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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Insurance Act of 2007".

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

Subtitle F—State Taxation

TITLE III—INSURANCE PRODUCERS AND OTHER INSURANCE SERVICING PERSONS

TITLE IV—HOLDING COMPANIES

TITLE V—RECEIVERSHIP

TITLE VI—INSOLVENCY PROTECTION

TITLE VII—CONFORMING AMENDMENTS AND MISCELLANEOUS PROVISIONS

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to establish a comprehensive system of Federal chartering, licensing, regulation, and supervision for insurers and insurance producers that is independent of the State system of insurance licensing, regulation, and supervision, yet that requires federally chartered and licensed insurers and producers to comply with certain State laws, including State tax laws;

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

(3) to provide for the appointment of a Commissioner of National Insurance, who, among other duties, is authorized—

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

(B) to exclusively regulate and supervise the operations and solvency of federally chartered or licensed insurers and producers on a uniform, nationwide basis, including the conduct of such insurers and producers with policyholders; and

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) BUSINESS ENTITY.—The term ''business entity'' means a corporation, association, partnership, trust, limited liability company, limited liability partnership, or other legal entity.

(3) BUSINESS OF INSURANCE.—The term ''business of insurance'' has the meaning given to

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

(4) COMMISSIONER.—The term ‘‘Commissioner’’ means the Commissioner of National Insurance.

(5) CONTROL.—

(A) IN GENERAL.—The term ‘‘control’’, including the terms ‘‘controlling’’, ‘‘controlled by’’, and ‘‘under common control with’’ means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, unless the power is the result of an official position with or corporate office held by a person.

(B) SPECIAL RULE.—For purposes of sections 1204(c), 1231, 1243(g), and title IV, control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person.

(6) CORPORATE GOVERNANCE PROCEDURES.—The term ‘‘corporate governance procedures’’ includes rules governing—

(A) corporate finance;

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

(C) indemnification of directors and officers and insurance for indemnification of directors and officers; and

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

(7) CORPORATION.—The term ‘‘Corporation’’ means the National Insurance Guaranty Corporation established under section 1603.

(8) FEDERAL BANKING AGENCIES.—The term ‘‘Federal banking agencies’’ means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(9) FEDERALLY LICENSED INSURANCE PRODUCER.—The term ‘‘federally licensed insurance producer’’ means a person, including a national

agency and a natural person acting on behalf of a national agency, that is an insurance producer licensed pursuant to section 1301.

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

(11) FUNCTIONAL REGULATOR.—The term ''functional regulator'' means—

(A) in the case of a broker-dealer, investment advisor or investment company, the Securities and Exchange Commission;

(B) in the case of a State insurer or State insurance producer, the appropriate State insurance regulator of a State that has jurisdiction over such insurer or insurance producer;

(C) in the case of a bank holding company or financial holding company, the Federal Reserve Board;

(D) in the case of a savings and loan holding company, the Office of Thrift Supervision;

(E) in the case of a national bank, the Office 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;

(C) an investment company that is registered under the Investment Company Act of 1940;

(D) a State insurer or State insurance producer that is subject to supervision by a State insurance regulator;

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

(F) a national bank subject to the supervision of the Office of the Comptroller of the Currency;

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

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

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

(J) a business entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to commodities activities of such entity and activities incidental to such commodities activities.

(13) INSOLVENCY; INSOLVENT.—

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

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

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

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

(14) INSURANCE OPERATIONS.—The term ''insurance operations'' includes—

(A) the business of insurance;

(B) all acts and transactions relating to the sale, solicitation, negotiation, and underwriting of insurance;

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

(D) all acts and transactions relating to the establishment of rates, rules, risk classifications, rating classifications, rating territories, and forms (including, endorsements, addendums, and policy language) for insurance;

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

(F) financial condition and solvency;

(G) holding company transactions; and

(H) corporate governance.

(15) INSURANCE PERSON.—The term ''insurance person'' has the same meaning as in section 1037A(d)(4) of title 18, United States Code.

(16) INSURANCE PRODUCER.—The term ''insurance producer''—

(A) means any person, including a national agency and a natural person acting on behalf of a national agency, that sells, solicits, or negotiates policies of insurance, non-admitted insurance, and surplus lines of insurance; and

(B) does not include—

(i) a national insurer;

(ii) an officer, director, or employee of a national insurer or of an insurance producer—

(I) if the officer, director, or employee does not receive any commission or other compensation on insurance policies written or sold by the national insurer or insurance producer, which commission or other compensation is directly dependent upon the amount of insurance policies written or sold; and

(II) if—

(aa) the activities of the officer, director, or employee are executive, administrative, managerial, clerical, or a combination thereof, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(bb) the functions of the officer, director, or employee relate to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a policy of insurance; or

(cc) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to federally licensed insurance producers, and do not include the sale, solicitation, or negotiation of insurance;

(iii) a person who secures and furnishes information for the purpose of group insurance policies, or for the purpose of enrolling individuals under plans, or issuing certificates under plans, or otherwise assisting in administering plans, where no commission or other compensation directly dependent upon the amount of insurance policies written or sold is paid to the person for the service;

(iv) an employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employer, association, officer, director, employee, or trustee is engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance written by the national insurer, as long as the employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the national insurer;

(v) an employee of a national insurer or an organization employed by a national insurer that is engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and that is not individually engaged in the sale, solicitation, or negotiation of insurance;

(vi) a person whose activities are limited to advertising without the intent to solicit insurance through communications in printed publications or other forms of electronic mass media, provided that the person does not sell, solicit, or negotiate insurance;

(vii) a salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the em-

employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission or other compensation directly dependent upon the amount of insurance policies written or sold;

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

(ix) any other kind of person identified by the Commissioner, by regulation, as not being an insurance producer for purposes of this Act.

(17) INSURANCE SECURITIZATION.—The term "insurance securitization" means the issuance of debt instruments by a national insurer, the proceeds from which support the exposures attributed to a protected cell, where repayment of principal or interest, or both, to investors under the transaction terms is contingent upon the occurrence or nonoccurrence of an event with respect to which the national insurer is exposed to loss under insurance policies or reinsurance contracts it has written.

