to the person, which person shall
14 promptly comply with the request; and

15 (8) take other necessary or appropriate action
16 to discharge the duties and obligations of the Cor-
17 poration under this title or to exercise the powers of
18 the Corporation under this title.

19 **SEC. 1607. SUBROGATION.**

20 (a) IN GENERAL.—Persons receiving benefits or pay-
21 ments for claims under this title shall be deemed to have
22 assigned their rights under, and any causes of action
23 against any person for losses arising under, resulting
24 from, or otherwise relating to, their covered policies to the
25 Corporation, and the Corporation shall have a claim by

1 way of subrogation to the rights of such persons against
2 the assets of the insolvent insurer, to the extent of the
3 benefits received or claims paid because of this title. The
4 Corporation shall also have the right to require an assign-
5 ment to the Corporation of such rights and cause of action
6 by any payee, policyowner, beneficiary, insured, or annu-
7 itant as a condition precedent to the receipt of any right
8 or benefits conferred by this title upon the person.

9 (b) COMMON LAW RIGHTS.—In addition to sub-
10 section (a), the Corporation shall have all common law
11 rights of subrogation and any other equitable or legal rem-
12 edy that would have been available to the national insurer
13 or policyowner, beneficiary, or payee of an insurance policy
14 with respect to the policy.

15 (c) PRIORITY.—The priority of the subrogation rights
16 of the Corporation against the assets of a national insurer
17 shall be governed by the regulations issued by the Com-
18 missioner pursuant to section 1504.

19 (d) RESULT IF FOUND INVALID OR INEFFECTIVE.—
20 If any other provision of this section is held to be invalid
21 or ineffective with respect to any person or claim for any
22 reason, the amount payable under this title with respect
23 to the related benefits or payments under this title shall
24 be reduced by the amount realized by any other person
25 with respect to the person or claim that is attributable

1 to the insurance policies (or portion of the insurance poli-
2 cies) covered by this title.

3 (e) PAYMENT OF PORTION.—If benefits or payments
4 have been provided under this title with respect to a cov-
5 ered obligation and a person recovers amounts as to which
6 the Corporation has rights, as described in this section,
7 the person shall pay to the Corporation the portion of the
8 recovery attributable to the insurance policies (or portion
9 of the insurance policies) covered by this title.

10 **SEC. 1608. ASSESSMENTS.**

11 (a) ASSESSMENTS BY CORPORATION AUTHORIZED.—
12 For the purpose of providing the funds necessary to pro-
13 vide the benefits or payments under this title, the Corpora-
14 tion shall be authorized to assess member insurers sepa-
15 rately for each account, at such time and for such amounts
16 as the board of directors of the Corporation finds nec-
17 essary, in accordance with this section.

18 (b) CLASSES OF ASSESSMENTS.—

19 (1) IN GENERAL.—The Corporation shall im-
20 pose 3 classes of assessments in accordance with
21 paragraphs (2) through (4).

22 (2) GENERAL ADMINISTRATIVE ASSESS-
23 MENTS.—

24 (A) IN GENERAL.—Each member insurer
25 shall be assessed an amount necessary to cover

1 the general administrative and legal costs of the
2 Corporation, other than the costs specified in
3 paragraphs (3) and (4).

4 (B) AMOUNT.—In setting the amount of
5 the assessment under subparagraph (A), the
6 Corporation shall divide such administrative
7 and legal expenses equally among all member
8 insurers.

9 (C) DEPOSIT.—The amount collected pur-
10 suant to this paragraph shall be deposited, in
11 equal amounts, in the accounts established pur-
12 suant to section 1603(f).

13 (3) PROPERTY/CASUALTY ASSESSMENTS.—

14 (A) IN GENERAL.—The Corporation
15 shall—

16 (i) allocate claims paid and expenses
17 incurred among the workers' compensation
18 account, the automobile insurance account,
19 or the other property/casualty account; and

20 (ii) assess member insurers doing
21 business in States without qualified asso-
22 ciations covering the types of risks insured
23 that are licensed to sell property/casualty
24 insurance separately for each account de-
25 scribed in clause (i) the amounts necessary

1 to pay the obligations of the Corporation
2 under section 1605 and the expenses of
3 handling such claims.

4 (B) AMOUNT.—The assessment established
5 under subparagraph (A)(ii) shall equal an
6 amount that bears the same ratio to the total
7 amount of claims and expenses allocated to an
8 account pursuant to subparagraph (A)(i) as the
9 premiums received by such member insurer in
10 States without qualified associations on the
11 kind of insurance in the account during the cal-
12 endar year preceding the assessment bears to
13 the premiums received by all assessed member
14 insurers in States without qualified associations
15 on the kind of insurance in the account during
16 the year preceding the assessment.

17 (C) DEPOSIT.—The assessments received
18 pursuant to this paragraph shall be deposited in
19 the workers' compensation account, the auto-
20 mobile insurance account, or the other property/
21 casualty account, as appropriate.

22 (4) LIFE AND ANNUITY ASSESSMENTS.—

23 (A) IN GENERAL.—The Corporation
24 shall—

1 (i) allocate benefits paid and expenses
2 incurred among the life insurance account,
3 the annuity account, and the health ac-
4 count; and

5 (ii) assess member insurers doing
6 business in States without qualified asso-
7 ciations that are licensed to sell life insur-
8 ance separately for each account described
9 in clause (i) the amounts necessary to pay
10 the obligations of the Corporation under
11 section 1604 and the expenses of providing
12 such benefits.

13 (B) AMOUNT.—The assessment established
14 under subparagraph (A)(ii) shall equal an
15 amount that bears the same ratio to the total
16 of benefits and expenses allocated to an account
17 pursuant to subparagraph (A)(i) as the pre-
18 miums received by such member insurer in
19 States without qualified associations on the
20 kind of insurance in the account during the cal-
21 endar year preceding the assessment bears to
22 the premiums received by all assessed member
23 insurers in States without qualified associations
24 on the kind of insurance in the account during
25 the year preceding the assessment.