(18) INSURER-AFFILIATED PARTY.—The term "insurer-affiliated party" means—

(A) any director, officer, employee, or controlling shareholder of, or agent for, a national insurer or a national agency;

(B) any other person who has filed or is required to file a statement with the Commissioner under section 1231;

(C) any shareholder, consultant, joint venture partner, and any other person as determined by the Commissioner (by regulation or order) who participates in the conduct of the affairs of a national insurer or a national agency; and

(D) any independent contractor (including any attorney, actuary, or accountant) of a national insurer or a national agency who in that capacity knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any conduct that involves an undue risk of loss to the policyholders of a national insurer as a whole, and which violation, breach, or conduct caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, a national insurer or the policyholders as a whole of a national insurer.

(19) INSURER IN FRATERNAL FORM.—The term ''insurer in fraternal form'' means an incorporated society, order, or supreme lodge, without capital stock (generally known as a fraternal benefit society), that—

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

(B) is operated on a lodge system with ritualistic form of work;

(C) has a representative form of government;

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

(E) operates for 1 or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others.

(20) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners.

(21) NATIONAL AGENCY.—The term ''national agency'' means a national insurance agency chartered under section 1201.

(22) National insurer.—The term ''national insurer'' means a national insurance company chartered under section 1201.

(23) National life insurer.—The term ''national life insurer'' means a national insurer that holds a Federal license to sell, solicit, negotiate, and underwrite 1 or both of life insurance and annuities, provided that a national life insurer may also sell, solicit, negotiate, and underwrite disability income insurance, long-term care insurance, and funding agreements.

(24) National property/casualty insurer.—The term ''national property/casualty insurer'' means a national insurer that holds a Federal license to sell, solicit, negotiate, and underwrite any combination of lines of property/casualty insurance.

(25) Negotiate.—The term ''negotiate'', in the context of negotiating insurance, means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular policy of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act

either sells insurance to or obtains insurance coverage for purchasers.

(26) NON-ADMITTED INSURANCE.—The term ''non-admitted insurance'' means any property/casualty insurance permitted to be placed directly or through an insurance producer with a non-admitted insurer eligible to accept such insurance.

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

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

(B) is not a national insurer.

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

(29) OFFICE.—The term ''Office'' means the Office of National Insurance.

(30) PARTICIPATING POLICY PROCEDURES.—The term "participating policy procedures"—

(A) means the rules applicable to a life insurer in mutual form, by which the insurer ascertains divisible surplus and apportions an amount of divisible surplus to participating insurance policies; and

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

(31) PERSON.—The term "person" means any natural person, business entity, governmental body or entity, voluntary organization, or similar organization.

(32) POLICY OF INSURANCE; INSURANCE POLICY.—The term "policy of insurance" or "insurance policy" means a policy, contract, certificate, or other evidence of insurance. "Policy of insurance" or "insurance policy" includes an annuity contract and a funding agreement, but does not include a reinsurance contract.

(33) POLICYHOLDER.—The term "policyholder" of an insurance policy means the person who is identified as the legal owner under the terms of the insurance policy or who is otherwise vested with legal

title to the insurance policy. An assignment, absolute on its face, completed in accordance with the terms of the insurance policy and properly recording the assignee as the policyholder on the books of the insurer vests legal title in the name of the assignee. The term ''policyholder'' does not include a person with a mere beneficial interest in an insurance policy or a person to whom an insurance policy is assigned for collateral security purposes.

(34) PROPERTY/CASUALTY INSURANCE.—The term ''property/casualty insurance''—

(A) means a product that insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including surety bonds, private passenger or commercial automobile, homeowners, mortgage guaranty, financial guaranty, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm or ranch owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance; and

(B) does not include life insurance, disability income insurance, long-term care insurance, health insurance, annuities, a funding agreement, or title insurance.

(35) PROTECTED CELL.—The term ''protected cell'' means an identified pool of assets and liabilities of a national insurer segregated and insulated from the remainder of the national insurer's assets and liabilities. The remainder of the national insurer's assets and liabilities includes general account assets and liabilities, separate account assets and liabilities, and assets and liabilities of other protected cells.

(36) PROTECTED CELL ACCOUNT.—The term ''protected cell account'' means a specifically identified bank or custodial account established by a national insurer for the purpose of segregating the protected cell assets of 1 protected cell from the protected cell assets of other protected cells and from the assets of the national insurer's general account and separate accounts.

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

(38) SEPARATE ACCOUNT.—The term ''separate account'' means an account established and main-

tained by a national life insurer under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the national life insurer.

(39) SOLICIT.—The term ''solicit'', in the context of soliciting a policy of insurance, means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

(40) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any territory of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(41) STATE INSURANCE AGENCY.—The term ''State insurance agency'' means an insurance producer that is organized under the laws of a State.

(42) STATE INSURER.—The term ''State insurer'' means an insurer incorporated or organized under the laws of a State.

(43) SUBSIDIARY.—The term ''subsidiary'' means a business entity controlled, directly or indirectly, by another business entity. For purposes of this definition—

(A) a business entity is conclusively presumed to be controlled by a person that, directly or indirectly, with power to vote, owns, controls, or holds a majority of the outstanding voting securities of such business entity;

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

(C) absence of control is presumed if such ownership, control or holding of voting securities is 5 percent or less; and

(D) in determining control, voting securities held in separate accounts of a business entity shall be deemed to be owned by the business entity, but voting securities in an investment advisory account that are not owned by a business entity but are held in an account as to which the business entity is an investment adviser shall not be deemed to be controlled or held by such business entity.

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

(45) TITLE INSURANCE.—The term ‘‘title insurance’’ or ‘‘business of title insurance’’ means any of the following:

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

(i) Defects in or any liens or encumbrances on the insured title.

(ii) Unmarketability of the insured title.

(iii) Invalidity, lack of priority, or unenforceability of any liens or encumbrances on the stated property.

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

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

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

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

(D) Handling escrows, settlements, or closings done in conjunction with subparagraph (A), (B), (C), (E), or (F).

(E) Any product or service defined by the laws of any State, whether by statute, regulation, or administrative determination, as title insurance.

(F) Doing or proposing to do any business substantially equivalent to any of the activities described in this paragraph, in a manner designed to evade the provisions of this Act.

(46) TITLE INSURER.—The term ''title insurer'' means a company organized under the laws of a State for the purpose of conducting the business of title insurance.