1 (C) DEPOSIT.—The assessments received
2 pursuant to this paragraph shall be deposited in
3 the life insurance account, the annuity account,
4 or the health account, as appropriate.

5 (c) NOTICE AND IMPOSITION OF ASSESSMENTS.—

6 (1) WRITTEN NOTICE REQUIRED.—The Cor-
7 poration shall provide each member insurer a writ-
8 ten notice of an assessment, and assessments shall
9 be payable not earlier than 30 days after the date
10 of receipt of such notice.

11 (2) LATE PAYMENT.—Member insurers that fail
12 to pay an assessment when due shall be subject to
13 an interest charge on the assessment, as set by the
14 Corporation.

15 (3) ASSESSMENTS NOT IMPOSED UNTIL NEED-
16 ED.—The Corporation shall not impose an assess-
17 ment described in paragraph (3) or (4) of subsection
18 (b) until such funds are needed.

19 (4) MAXIMUM ASSESSMENT.—

20 (A) IN GENERAL.—The Corporation may
21 not assess a member insurer doing business in
22 States without qualified associations in any
23 year on any account in an amount greater than
24 2 percent of the net direct written premiums of
25 the insurer for the calendar year preceding the

1 assessment on the kind of insurance in the ac-
2 count.

3 (B) INSUFFICIENT AMOUNT IN LIFE IN-
4 SURANCE ACCOUNT, ANNUITY ACCOUNT, OR
5 HEALTH ACCOUNT.—

6 (i) INSUFFICIENT AMOUNT IN LIFE
7 INSURANCE ACCOUNT.—If the maximum
8 assessment in any year does not provide an
9 amount sufficient to make all necessary
10 payments from the life insurance account,
11 the Corporation may assess the annuity ac-
12 count, the health account, or both, for the
13 necessary additional amount, except that
14 in each subsequent year, for so long as
15 necessary, the Corporation shall assess up
16 to the maximum on the life insurance ac-
17 count, in order to—

18 (I) make all necessary payments
19 from the life insurance account; and

20 (II) reimburse the annuity ac-
21 count or the health account, or both,
22 for the amounts assessed on behalf of
23 the life insurance account.

24 (ii) INSUFFICIENT AMOUNT IN ANNU-
25 ITY ACCOUNT.—If the maximum assess-

ment in any year does not provide an amount sufficient to make all necessary payments from the annuity account, the Corporation may assess the life insurance account, the health account, or both, for the necessary additional amount, except that, in each subsequent year, for so long as necessary, the Corporation shall assess up to the maximum on the annuity account, in order to—

(I) make all necessary payments from the annuity account; and

(II) reimburse the life insurance account, the health account, or both, for the amounts assessed on behalf of the annuity account.

(iii) INSUFFICIENT AMOUNT IN HEALTH ACCOUNT.—If the maximum assessment in any year does not provide an amount sufficient to make all necessary payments from the health account, the Corporation may assess the life insurance account, the annuity account, or both, for the necessary additional amount, except that, in each subsequent year, for so long

as necessary, the Corporation shall assess
up to the maximum on the health account,
in order to—

(I) make all necessary payments
from the health account; and

(II) reimburse the life insurance
account, the annuity account, or both,
for the amounts assessed on behalf of
the health account.

(C) INSUFFICIENT AMOUNT IN WORKERS'
COMPENSATION ACCOUNT, AUTOMOBILE INSUR-
ANCE ACCOUNT, OR OTHER PROPERTY/CAS-
UALTY INSURANCE ACCOUNT.—

(i) INSUFFICIENT AMOUNT IN WORK-
ERS' COMPENSATION ACCOUNT.—If the
maximum assessment in any year does not
provide an amount sufficient to make all
necessary payments from the workers'
compensation account, the Corporation
may assess the automobile insurance ac-
count, other property/casualty insurance
account, or both, for the necessary addi-
tional amount, except that, in each subse-
quent year, for as long as necessary, the
Corporation shall assess up to the max-

imum on the workers compensation account, in order to—

(I) make all necessary payments from the workers' compensation account; and

(II) reimburse the automobile insurance account, the other property/casualty insurance account, or both, for the amounts assessed on behalf of the workers' compensation account.

(ii) INSUFFICIENT AMOUNT IN AUTOMOBILE INSURANCE ACCOUNT.—If the maximum assessment in any year does not provide an amount sufficient to make all necessary payments from the automobile insurance account, the Corporation may assess the workers' compensation account, the other property/casualty insurance account, or both, for the necessary additional amount, except that, in each subsequent year, for so long as necessary, the Corporation shall assess up to the maximum on the automobile insurance account, in order to—

1 (I) make all necessary payments
2 from the automobile insurance ac-
3 count; and

4 (II) reimburse the workers' com-
5 pensation account, the other property/
6 casualty insurance account, or both,
7 for the amounts assessed on behalf of
8 the automobile insurance account.

9 (iii) INSUFFICIENT AMOUNT IN OTHER
10 PROPERTY/CASUALTY INSURANCE AC-
11 COUNT.—If the maximum assessment in
12 any year does not provide an amount suffi-
13 cient to make all necessary payments from
14 the other property/casualty insurance ac-
15 count, the Corporation may assess the
16 workers' compensation account, the auto-
17 mobile insurance account, or both, for the
18 necessary additional amount, except that,
19 in each subsequent year for so long as nec-
20 essary, the Corporation shall assess up to
21 the maximum on the other property/cas-
22 ualty insurance account, in order to—

23 (I) make all necessary payments
24 from the other property/casualty in-
25 surance account; and

1 (II) reimburse the automobile in-
 2 surance account, the workers' com-
 3 pensation account, or both, for the
 4 amounts assessed on behalf of the
 5 other property casualty insurance ac-
 6 count.