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

(48) TRUSTEED SURPLUS.—The term ''trusteed surplus'' means, with respect to a United States branch, the value of the insurer's trusteed assets deposited with a trustee under section 1202(b), plus accrued investment income thereon where such income is collectible by the trustee, less the aggregate net amount of all of its reserves and other liabilities in the United States as determined under section 1202(b).

(49) UNITED STATES BRANCH.—The term ''United States branch'' means the business unit through which business is transacted within the United States by a non-United States insurer and the assets and liabilities of the insurer within the United States pertaining to such business.

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

nized or incorporated in a State that directly or indirectly controls a national insurer.

(51) VIOLATION.—The term ''violation'' includes any action or inaction (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(52) VOTING SECURITIES.—The term ''voting securities'' means securities of any class or any ownership interest having voting power for the election of directors, trustees, or management of a business entity, other than securities having such power only by reason of the happening of a contingency.

TITLE I—OFFICE OF NATIONAL INSURANCE

Subtitle A—Establishment of Office of National Insurance

SEC. 1101. ESTABLISHMENT.

(a) IN GENERAL.—There is established, in the Department of the Treasury, the Office of National Insurance, which shall be headed by the Commissioner of National Insurance.

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

United States, as the Commissioner determines to be necessary to carry out the provisions of this Act.

(c) FUNDING.—The operations of the Office, including the compensation of the Commissioner and all employees of the Office, shall be paid from fees and assessments imposed under the terms of section 1122.

(d) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—The Office shall be an agency of the United States for purposes of subchapter II of chapter 5 and chapter 6 of title 5, United States Code.

(e) ANNUAL REPORT.—The Commissioner shall prepare and submit to Congress an annual report on the activities of the Office.

SEC. 1102. COMMISSIONER OF NATIONAL INSURANCE.

(a) APPOINTMENT.—

(1) IN GENERAL.—The Commissioner of National Insurance shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) TERM.—The Commissioner shall be appointed for a term of 5 years.

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

shall be filled in the manner established under paragraph (1). The Commissioner appointed to fill the vacancy shall be appointed only for the remainder of the term of the preceding Commissioner.

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

(A) such time as a successor has been appointed; or

(B) 1 year after the expiration of the individual's term.

(5) PROHIBITION ON FINANCIAL INTERESTS.—The Commissioner may not have a direct or indirect financial interest in any national insurer, national agency, or other federally licensed insurance producer, except that the Commissioner may own, directly or indirectly, or may have a direct or indirect beneficial interest in any insurance policy written or sold by a national insurer or national agency.

(6) OVERSIGHT.—The Commissioner shall be subject to the general oversight of the Secretary of the Treasury, who may not intervene in any matter or proceeding before the Commissioner unless otherwise specifically provided by law.

(7) EXECUTIVE SCHEDULE.—

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

(B) TECHNICAL AMENDMENT.—Section 5314 of title 5, United States Code, is amended by inserting ‘‘Commissioner of National Insurance, Department of the Treasury.’’ as a new item after ‘‘Administrator, Pipeline and Hazardous Materials Safety Administration.’’.

(b) POWERS OF THE COMMISSIONER.—

(1) IN GENERAL.—

(A) POWERS.—The Commissioner shall—

(i) oversee the organization, incorporation, operation, regulation, and supervision of national insurers and national agencies;

(ii) issue charters and licenses for national insurers and national agencies;

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

(iv) have exclusive authority to determine whether a person subject to this Act has complied with the Act or the application of any State law to matters regulated under this Act, including the determination of any complaint raised by any person.

(B) FINAL AGENCY ACTION.—A determination of the Commissioner under subparagraph (A)(iv) shall be the final agency action for purposes of judicial review of that action.

(2) RULEMAKING.—

(A) ISSUANCE OF REGULATIONS AND OTHER ACTIONS.—The Commissioner may issue such rules, regulations, orders, and interpretations as the Commissioner determines to be necessary to carry out the purposes of this Act.

(B) AUTONOMY.—The Secretary of the Treasury may not delay or prevent the issuance of any rule, regulation, order, or interpretation by the Commissioner, unless otherwise specifically authorized by law.

(C) NO DELEGATION PERMITTED.—The Commissioner may not delegate any authority conferred under subparagraph (A) to any insurance self-regulatory organization.

(3) LITIGATION AUTHORITY.—

(A) IN GENERAL.—The Commissioner may sue and be sued, complain and defend, and otherwise litigate, in the Commissioner's name and through the Commissioner's own attorney, in any Federal or State court, other than the Supreme Court of the United States in which the Commissioner shall be represented by the Solicitor General of the United States.

(B) ENFORCEMENT.—The Commissioner may apply to the United States district court for the jurisdiction in which the main office of a national insurer or national agency is located, or in which any other federally licensed insurance producer or other person is located, for the enforcement of any effective and outstanding rule, regulation, order, or interpretation issued pursuant to this Act.

(4) CONSULTATION WITH STATE INSURANCE REGULATORS.—The Commissioner may, as appropriate, consult with State insurance regulators responsible for the supervision of States insurers, State insurance agencies, and State licensed insurance producers regarding regulatory and supervisory matters of common interest.

(5) INTERNATIONAL COORDINATION AND COOPERATION.—

(A) IN GENERAL.—The Commissioner may engage in international efforts to secure bilateral and multilateral cooperation and agreements, as appropriate, with respect to insurance regulation in global markets in order to promote open and fair competition in such markets and to improve the quality and uniformity of insurance regulation in all countries.

(B) FOREIGN INSURANCE REGULATORS.—The Commissioner may provide appropriate technical assistance to, and cooperation with, individual foreign insurance regulators and regional and global regulatory organizations in insurance matters affecting international commerce, including—

(i) the development and implementation of international regulatory standards; and

(ii) the development and implementation of bilateral and multilateral mutual recognition agreements on the licensing of insurance companies and insurance producers.

(C) CONSULTATION AND COOPERATION.—In exercising the authority granted under subparagraphs (A) and (B), the Commissioner—

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

(ii) may include a representative of any interested State insurance regulators as the Commissioner determines to be appropriate.

(6) INDEPENDENCE IN CONGRESSIONAL TESTIMONY AND RECOMMENDATIONS.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting ''the Commissioner of National Insurance,'' after ''the Director of the Office of Thrift Supervision,''.