7 (d) ABATED OR DEFERRED ASSESSMENTS.—

8 (1) AUTHORITY OF CORPORATION.—The board
 9 of directors of the Corporation may abate or defer,
 10 in whole or in part, an assessment imposed on a
 11 member insurer under this title if, in the opinion of
 12 the board, payment of the assessment would endan-
 13 ger the ability of the member insurer to fulfill its
 14 contractual obligations.

15 (2) SHARED BURDEN.—In the event an assess-
 16 ment against a member insurer is abated or de-
 17 ferred, in whole or in part, the amount by which the
 18 assessment is abated or deferred may be assessed
 19 against the other member insurers doing business in
 20 States without qualified associations, in a manner
 21 consistent with the basis for assessments set forth in
 22 this section. Once the conditions that caused action
 23 under this subsection have been removed or rectified,
 24 the member insurer shall pay all assessments that

1 were deferred pursuant to a repayment plan ap-
2 proved by the board of directors of the Corporation.

3 (e) REFUNDS.—The board of directors of the Cor-
4 poration may, by an equitable method, as established by
5 its operating rules, refund to member insurers, in propor-
6 tion to the contribution of each insurer to that account,
7 the amount by which the assets of the account exceed the
8 amount that the board finds is necessary to carry out dur-
9 ing the coming year the obligations of this title with re-
10 gard to that account, including assets accruing from as-
11 signment, subrogation, net realized gains, and income
12 from investments. A reasonable amount may be retained
13 in any account to provide funds for the continuing ex-
14 penses of the Corporation, and for future claims.

15 (f) ASSESSMENT PROTESTS.—

16 (1) IN GENERAL.—A member insurer that wish-
17 es to protest all or part of an assessment under this
18 title shall pay when due the full amount of the as-
19 sessment, as set forth in the notice provided by the
20 Corporation. The payment shall be available to meet
21 obligations under this title during the pendency of
22 the protest or any subsequent appeal. Payment shall
23 be accompanied by a statement in writing that the
24 payment is made under protest and setting forth a
25 brief statement of the grounds for the protest.

1 (2) NOTIFICATION OF DETERMINATION.—Not
2 later than 60 days after the date of payment of an
3 assessment under protest by a member insurer, the
4 Corporation shall notify the member insurer in writ-
5 ing of the determination of the Corporation with re-
6 spect to the protest, unless the Corporation notifies
7 the insurer that additional time is required to re-
8 solve the issues raised by the protest.

9 (3) FINAL DECISION.—Not later than 30 days
10 after a final decision has been made, the Corpora-
11 tion shall notify the protesting member insurer in
12 writing of the final decision. Not later than 60 days
13 after the date of receipt of notice of the final deci-
14 sion, the protesting member insurer may appeal that
15 final action to the Commissioner.

16 (4) REFERRAL.—In the alternative to rendering
17 a final decision with respect to a protest based on
18 a question regarding the assessment base, the Cor-
19 poration may refer protests to the Commissioner for
20 a final decision, with or without a recommendation
21 from the Corporation.

22 (5) PROTEST OR APPEAL UPHELD.—If the pro-
23 test or appeal on the assessment is upheld, the
24 amount paid in error or excess shall be returned to
25 the member insurer. Interest on a refund due a pro-

1 testing member insurer shall be paid at the rate ac-
2 tually earned by the Corporation.

3 (g) TRANSITIONAL RESPONSIBILITIES.—In the event
4 that the conservation, rehabilitation, or liquidation of a
5 national insurer or State insurer commences at a time
6 when a State insurance guaranty association or State in-
7 surance guaranty fund is a nonqualified association, but
8 such association or fund subsequently becomes a qualified
9 association, the Corporation shall continue to be respon-
10 sible for such conservation, rehabilitation, or liquidation,
11 unless and until the Corporation shall contract with such
12 association or fund pursuant to section 1602(e)(3). The
13 Corporation shall continue to be entitled to levy assess-
14 ments in respect of such pending conservation, rehabilita-
15 tion, or liquidation on all companies doing business in the
16 State where the association or fund resides, as if the asso-
17 ciation or fund remained a nonqualified association.

18 (h) INFORMATION REQUESTS.—The Corporation
19 may request information of member insurers doing busi-
20 ness in States without qualified associations in order to
21 aid in carrying out its duties under this section, and such
22 member insurers shall promptly comply with such a re-
23 quest.

1 **SEC. 1609. REGULATIONS.**

2 In addition to the duties and powers enumerated else-
3 where in this title, the Commissioner shall issue such regu-
4 lations as the Commissioner determines necessary to fa-
5 cilitate the operations of the Corporation and implement
6 the terms of this title.

7 **SEC. 1610. STATE TAXATION.**

8 No State shall have the power to impose its premium
9 tax, franchise tax, income tax, retaliatory tax, or other pri-
10 mary tax applicable to insurance companies, on any na-
11 tional insurer, unless such State allows the national in-
12 surer to recoup Corporation assessments allocable to such
13 State—

14 (1) in the same manner and to the same extent
15 that a State insurer is allowed to recoup State insur-
16 ance guaranty association or State insurance guar-
17 anty fund assessments in such State; or

18 (2) through the rates or a policyholder sur-
19 charge, at the election of the national insurer, in any
20 State that allows State insurers to recoup State in-
21 surance guaranty association or State insurance
22 guaranty fund assessments only through the rates.

23 **SEC. 1611. EXAMINATION OF THE CORPORATION; ANNUAL**
24 **REPORT.**

25 The Corporation shall be subject to examination and
26 regulation by the Commissioner. The Corporation shall

1 submit to the Commissioner, and each State insurance
2 commissioner in any State without a qualified association,
3 a financial report in a form approved by the Commissioner
4 and a report of the activities of the Corporation during
5 the preceding fiscal year, as the activities relate to its du-
6 ties and functions carried out under this title.