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

SEC. 1103. OFFICE PERSONNEL MATTERS.

(a) IN GENERAL.—The Commissioner may employ such examiners, lawyers, accountants, actuaries, and other employees as are necessary to carry out the provisions of this Act.

(b) COMPENSATION.—The Commissioner shall fix the compensation and number of employees of the Office without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(c) ADDITIONAL COMPENSATION.—The Commissioner may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any Federal banking agency or, if not then being provided, could be provided by any such agency under applicable provisions of law or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Commissioner shall consult, and seek to maintain comparability with, the Federal banking agencies.

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

(e) DELEGATION OF POWERS.—

(1) EMPLOYEES AND OTHERS.—Unless otherwise prohibited by this Act, the Commissioner may delegate to any employee, representative, or agent any power of the Commissioner.

(2) SELF-REGULATORY ORGANIZATIONS.—Unless otherwise prohibited by this Act, the Commissioner may, by regulation, delegate to any insurance self-regulatory organization any power of the Commissioner in accordance with the terms of section 1106.

SEC. 1104. DIVISION OF INSURANCE FRAUD.

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

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

SEC. 1105. DIVISION OF CONSUMER AFFAIRS.

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

(b) AUTHORITY.—The Division of Consumer Affairs shall support the Commissioner in the implementation and enforcement of the market conduct regulations issued pursuant to section 1216.

SEC. 1106. INSURANCE SELF-REGULATORY ORGANIZATIONS.

(a) AUTHORITY OF THE COMMISSIONER.—Subject to the terms of this section, and the regulations issued pursuant to this section, the Commissioner shall have the authority to—

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

(2) supervise and regulate any registered insurance self-regulatory organization, which shall include the authority to—

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

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

(C) remove, suspend, or bar an individual from serving as an officer or director of an insurance self-regulatory organization;

(D) remove or suspend a member of an insurance self-regulatory organization; and

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

(b) AUTHORITY OF REGISTERED INSURANCE SELF-REGULATORY ORGANIZATIONS.—An insurance self-regulatory organization that is registered by the Commissioner shall have the authority to—

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

(2) enforce compliance by its members with the provisions of this Act, applicable regulations issued by the Commissioner, and the rules of the organization.

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

(1) national insurers;

(2) national agencies;

(3) federally licensed insurance producers; or

(4) any combination of national insurers, national agencies, and federally licensed insurance producers.

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

(1) the procedures insurance self-regulatory organizations must follow to be registered by the Commissioner, which shall provide for public notice and an opportunity for public comment on the proposed registration;

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

shall require an insurance self-regulatory organization to demonstrate that—

(A) it has the capacity to—

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

(ii) enforce compliance by its members with the provisions of this Act, applicable regulations, and the rules of the organization; and

(B) its operating rules—

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

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

(iii) provide for the organization to take appropriate disciplinary actions against members, including the revocation of membership status, for violations of this Act, the regulations issued pursuant to this Act, or the operating rules of the organization; and

(iv) include procedures for members that are subject to disciplinary actions to obtain review of such actions by the Commissioner;

(3) the procedures and standards the Commissioner shall follow in reviewing, approving, abrogating, or modifying any new operating rule or any amendment to an existing operating rule that is proposed by an insurance self-regulatory organization, which shall include procedures for public notice and comment on such rule or amendment;

(4) the procedures and standards the Commissioner shall follow in abrogating, modifying, or adding to the operating rules of an insurance self-regulatory organization;

(5) the procedures and standards the Commissioner shall follow in reviewing, approving, abrogating, or modifying any disciplinary action by an insurance self-regulatory organization;

(6) the procedures and standards the Commissioner shall follow in removing, suspending, or baring any individual from serving as an officer or director of an insurance self-regulatory organization;

(7) the procedures and standards the Commissioner shall follow in suspending or revoking the registration of an insurance self-regulatory organization; and

(8) such other matters as the Commissioner determines appropriate to ensure and protect the public interest and the interests of policyholders.

SEC. 1107. OFFICE OF THE OMBUDSMAN.

(a) ESTABLISHMENT OF THE OFFICE OF THE OMBUDSMAN.—There is established within the Office, an Office of the Ombudsman. The Commissioner shall appoint an Ombudsman to administer the Office of the Ombudsman. The Ombudsman shall report directly to the Commissioner.

(b) DUTIES OF THE OMBUDSMAN.—

(1) IN GENERAL.—The Ombudsman shall act as a liaison between the Office and any regulated person adversely affected by the supervisory or regulatory activities of the Office, including the failure of the Office to take a requested action. The Ombudsman shall assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(2) DEFINITION.—For purposes of this section the term, a ‘‘regulated person’’ means a national insurer, a national agency, a federally licensed insurance producer, or an insurer-affiliated party.

(c) POWERS OF THE OMBUDSMAN.—The Ombudsman—

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

(2) shall review and report any weakness in policy or procedures to the Commissioner, and make recommendations to the Commissioner regarding changes in such policies or procedures.

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

(1) the appointment of a receiver or conservator;

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

(3) any formal enforcement-related action or decision, including the issuance of a cease-and-desist order, assessment of a civil money penalty, or commencement of a formal investigation;

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

(5) any decision or recommended decision following a formal adjudication conducted pursuant to

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

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

(e) PROCEDURES FOR FILING AN APPEAL TO THE OMBUDSMAN.—A regulated person may seek review of an appealable matter by filing a written appeal with the Office of the Ombudsman. In the case of a regulated person that is an entity, the appeal shall be signed by the President or Chief Executive Officer of the regulated person. The appeal shall set forth all of the reasons for the appeal and supporting documentation. The Ombudsman may arrange for a meeting of Office personnel and the complainants to discuss the appeal.

(f) DECISIONS OF THE OMBUDSMAN.—After a thorough investigation of the matter, and after considering all relevant information provided by the complainant and the Office, the Ombudsman shall issue a written determination of the appeal. Such determination shall become the final decision of the Office, unless reversed, modified, or stayed by the Commissioner.