7 **SEC. 1612. IMMUNITY.**

8 There shall be no liability on the part of, and no
9 cause of action of any nature shall arise against, any of
10 the following persons for any action or omission by them
11 in the performance of their powers and duties under the
12 State insurance guaranty association or fund or provisions
13 of State insurance guaranty association or fund law or
14 under this title:

15 (1) A member insurer and its directors, officers,
16 employees, and agents.

17 (2) Any State insurance guaranty association or
18 State insurance guaranty fund and its respective di-
19 rectors, officers, employees, or agents.

20 (3) The Corporation and its directors, officers,
21 employees, and agents.

22 (4) The Commissioner and the representatives
23 thereof.

24 (5) Any State insurance commissioner and rep-
25 resentatives thereof.

1 **TITLE** **VII—CONFORMING**
2 **AMENDMENTS AND MIS-**
3 **CELLANEOUS PROVISIONS**

4 **SEC. 1701. NONDISCRIMINATION.**

5 No State may, by statute, regulation, order, interpre-
6 tation, or otherwise, discriminate, in any manner,
7 against—

8 (1) any State insurer because such insurer or
9 any affiliate has applied to become, or has declared
10 its intention to become, a national insurer chartered
11 under this Act;

12 (2) any State-licensed insurance producer be-
13 cause such insurance producer or an affiliate has ap-
14 plied to become, or has declared its intention to be-
15 come, a national agency chartered under this Act or
16 a federally licensed insurance producer licensed
17 under this Act;

18 (3) any affiliate of a national insurer, national
19 agency, or a federally licensed insurance producer
20 because the affiliate is so affiliated;

21 (4) any policyholder, insured, claimant, State-li-
22 censed insurance producer, or any person engaged in
23 the acts described in section 1304(b) because of any
24 dealing with a national insurer, national agency, a
25 federally licensed insurance producer, or an affiliate

1 of a national insurer, national agency, or a federally
 2 licensed insurance producer; or

3 (5) any State-licensed insurance producer (in-
 4 cluding with respect to such producer's sales, solici-
 5 tation, or negotiation of any insurance policy written
 6 or sold by a State insurer) because it sells, solicits,
 7 or negotiates an insurance policy written or sold by
 8 a national insurer.

9 **SEC. 1702. APPLICATION OF THE FEDERAL ANTITRUST**
 10 **LAWS TO NATIONAL INSURERS, NATIONAL**
 11 **AGENCIES, AND FEDERALLY LICENSED IN-**
 12 **SURANCE PRODUCERS.**

13 (a) APPLICATION.—Except as provided in subsection
 14 (b), the Sherman Act (15 U.S.C. 1 et seq.), the Clayton
 15 Act (15 U.S.C. 12 et seq.), the Federal Trade Commission
 16 Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936
 17 (49 Stat. 1526) (commonly known as the Robinson-Pat-
 18 man Antidiscrimination Act), shall be applicable to na-
 19 tional insurers, national agencies, and federally licensed
 20 insurance producers to the same extent as other busi-
 21 nesses are subject to such laws, except as follows:

22 (1) Such laws shall not apply to the develop-
 23 ment, dissemination, or use of standard insurance
 24 policy forms (including standard endorsements,
 25 addendums, and policy language), or to activities in-

1 cidental thereto, by national insurers, national agen-
2 cies, and federally licensed insurance producers.

3 (2) Section 3 of the Act of March 9, 1945 (59
4 Stat. 33; 15 U.S.C. 1013), shall apply to national
5 insurers, national agencies, and federally licensed in-
6 surance producers to the extent that such insurers
7 and producers are subject to State law.

8 (b) EXCEPTION.—Section 5 of the Federal Trade
9 Commission Act (15 U.S.C. 45) shall not apply to national
10 insurers, national agencies, and federally licensed insur-
11 ance producers.

12 **SEC. 1703. APPLICATION OF STATE LAW AND REGULATION**
13 **TO NATIONAL INSURERS, NATIONAL AGEN-**
14 **CIES, AND FEDERALLY LICENSED INSURANCE**
15 **PRODUCERS.**

16 Except to the extent expressly provided in this Act,
17 national insurers, national agencies, and federally licensed
18 insurance producers shall not be subject under State law
19 to any form of licensing, examination, reporting, regula-
20 tion, or other supervision relating to the sale, solicitation,
21 or negotiation of insurance, to the underwriting of insur-
22 ance, or to any other insurance operations.

23 **SEC. 1704. FEDERAL COURT JURISDICTION.**

24 Chapter 85 of part IV of title 28, United States Code,
25 is amended by adding at the end the following:

1 **“§ 1370. National insurer as party**

2 “The district courts shall have original jurisdiction
3 of any civil action—

4 “(1) commenced by the United States, or by di-
5 rection of any officers thereof, against any national
6 insurer, national agency, or any federally licensed in-
7 surance producer;

8 “(2) to enjoin the Commissioner of National In-
9 surance in the Commissioner’s capacity as head of
10 the Office of National Insurance or as the receiver
11 of a national insurer.”.

12 **SEC. 1705. FEDERAL COURT VENUE.**

13 Chapter 87 of part IV of title 28, United States Code,
14 is amended by adding at the end the following:

15 **“SEC. 1414. NATIONAL INSURER OR NATIONAL AGENCY AC-**
16 **TION AGAINST COMMISSIONER OF NATIONAL**
17 **INSURANCE.**

18 “Any civil action by a national insurer or a national
19 agency to enjoin the Commissioner of National Insurance,
20 under the provisions of any Act of Congress relating to
21 such insurers or agencies, may be prosecuted in the judi-
22 cial district where such insurer or agency is located.”.