(g) RETALIATION PROHIBITED.—The Office and its staff may not take any adverse action against a complainant for appealing any decision or action to the Ombudsman. Upon learning of any possible retaliatory actions, the Ombudsman shall investigate the matter, and if the Ombudsman determines that reasonable grounds exist to conclude that retaliation has taken place, shall refer the matter to the Commissioner.

Subtitle B—Supervision of National Insurers and National Agencies

SEC. 1121. EXAMINATION OF NATIONAL INSURERS AND NATIONAL AGENCIES.

(a) IN GENERAL.—

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

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

(3) EXAMINATION OF NATIONAL AGENCIES.—The Commissioner may examine a national agency 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 of the affiliate may have such an effect;

(II) the examination is limited to the extent necessary to disclose information related to such effect; and

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

(B) ACCEPTANCE OF AVAILABLE INFORMATION.—To the extent that the Commissioner requires an affiliate to make reports or provide material under subparagraph (A), the Commissioner shall, to the fullest extent possible, accept—

(i) reports that the affiliate has provided or been required to provide to other Federal or State regulatory authorities or appropriate self-regulatory organizations;

(ii) information that is otherwise required to be reported publicly; and

(iii) audited financial statements.

(C) USE OF REGULATORY REPORTS.—If the Commissioner determines to conduct an examination of an affiliate under subparagraph

(B) and such affiliate is a functionally regulated affiliate, the Commissioner shall, to the fullest extent possible, rely on the examination reports made by the functional regulator of such affiliate.

(b) ACCESS TO PEOPLE AND RECORDS.—

(1) IN GENERAL.—In the course of examining a national insurer, national agency, or affiliate of a national insurer or national agency, the Commissioner, upon request, shall be given prompt and reasonable access to officers, employees, agents, books, records, and documents of such insurer, agency, or affiliate.

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

(3) SUBPOENA POWER.—In connection with examinations of national insurers, national agencies, or affiliates under this section and the examination of

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

(A) administer oaths and affirmations;

(B) examine, take, and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such national insurer, national agency, affiliate, or federally licensed insurance producer;

(C) issue subpoenas; and

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

(i) in which the main office of the national insurer, national agency, or affiliate is located;

(ii) in which the federally licensed insurance producer is located; or

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

SEC. 1122. EXAMINATION FEES AND OTHER ASSESSMENTS.

(a) EXAMINATION FEE.—

(1) NATIONAL INSURERS, NATIONAL AGENCIES, AND FEDERALLY LICENSED INSURANCE PRODUCERS.—The Commissioner shall assess the cost of conducting examinations of national insurers, na-

tional agencies, and federally licensed insurance producers against each such insurer, agency, or producer, as the Commissioner determines to be appropriate.

(2) AFFILIATES.—The Commissioner shall assess the cost of conducting examinations of affiliates against each such affiliate, as the Commissioner determines to be appropriate.

(3) REFUSAL TO PAY.—

(A) IN GENERAL.—Subject to subparagraph (B), if any affiliate refuses to pay an assessment imposed pursuant to paragraph (2), the Commissioner may assess such cost against the affiliated national insurer or national agency.

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

(b) PROCESSING FEE.—The Commissioner may assess a fee against any person who submits to the Office an application, filing, statement, notice, or request for approval to cover the cost of processing such submission.

(c) OTHER ASSESSMENTS.—The Commissioner may assess against national insurers, national agencies, and federally licensed insurance producers such additional fees as the Commissioner determines to be necessary and appropriate to fund the expenses of the Office.

(d) NOTICE.—The Commissioner shall notify national insurers, national agencies, and federally licensed insurance producers of—

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

(2) any change in fees and assessments.

(e) TREATMENT OF FEES AND ASSESSMENTS.—

(1) DEPOSITS.—Amounts received by the Commissioner from fees and assessments imposed under this section shall be deposited in the manner provided for in section 5234 of the Revised Statutes of the United States (12 U.S.C. 192) with respect to assessments by the Comptroller of the Currency.

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

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

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

(f) WORKING CAPITAL FUND.—

(1) IN GENERAL.—The Commissioner may impose fees and assessments pursuant to subsections (a), (b), and (c), in excess of actual expenses for any given year, to maintain an appropriate working capital fund.

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

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

(h) APPROPRIATIONS DURING START-UP PERIOD.—

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

essary and appropriate to organize and begin operations of the Office.

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

(i) RULEMAKING.—The Commissioner shall promulgate regulations with respect to the computation, assessment, notice, and collection of the fees and assessments provided for in this section.

SEC. 1123. DISCLOSURE OF INFORMATION.

(a) REGULATIONS REQUIRED.—The Commissioner shall, by regulation, establish standards for the disclosure of examination reports, other reports, applications, filings, correspondence, records, and other information prepared by, reported to, obtained by, or submitted to, the Commissioner. The regulation shall exclude matters to be addressed under regulations required under section 1161.

(b) SUPERVISORY PRIVILEGE.—The regulation issued pursuant to subsection (a) shall prohibit the disclosure of confidential supervisory information, as such information is defined by the Commissioner in such regulation.

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

SEC. 1124. REPORTING REQUIREMENT.

(a) GENERAL AUTHORITY.—The Commissioner is authorized to require national insurers and national agencies to make such reports, containing such information and in such form, as the Commissioner may prescribe by regulation.

(b) FINANCIAL STATEMENTS.—Each national insurer holding a Federal license shall submit annual and quarterly financial statements, in compliance with the accounting principles and auditing standards specified under section 1211, to the Commissioner at such times and in such form as the Commissioner may require under regulations promulgated pursuant to subsection (c).

(c) REGULATIONS.—The Commissioner shall promulgate regulations that—

(1) specify the information that shall be disclosed in the financial statements required under subsection (b); and

(2) specify any additional financial schedules that national insurers shall make available for examination by the Commissioner upon request.

SEC. 1125. REGULATORY SUPERVISION AND RELATIONSHIP TO STATE LAW.

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

(1) the sale, solicitation, or negotiation of insurance;

(2) the underwriting of insurance; or

(3) any other insurance operations.