23 **SEC. 1706. JUDICIAL REVIEW.**

24 Except as otherwise expressly provided in this Act,
25 any party aggrieved by an order of the Commissioner
26 under this Act may obtain a review of such order in the

1 United States Court of Appeals within any circuit wherein
2 such party has its main office, or in the Court of Appeals
3 for the District of Columbia, by filing in the court, within
4 30 days after the entry of the Commissioner's order, a
5 petition praying that the order of the Commissioner be
6 set aside, modified, or terminated. A copy of such petition
7 shall be forthwith transmitted to the Commissioner by the
8 clerk of the court, and thereupon the Commissioner shall
9 file in the court the record made before the Commissioner,
10 as provided in section 2112 of title 28, United States
11 Code. Upon the filing of such petition, the court shall have
12 jurisdiction to affirm, set aside, modify, or terminate the
13 order of the Commissioner and to require the Commis-
14 sioner to take such action with regard to the matter under
15 review as the court determines proper. Review of an order
16 under this section shall be had as provided in chapter 7
17 of part I of title 5, United States Code. The judgment
18 and decree of the court shall be final, except that the same
19 shall be subject to review by the Supreme Court upon cer-
20 tiorari, as provided in section 1254 of title 28, United
21 States Code.

22 **SEC. 1707. AMENDMENT TO THE FREEDOM OF INFORMA-**
23 **TION ACT.**

24 Section 552(b)(8) of title 5, United States Code, is
25 amended by inserting "(including national insurers, na-

1 tional agencies, and federally licensed insurance pro-
 2 ducers)” after “financial institutions”.

3 **SEC. 1708. AMENDMENTS TO THE FEDERAL SECURITIES**
 4 **LAWS.**

5 (a) SECURITIES ACT OF 1933.—The Securities Act
 6 of 1933 (15 U.S.C. 77a et seq.) is amended—

7 (1) in section 2(a)(13), by inserting “the Com-
 8 missioner of National Insurance or” after “subject
 9 to supervision by”;

10 (2) in section 2(a)(14), by inserting “the
 11 United States or” after “the laws of”;

12 (3) in section 3(a)(8), by inserting “the Com-
 13 missioner of National Insurance or” after “subject
 14 to the supervision of”; and

15 (4) in section 4(5)(A)(ii), by inserting “the
 16 Commissioner of National Insurance or” after “sub-
 17 ject to the supervision of”.

18 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
 19 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
 20 is amended—

21 (1) in section 10A(i)(1)(A) (15 U.S.C. 78j–
 22 l(i)(1)(A)), by inserting “or Federal” after “pur-
 23 poses of State”;

24 (2) in section 15(b)(4)(H) (15 U.S.C.
 25 78o(b)(4)(H))—

1 (A) by striking “or the National” and in-
 2 serting “the National”; and

3 (B) by inserting, “or the Commissioner of
 4 National Insurance” after “Union Administra-
 5 tion”.

6 (3) in section 17(i)(3)(C)(iii), by inserting “or
 7 by the Commissioner of National Insurance” after
 8 “appropriate State insurance regulator”; and

9 (4) in section 17(i)(4)—

10 (A) in subparagraph (A), by striking
 11 “and” after the semicolon;

12 (B) in subparagraph (B), by striking the
 13 period at the end and inserting “; and”; and

14 (C) by adding at the end the following:

15 “(D) the Commissioner of National Insur-
 16 ance with regard to all interpretations of, and
 17 the enforcement of, the National Insurance Act
 18 of 2007 relating to the activities, conduct, and
 19 operations of national insurers, national agen-
 20 cies, and federally licensed insurance pro-
 21 ducers.”.

22 (c) AMENDMENTS TO INVESTMENT COMPANY ACT OF
 23 1940.—The Investment Company Act of 1940 (15 U.S.C.
 24 80a–1 et seq.) is amended—

1 (1) in section 2(a)(17), by inserting “the Com-
2 missioner of National Insurance or” after “subject
3 to supervision by”;

4 (2) in section 2(a)(37), by inserting “the
5 United States or” after “the laws of”;

6 (3) in section 12(g)—

7 (A) by inserting “the Commissioner of Na-
8 tional Insurance or” after “affect or derogate
9 from the powers of”; and

10 (B) by inserting “Federal or” after “affect
11 the right under”;

12 (4) in section 26(f)(2)(B)(ii), by inserting “or,
13 in the case of a national insurer chartered under the
14 National Insurance Act of 2007, files with the Com-
15 missioner of National Insurance,” after “files with
16 the insurance regulatory authority of the State
17 which is the domiciliary State of the insurance com-
18 pany,”; and

19 (5) in section 26(f)(2)(B)(iii), by inserting “or,
20 in the case of a national insurer chartered under the
21 National Insurance Act of 2007, the Commissioner
22 of National Insurance” after “insurance authority of
23 such State”.

1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
 2 203(e)(9) of the Investment Advisers Act of 1940 (15
 3 U.S.C. 80b–3(e)(9)) is amended—

4 (1) by striking “or the National” and inserting
 5 “the National”; and

6 (2) by inserting “, or the Commissioner of Na-
 7 tional Insurance” after “Union Administration”.

8 **SEC. 1709. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
 9 **INCOME SECURITY ACT OF 1974.**

10 The Employee Retirement Income Security Act of
 11 1974 (29 U.S.C. 1001 et seq.) is amended—

12 (1) in section 401(b)(2)(A), by inserting “or li-
 13 censed as a national insurer” after “qualified to do
 14 business in a State”; and

15 (2) in section 733(b)(2), by inserting “or which
 16 is licensed as a national insurer and which is subject
 17 to the authority of the Commissioner of National In-
 18 surance” after “(within the meaning of section
 19 514(b)(2))”.

20 **SEC. 1710. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
 21 **ACT.**

22 (a) INTERAGENCY CONSULTATION.—

23 (1) AMENDMENTS.—Section 307 of the
 24 Gramm-Leach-Bliley Act (15 U.S.C. 6716) is
 25 amended by adding at the end the following:

1 “(g) OFFICE OF NATIONAL INSURANCE.—In this sec-
 2 tion, the terms ‘State insurance regulator’, ‘State insur-
 3 ance regulators’, and ‘insurance regulator of any State’
 4 shall include the Office of National Insurance.”.

5 (2) NO WAIVER.—The provision of information
 6 or material by the Office of National Insurance to
 7 a Federal banking agency (as defined in section 3 of
 8 the Federal Deposit Insurance Act (12 U.S.C.
 9 1813)) shall not constitute a waiver of, or otherwise
 10 affect, any privilege or other form of legal protection
 11 or exemption from public disclosure to which such
 12 information or material is otherwise subject.

13 (b) PRIVACY.—The Gramm-Leach-Bliley Act (Public
 14 Law 106–102; 113 Stat. 1338) is amended—

15 (1) in section 504(a)(1), by inserting “the Com-
 16 missioner of National Insurance,” after “Federal
 17 banking agencies,”;

18 (2) in section 504(a)(3), by inserting “, except
 19 that, in the case of the Commissioner of National
 20 Insurance, such regulations shall be issued in final
 21 form not later than 12 months after the date of en-
 22 actment of the National Insurance Act of 2007”
 23 after “enactment of this Act”;

24 (3) in section 505(a)(6), by inserting “(other
 25 than a person subject to the jurisdiction of the Of-

1 fice of National Insurance under paragraph (8))”
 2 after “providing insurance”;

3 (4) in section 505(a)—

4 (A) by redesignating paragraph (7) as
 5 paragraph (8); and

6 (B) by inserting after paragraph (6) the
 7 following:

8 “(7) Under subtitle C of title I of the National
 9 Insurance Act of 2007, by the Commissioner of Na-
 10 tional Insurance with respect to any national insurer
 11 or national agency, any subsidiaries of such an enti-
 12 ty (except any financial institution or other person
 13 subject to the jurisdiction of any agency or authority
 14 under paragraphs (1) through (6)), and any feder-
 15 ally licensed insurance producer.”;

16 (5) in section 505(a)(8), as redesignated by
 17 paragraph (4) of this section, by striking “through
 18 (6)” and inserting “through (7)”;

19 (6) in section 505(b)(2), by striking “and (7)”
 20 and inserting “(7), and (8)”;

21 (7) in section 509(2)—

22 (A) by redesignating subparagraphs (E)
 23 and (F) as subparagraphs (F) and (G), respec-
 24 tively; and

1 (B) by inserting after subparagraph (D)
 2 the following:

3 “(E) the Commissioner of National Insur-
 4 ance;”;

5 (8) in section 521(e), by inserting “or Federal”
 6 after “such institution under State”;

7 (9) in section 522(b)(1)—

8 (A) in subparagraph (A)(iv), by striking
 9 “and” after the semicolon;

10 (B) in subparagraph (B), by striking the
 11 period at the end and inserting “; and”; and

12 (C) by inserting after subparagraph (B)
 13 the following:

14 “(C) subtitle C of title I of the National
 15 Insurance Act of 2007, by the Commissioner of
 16 National Insurance with respect to any national
 17 insurer or national agency and any federally li-
 18 censed insurance producer.”; and

19 (10) in section 525, by inserting “the Commis-
 20 sioner of National Insurance,” after “National Cred-
 21 it Union Administration,”.

22 (c) OTHER CONFORMING AMENDMENTS.—The
 23 Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat.
 24 1338) is amended—

1 (1) in section 104(b), by inserting “, or as re-
 2 quired by the Commissioner of National Insurance
 3 in accordance with the National Insurance Act of
 4 2007” after “subject to subsections (c), (d), and
 5 (e)”;

6 (2) in section 104(f)—

7 (A) by striking “Subsections (c) and (d)”
 8 and inserting the following:

9 “(1) IN GENERAL.—Subsections (c) and (d)”;

10 (B) by striking “(1) the jurisdiction” and
 11 inserting the following: “(A) the jurisdiction”;

12 (C) by striking “(A) to investigate” and in-
 13 serting the following: “(i) to investigate”;

14 (D) by striking “(B) to require” and in-
 15 serting the following: “(ii) to require”;

16 (E) by striking “(2) State laws” and in-
 17 serting the following: “(B) State laws”; and

18 (F) by adding at the end the following:

19 “(2) OTHER.—Notwithstanding any provision
 20 of subsection (d), paragraphs (2) and (3) of sub-
 21 section (d) and subsection (e) shall not apply to any
 22 person to the extent that such person is engaged in
 23 the business of insurance or other insurance oper-
 24 ations pursuant to authority provided under the Na-
 25 tional Insurance Act of 2007.”;

1 (3) in section 104(g)(4), by striking “business
2 of insurance.” and inserting “business of insurance,
3 but only to the extent that such person is doing so
4 pursuant to a license issued under the authority of
5 State law.”;

6 (4) in section 112, by inserting in the heading
7 “**COMMISSIONER OF NATIONAL INSURANCE**”
8 after “**AUTHORITY OF STATE INSURANCE REGU-**
9 **LATOR**”;

10 (5) in section 301, by inserting “, except that
11 the insurance activities of a national insurer, na-
12 tional agency, and a federally licensed insurance pro-
13 ducer shall be functionally regulated by the Office of
14 National Insurance” after “subject to section 104”;
15 and

16 (6) in section 311, by inserting at the end the
17 following: “This subtitle shall not apply to a national
18 insurer in mutual form that is reorganizing into a
19 mutual holding company.”.