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

(1) applicable State unclaimed property and escheat laws;

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

(3) applicable State law relating to participation in an assigned risk plan, mandatory joint underwriting association, or any other mandatory residual market mechanism designed to make insurance available to those unable to obtain insurance in the voluntary market, except to the extent that such State law—

(A) relates to participation in any voluntary joint underwriting association or similar arrangement;

(B) results in rates in effect for an assigned risk plan, mandatory joint underwriting association, or any other mandatory residual market mechanism that fail to cover the expected value of all future costs associated with insurance policies written by such residual market mechanism;

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

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

(4) applicable State insurance law that prescribes the compulsory coverage requirements for workers' compensation or motor vehicle insurance, or both, that every insurer must provide if the insurer issues insurance policies in such State, except to the extent that such State law requires a national insurer to use any particular rate, rating element, price, or form;

(5) applicable State insurance law mandating the participation of insurers in an advisory or statistical organization, except to the extent that such State law requires a national insurer to use any particular rate, rating element, price, or form; and

(6) applicable State law relating to participation in a workers' compensation administration mechanism, except to the extent that such State law is inconsistent with any provision of this Act.

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

(1) ''advisory or statistical organization'' does not include the National Association of Insurance Commissioners;

(2) ''compulsory coverage'' does not include any State statutory requirement other than those prescribing the minimum extent of insurance protection afforded by a policy of insurance; and

(3) ‘‘mandatory residual market’’ means a facility, entity, or plan required by and established pursuant to State law to provide coverage for persons that cannot obtain insurance in the private market.

SEC. 1126. PRESERVATION OF OFFICE RECORDS.

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

(1) photographed or microphotographed or otherwise reproduced upon film; or

(2) preserved in any electronic medium or format which is capable of—

(A) being read or scanned by computer; and

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

(b) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in subsection (a)(1) or reproduction or electronically stored data described in subsection (a)(2) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(c) AUTHORITY OF THE COMMISSIONER.—Any photographs, microphotographs, or photographic film or copies thereof described in subsection (a)(1) or reproduction of electronically stored data described in subsection (a)(2) shall be preserved in such manner as the Commissioner shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of, as the Commissioner may direct.

SEC. 1127. COMPLIANCE WITH ANTI-MONEY LAUNDERING REQUIREMENTS.

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

(b) EXAMINATIONS.—Each examination of a national life insurer shall include a review of the procedures required to be established and maintained under subsection (a).

(c) ORDER.—The Commissioner shall issue an order, in the manner prescribed in subsection (c) or (d) of section 1142, requiring such insurer to cease and desist from a violation of this section or regulations prescribed under this section, if the Commissioner determines that a national life insurer—

(1) has failed to establish and maintain the procedures described in subsection (a); or

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

Subtitle C—Enforcement of Federal Insurance Laws

SEC. 1141. NATIONAL INSURER LICENSE SUSPENSION, RESTRICTION, OR REVOCATION.

(a) IN GENERAL.—In accordance with the conditions under this section, the Commissioner may revoke or restrict the Federal license of a national insurer if the Commissioner determines that the national insurer—

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

(2) is in a financial or other condition that is not consistent with the continuation of existing operations; or

(3) has violated any—

(A) applicable law or regulation;

(B) order or condition imposed in writing by the Commissioner in connection with the approval of an application, filing, statement, notice, or other request by the national insurer; or

(C) written agreement entered into between the national insurer and the Commissioner.

(b) NOTICE TO NATIONAL INSURER.—

(1) IN GENERAL.—If the Commissioner determines under subsection (a) that the Federal license of a national insurer should be revoked or restricted, the Commissioner shall—

(A) serve the national insurer with written notice of the intent of the Commissioner to revoke or restrict such Federal license;

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

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

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

or in such other manner reasonably calculated to give actual notice as the Commissioner may by regulation or otherwise provide.

(c) REVOCATION OR RESTRICTION HEARING.—

(1) IN GENERAL.—Before revoking or restricting a Federal license, the Commissioner shall conduct a hearing in accordance with section 554 of title 5, United States Code, to determine if the conditions described in subsection (a) exist.

(2) AUTHORITY TO REVOKE OR RESTRICT FEDERAL LICENSE.—If, on the basis of the evidence presented at the hearing under paragraph (1) and the written findings of the Commissioner with respect to such evidence, the Commissioner establishes the existence of any conduct, condition, or violation specified in the notice sent to a national insurer under subsection (b), the Commissioner may issue an order revoking or restricting the Federal license of the national insurer, which shall be effective as of a date subsequent to such finding.

(3) CONSENT TO REVOCATION OR RESTRICTION.—If a duly authorized representative of the national insurer fails to appear at the hearing under this subsection, the national insurer shall be deemed to have consented to the revocation or restriction of

its Federal license, and the Commissioner may immediately revoke or restrict such Federal license.

(d) NOTICE OF REVOCATION OR RESTRICTION REQUIRED.—

(1) NOTICE BY NATIONAL INSURER.—

(A) IN GENERAL.—The national insurer shall give notice of a revocation or restriction of its Federal license under this section to each policyholder affected by the revocation or restriction.

(B) TYPE OF NOTICE.—Notice under this paragraph shall be sent to the last address of record of the policyholder on the books of the national insurer, in such manner and at such time as the Commissioner determines to be necessary for the protection of policyholders.

(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 insurer 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 such manner as the Commissioner may find to be necessary and proper.

(B) COSTS.—The cost of any notice provided under subparagraph (A) shall be paid by the national insurer.

(e) TEMPORARY SUSPENSION OR RESTRICTION.—

(1) IN GENERAL.—If the Commissioner, in the course of a revocation proceeding under this section, finds that the national insurer poses an immediate threat to the interests of its policyholders as a whole or to the public, the Commissioner may issue an order temporarily suspending or restricting the Federal license of the national insurer.

(2) NOTICE OF TEMPORARY ORDER.—A national insurer whose Federal license is temporarily suspended or restricted under this subsection shall give notice of an order issued under this paragraph to each affected policyholder in such manner and at such times as the Commissioner may find to be necessary and may order for the protection of policyholders and the public.

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

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

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

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

(ii) the date on which the Commissioner determines that there is insufficient evidence to revoke or restrict a Federal license under this subsection.

(4) JUDICIAL REVIEW.—

(A) IN GENERAL.—During the 10-day period beginning on the date on which a temporary order has been issued under paragraph (1), the national insurer may apply to a court described in subparagraph (B) for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order.

(B) JURISDICTION.—The United States District Court for the District of Columbia and the United States district court for the judicial district in which the main office of the national insurer is located shall have jurisdiction to issue an injunction under this paragraph.