20 **SEC. 1711. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
21 **SURANCE ACT.**

22 The Federal Deposit Insurance Act (12 U.S.C. 1811
23 et seq.) is amended—

24 (1) in section 45, by inserting in the section
25 heading “, **COMMISSIONER OF OFFICE OF NA-**

1 **TIONAL INSURANCE,**” after “**STATE INSURANCE**
 2 **REGULATOR**”; and

3 (2) in section 47(g)(1)—

4 (A) in subparagraph (A), by striking “or”
 5 after the semicolon;

6 (B) in subparagraph (B), by striking the
 7 period at the end and inserting “; or”; and

8 (C) by adding at the end the following:

9 “(C) any authority of the Commissioner of
 10 National Insurance under the National Insur-
 11 ance Act of 2007.”.

12 **SEC. 1712. AMENDMENTS TO THE BANK HOLDING COM-**
 13 **PANY ACT OF 1956.**

14 The Bank Holding Company Act of 1956 (12 U.S.C.
 15 1841 et seq.) is amended—

16 (1) in section 4(k)(4)(I)(iii), by inserting “or
 17 Federal” after “relevant State”;

18 (2) in section 5(c)(2)(E)(iii), by inserting “or
 19 by or on behalf of the Commissioner of National In-
 20 surance” after “for the supervision of insurance
 21 companies”;

22 (3) in section 5(c)(3)(A)(ii)(I), by inserting “or
 23 the Office of National Insurance” after “Securities
 24 and Exchange Commission”;

1 (4) in section 5(c)(4)(B), by inserting “or the
2 Commissioner of National Insurance” after “a State
3 insurance authority”;

4 (5) in section 5(c)(5)(B)(iv), by inserting “or by
5 the Commissioner of National Insurance” after
6 “State insurance regulator”;

7 (6) in section 5(g), by inserting in the heading
8 “, COMMISSIONER OF NATIONAL INSURANCE” after
9 “STATE INSURANCE REGULATOR”;

10 (7) in section 5(g)(1)(B), by inserting “or the
11 Commissioner of National Insurance” after “State
12 insurance authority”;

13 (8) in section 5(g)(2)—

14 (A) in the heading, by inserting “, COM-
15 MISSIONER OF NATIONAL INSURANCE,” after
16 “STATE INSURANCE AUTHORITY”; and

17 (B) by inserting “or the Commissioner of
18 National Insurance” after “the Board shall
19 promptly notify the State insurance authority”;
20 and

21 (9) in section 5(g)(3), by inserting “, the Com-
22 missioner of National Insurance,” after “If the
23 Board receives a notice described in paragraph
24 (1)(B) from a State insurance authority”.

1 **SEC. 1713. AMENDMENTS TO TITLE 18 (CRIMES AND CRIMI-**
 2 **NAL PROCEDURE).**

3 (a) AMENDMENTS TO TITLE 18.—Section 1033(b) of
 4 title 18, United States Code, is amended—

5 (1) in paragraph (1)—

6 (A) by inserting “removes, conceals, alters,
 7 destroys,” after “willfully embezzles, abstracts,
 8 purloins,”; and

9 (B) by inserting “assets,” after “moneys,
 10 funds, premiums, credits,”; and

11 (2) in paragraph (2)—

12 (A) in the first sentence, by inserting “re-
 13 moval, concealment, alteration, destruction,”
 14 after “embezzlement, abstraction, purloining,”;
 15 and

16 (B) in the second sentence, by inserting
 17 “removed, concealed, altered, destroyed,” after
 18 “embezzled, abstracted, purloined,”.

19 (b) INSURANCE FRAUD.—Title 18, United States
 20 Code, is amended by inserting after section 1037 the fol-
 21 lowing:

22 **“§ 1037A. Insurance fraud**

23 “(a) Whoever commits a fraudulent insurance act or
 24 whoever knowingly and intentionally interferes with the
 25 enforcement of the provisions of subtitle D of title I of
 26 the National Insurance Act of 2007 or investigations of

1 suspected or actual violations of this section shall be pun-
2 ished as provided in subsection (b).

3 “(b)(1) Except as provided in paragraph (2), the
4 punishment for an offense under subsection (a) is a fine
5 as provided under this title or imprisonment for not more
6 than 10 years, or both.

7 “(2) Where the person committing an offense under
8 subsection (a) is a national insurer, national agency, in-
9 surer-affiliated party, or a federally licensed insurance
10 producer, punishment for an offense under subsection (a)
11 shall be a fine, the maximum of which is the greater of—

12 “(A) \$1,000,000 per violation; or

13 “(B) a fine as provided under this title, or im-
14 prisonment for not more than 10 years, or both.

15 “(3) If the fraudulent insurance act involved an
16 amount or value not exceeding \$5,000, whoever violates
17 subsection (a) shall be fined as provided in this title or
18 imprisoned not more than 1 year, or both.

19 “(4) The punishment in this subsection shall be in
20 addition to any other penalties under the National Insur-
21 ance Act of 2007.

22 “(5) Any person convicted of an offense under sub-
23 section (a) shall be ordered to make monetary restitution
24 for any financial loss or damage sustained by any other
25 person as a result of such offense. Such restitution shall

1 be the exclusive monetary remedy available to the victim
2 at law or in equity after entry of judgment. However,
3 nothing in this paragraph shall preclude the maintenance
4 of an action pursuant to section 1163 of the National In-
5 surance Act of 2007, absent a conviction. If the person
6 convicted of an offense under subsection (a) holds an occu-
7 pational license under any provision of State or Federal
8 law, the court shall notify the appropriate licensing au-
9 thority of the conviction.

10 “(c)(1) Any individual who has been convicted of any
11 criminal felony involving dishonesty or breach of trust,
12 and who participates in the business of insurance, shall
13 be fined as provided in this title or imprisoned not more
14 than 5 years, or both.