(f) DECISION TO SUSPEND, RESTRICT, OR REVOKE.—

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

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

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

SEC. 1142. SUSPENSION, RESTRICTION, OR REVOCATION OF FEDERAL LICENSE OF NATIONAL AGENCIES AND FEDERALLY LICENSED INSURANCE PRODUCERS.

(a) IN GENERAL.—In accordance with the provisions of this section, the Commissioner may revoke or restrict the Federal producer license, including lines of insurance covered by such license, of a national agency or other federally licensed insurance producer if the Commissioner determines that the Agency or producer has—

(1) violated any applicable law, regulation, order, condition imposed in writing by the Commissioner in connection with the approval of an application, filing, statement, notice or other request by the producer, or written agreement entered into between the producer and the Commissioner;

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

(3) used fraudulent, coercive, or dishonest practices; or

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

(b) NOTICE TO FEDERALLY LICENSED INSURANCE PRODUCER.—If the Commissioner determines that any conduct, breach, or violation specified in subsection (a) requires revocation or restriction of the Federal producer license of a national agency or other federally licensed insurance producer, the Commissioner shall—

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

(2) provide the national agency or other federally licensed insurance producer with a statement of the basis for the determination to revoke or restrict the Federal producer license; and

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

(c) REVOCATION OR RESTRICTION HEARING.—

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

(2) AUTHORITY TO REVOKE OR RESTRICT FEDERAL LICENSE.—If, on the basis of the evidence presented at the hearing under paragraph (1) and the

written findings of the Commissioner with respect to such evidence, the Commissioner finds any conduct, condition, or violation specified in the notice sent to a national agency or other federally licensed insurance producer under subsection (b), the Commissioner may issue an order revoking or restricting the Federal producer license of the national agency or other federally licensed insurance producer, which shall be effective as of a date subsequent to such finding.

(3) CONSENT TO REVOCATION OR RESTRICTION.—If a duly authorized representative of the national agency or other federally licensed insurance producer fails to appear at the hearing under this subsection, the national agency or other federally licensed insurance producer shall be deemed to have consented to the revocation or restriction of its Federal producer license, and the Commissioner may immediately revoke or restrict such Federal producer license.

(d) NOTICE OF REVOCATION OR RESTRICTION REQUIRED.—

(1) NOTICE BY FEDERALLY LICENSED INSURANCE PRODUCER.—Each national agency or other 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

of a national insurer or a State insurer as a whole, or to the public, the Commissioner may issue a temporary order suspending or restricting the Federal producer license of the agency or other producer.

(2) NOTICE OF TEMPORARY ORDER.—The national agency or other federally licensed insurance producer shall give notice of a temporary order issued under this paragraph in such manner and at such times as the Commissioner may find to be necessary and may order for the protection of policyholders and the public.

(3) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any temporary order issued under paragraph (1) shall—

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

(B) unless set aside, limited, or suspended by a court under paragraph (4), remain effective and enforceable until an order of the Commissioner under subsection (c) becomes final or until the Commissioner dismisses the proceedings under paragraph (4).

(4) JUDICIAL REVIEW.—

(A) IN GENERAL.—During the 10-day period beginning on the date on which a temporary order has been issued under paragraph (1), the national agency or other federally licensed insurance producer may apply to a court described in subparagraph (B) for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order.

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

(f) JUDICIAL REVIEW.—Any national agency or other federally licensed insurance producer whose Federal producer license has been revoked or restricted by order of the Commissioner under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under section 1148.

SEC. 1143. CEASE-AND-DESIST PROCEEDINGS.

(a) NOTICE.—

(1) ISSUANCE.—The Commissioner may issue and serve upon a national insurer, national agency, federally licensed insurance producer, or insurer-affiliated party a notice of charges if the Commissioner determines that such insurer, agency, producer, or party—

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

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

(i) a law, rule, or regulation;

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

(iii) any written agreement entered into with the Commissioner by such insurer, agency, producer, or party.

(2) CONTENTS.—The notice issued under paragraph (1) shall—

(A) contain a statement of the facts constituting the alleged violations; and

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

(b) HEARING.—

(1) TIMING.—A hearing under this section shall be scheduled for a date which is not earlier than 30 days nor later than 60 days after the service of notice under subsection (a) unless another date is set by the Commissioner at the request of any party so served.

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

(c) CEASE-AND-DESIST ORDER.—

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

party consents, the Commissioner may issue and serve upon the national insurer, national agency, federally licensed insurance producer, or insurer-affiliated party, an order to cease and desist from any such violation or conduct.

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

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

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

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

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

(B) remain in effect and enforceable as provided therein, unless stayed, modified, terminated, or set aside by action of the Commissioner or a reviewing court.

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

(5) STANDARD FOR CERTAIN ORDERS.—No authority under this section to prohibit any insurer-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised, unless the Commissioner meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

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

(1) IN GENERAL.—If the Commissioner determines that the violation, threatened violation, or conduct specified in the notice of charges served under subsection (c)(1) is likely to cause insolvency or significant dissipation of assets or earnings of a national insurer or a State insurer, or is likely to weaken the condition of a national insurer or a State insurer or otherwise prejudice the interests of the

policyholders, as a whole, of a national insurer or a State insurer before the completion of the proceedings conducted under subsection (c)(1), the Commissioner may issue a temporary order requiring the national insurer, national agency, producer, or party to—

(A) cease and desist from any such violation or conduct; and

(B) take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

(2) CONTENTS OF ORDER; EFFECTIVE DATE.—A temporary cease-and-desist order issued under paragraph (1)—

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

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

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

(i) administrative proceedings pursuant to such order are completed;

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

(iii) if a cease-and-desist order is issued against such national insurer, national agency, producer, or party, such order is effective.

(3) INJUNCTION.—

(A) IN GENERAL.—A national insurer, national agency, federally licensed insurance producer, or insurer-affiliated party that has been served with a temporary cease-and-desist order under this subsection may, not later than 10 days after the date of such service, apply to a court described in subparagraph (B) for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order until the completion of administrative proceedings under this section.