15 “(2) Any insurance person who is engaged in the
16 business of insurance who knowingly and intentionally
17 permits the participation described in paragraph (1) shall
18 be fined as provided in this title or imprisoned not more
19 than 5 years, or both.

20 “(3) A person described in paragraph (1) or (2) may
21 participate in the business of insurance or permit such
22 participation, as the case may be, if such person has the
23 written consent of the Commissioner of National Insur-
24 ance.

25 “(d) In this section—

1 “(1) the terms ‘Commissioner,’ ‘insurance pol-
2 icy,’ ‘insurance producer,’ ‘insurer-affiliated party,’
3 ‘national agency,’ ‘national insurer,’ ‘person,’ and
4 ‘policy of insurance’ have the meanings given to the
5 terms in section 3 of the National Insurance Act of
6 2007;

7 “(2) the term ‘business of insurance’ has the
8 meaning given to the term in section 1033(f)(1);

9 “(3) the term ‘fraudulent insurance act’ means
10 an act or omission committed by a person who,
11 knowingly and with intent to defraud, and for the
12 purpose of depriving another of property or for pecu-
13 niary gain, commits, participates in, or aids, abets,
14 or conspires to commit or solicits another person to
15 commit, or permits its employees or its agents to
16 commit, 1 or more of the following—

17 “(A) presenting, causing to be presented or
18 preparing with knowledge or belief that it will
19 be presented to or by a national insurer, na-
20 tional agency, or an insurance producer acting
21 with respect to a policy of insurance written by
22 a national insurer, false information as part of,
23 in support of or concerning a fact material to
24 1 or more of the following—

1 “(i) an application for a new or re-
2 newal of an insurance policy or reinsurance
3 contract;

4 “(ii) the rating of a national insurer
5 that writes an insurance policy or enters
6 into a reinsurance contract;

7 “(iii) a claim for payment or benefit
8 pursuant to an insurance policy or reinsur-
9 ance contract;

10 “(iv) premiums paid on an insurance
11 policy or reinsurance contract;

12 “(v) payments made in accordance
13 with the terms of an insurance policy or
14 reinsurance contract;

15 “(vi) a document filed with the Com-
16 missioner;

17 “(vii) the financial condition of a na-
18 tional insurer;

19 “(viii) the formation, acquisition,
20 merger, consolidation, dissolution, or with-
21 drawal from 1 or more lines of insurance
22 or reinsurance by a national insurer;

23 “(ix) the issuance of evidence of in-
24 surance, whether in writing, electronic
25 form, or otherwise; or

1 “(x) the reinstatement of an insurance
2 policy;

3 “(B) solicitation or acceptance of new or
4 renewal insurance risks on behalf of a national
5 insurer, national agency, or other persons en-
6 gaged in the business of insurance by a person
7 who knows or should know that the national in-
8 surer or other person responsible for the risk is
9 insolvent at the time of the transaction;

10 “(C) removal, concealment, alteration, or
11 destruction of the records of a national insurer,
12 national agency, or other person engaged in the
13 business of insurance;

14 “(D) transaction of the business of insur-
15 ance in violation of laws requiring a license
16 therefore under the National Insurance Act of
17 2007; or

18 “(E) attempting to commit, aiding or abet-
19 ting in the commission of, or conspiracy to com-
20 mit the acts or omissions specified in, this para-
21 graph; and

22 “(4) the term ‘insurance person’ means officers,
23 directors, agents, or employees of national insurers
24 or national agencies, or other persons authorized to

1 act on behalf of national insurers or national agen-
 2 cies.”.

3 **SEC. 1714. AMENDMENTS TO THE AMERICANS WITH DIS-**
 4 **ABILITIES ACT OF 1990.**

5 Section 501(c) of the Americans with Disabilities Act
 6 of 1990 (42 U.S.C. 12201(c)) is amended—

7 (1) in paragraph (1), by inserting “or Federal”
 8 after “based on or not inconsistent with State”;

9 (2) in paragraph (2), by inserting “or Federal”
 10 after “based on or not inconsistent with State”; and

11 (3) in paragraph (3), by inserting “or Federal”
 12 after “subject to State”.

13 **SEC. 1715. AMENDMENT TO THE AGE DISCRIMINATION IN**
 14 **EMPLOYMENT ACT.**

15 Section 12(c)(2) of the Age Discrimination in Em-
 16 ployment Act of 1967 (29 U.S.C. 631(c)(2)) is amended
 17 by inserting “and the Commissioner of National Insur-
 18 ance” after “after consultation with the Secretary of the
 19 Treasury”.

20 **SEC. 1716. AMENDMENTS TO THE FAIR CREDIT REPORTING**
 21 **ACT.**

22 Section 621 of the Fair Credit Reporting Act (15
 23 U.S.C. 1681s) is amended—

24 (1) in subsection (b)—

1 (A) in paragraph (5), by striking “and”
2 after the semicolon;

3 (B) in paragraph (6), by striking the pe-
4 riod at the end and inserting “; and”;

5 (C) by inserting after paragraph (6) the
6 following:

7 “(7) subtitle C of title I of the National Insur-
8 ance Act of 2007, by the Commissioner of National
9 Insurance with respect to any national insurer, na-
10 tional agency, and any federally licensed insurance
11 producer.”; and

12 (D) by adding at the end of the undesig-
13 nated matter at the end the following: “The
14 terms used in paragraph (7) that are not de-
15 fined in this title shall have the meaning given
16 to them in section 3 of the National Insurance
17 Act of 2007.”; and

18 (2) in subsection (e), by adding at the end the
19 following:

20 “(3) The Commissioner of National Insurance
21 shall prescribe such regulations as are necessary to
22 carry out the purpose of this title with respect to
23 any persons identified in subsection (b)(7).”.

○