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

(4) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (a) specifies, on the basis of particular facts and circumstances, that the books and records of a national insurer are so incomplete or inaccurate that the Commissioner is unable, through the normal supervisory process, to determine the financial condition of that national insurer or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that national insurer, the Commissioner may issue a temporary order requiring—

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

(ii) affirmative action to restore such books or records to a complete and accurate state.

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

(i) shall become effective upon service; 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;

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

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

(4) employ qualified officers or employees, subject to approval by the Commissioner; and

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

(A) such national insurer, national agency, producer, or party was unjustly enriched in connection with such violation or conduct; or

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

SEC. 1145. SUSPENSION, REMOVAL, AND PROHIBITION AUTHORITY.

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

(1) an insurer-affiliated party has—

(A) violated—

(i) any law or regulation;

(ii) any final cease-and-desist order issued under section 1143;

(iii) any condition imposed in writing by the Commissioner in connection with the grant of any application, filing, statement, notice, or other request by such national insurer or national agency; or

(iv) any written agreement between such national insurer or national agency and the Commissioner;

(B) engaged or participated in any conduct that—

(i) is hazardous to the national insurer or national agency; and

(ii) involves an undue risk to the policyholders of such national insurer, as a whole, or the policyholders, as a whole, serviced by such national agency; or

(C) committed or engaged in any act, omission, or practice, which constitutes a breach of the fiduciary duty of such party;

(2) through any violation, conduct, practice, or breach described in paragraph (1)—

(A) such national insurer or national agency has suffered, or will probably suffer, financial loss or other damage;

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

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

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

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

(B) demonstrates willful or continuing disregard by such party for the condition of such national insurer or national agency or the interests of the national insurer's policyholders or the policyholders serviced by the national agency.

(b) TEMPORARY SUSPENSION ORDER.—

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

a temporary order suspending such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the national insurer or national agency, if the Commissioner—

(A) determines that such action is necessary for the protection of the national insurer or its policyholders or the national agency or the policyholders serviced by such Agency; and

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

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

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (e), shall remain in effect and enforceable until—

(i) the date the Commissioner dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

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

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

(c) PROCEDURES.—

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

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

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

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

(3) SUSPENSION OR REMOVAL.—

(A) FAILURE TO APPEAR.—If a duly authorized representative of the party receiving notice of a hearing under this subsection fails to appear at such hearing, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition.

(B) SUSPENSION OR REMOVAL.—In the event of such consent, or if upon the record made at any hearing under this subsection the Commissioner finds that any of the grounds specified in such notice have been established, the Commissioner may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the national insurer or national agency, as the Commissioner determines to be appropriate.

(C) EFFECTIVE DATE.—Any order issued under subparagraph (B) shall become effective on the expiration of 30 days after service upon the national insurer or national agency and such party (except in the case of an order issued upon consent, which shall become effective at the time specified in such order). Such order shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Commissioner or a reviewing court.

(d) INDUSTRYWIDE PROHIBITION.—

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

(A) continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of any national insurer or national agency;

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

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

(D) act as a federally licensed insurance producer.

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

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

(3) VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(e) STAY OF SUSPENSION OR PROHIBITION.—Not later than 10 days after any insurer-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a national insurer or national agency by a temporary order issued under subsection (b), such party may apply to the United States district court for the judicial district in which the main office of the national insurer or national agency is located, or the United States District Court for the District of Columbia, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (a), and such court shall have jurisdiction to stay such suspension or prohibition.

SEC. 1146. SUSPENSION OR PROHIBITION BASED ON CRIMINAL ACTIVITY.

(a) SUSPENSION OR PROHIBITION.—

(1) IN GENERAL.—The Commissioner may suspend an insurer-affiliated party from office or prohibit such party from further participation in any manner in the conduct of the affairs of a national insurer or national agency, by written notice served upon such party and the national insurer or national agency, if—

(A) continued service or participation by such party may pose a threat to the national insurer or national agency or the interests of the policyholders of the national insurer, as a whole, or the policyholders, as a whole, serviced by the national agency; and

(B) such party is charged in any information, indictment, or complaint, with the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law; or

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

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

(2) EFFECTIVE PERIOD.—A suspension or prohibition under paragraph (1) shall remain in effect until the information, indictment, or complaint referred to in paragraph (1)(B) is resolved or otherwise terminated by the Commissioner.

(b) REMOVAL OR PROHIBITION.—

(1) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an insurer-affiliated party in connection with a crime described in subsection (a)(1)(B)(i), the Commissioner may issue and serve upon such party and the national insurer or national agency an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the national insurer or national agency without the prior written consent of the Commissioner if—

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

(B) continued service or participation by such party may pose a threat to the national insurer or the interests of the policyholders of the national insurer or a national agency or the policyholders serviced by such agency.

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

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

(4) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Commissioner from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in national insurer or national agency affairs under subsection (a) or (b) of section 1145.

(5) EFFECTIVE PERIOD.—A notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal under subsection (c) or unless the suspension or order of removal is otherwise terminated by the Commissioner.

(c) ADMINISTRATIVE HEARING.—

(1) REQUEST.—Not later than 30 days after the date on which a notice of suspension or order of removal is received by an insurer-affiliated party under this subsection, such party may submit a written request to the Commissioner for an opportunity to appear before the Commissioner to show that the continued service to, or participation in, the conduct of the affairs of the national insurer or national agency by such party will not pose a threat to the national insurer or to the interests of its policyholders or to a national agency or the policyholders serviced by such Agency.

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

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

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

(A) whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the national insurer or national agency will be continued, terminated, or otherwise modified;

(B) whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the national insurer or national agency will be rescinded or otherwise modified; and

(C) the basis for any decision by the Commissioner that is adverse to such party.

SEC. 1147. ANCILLARY PROVISIONS.

(a) POWERS RELATED TO HEARINGS.—In the course of or in connection with any proceeding or other action under this subtitle, the Commissioner, and any person designated to conduct any hearing under this section, may—

(1) administer oaths and affirmations;

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

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

(b) SUBPOENA POWER.—

(1) IN GENERAL.—The Commissioner, or designee of the Commissioner, may require the attendance of witnesses and the production of documents provided for in this section from any place in any State or other place subject to the jurisdiction of the United States at any designated place where such proceeding or other action is being conducted.

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

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

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

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

(ii) the witness resides or conducts business.

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

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

(5) PENALTY FOR NONCOMPLIANCE.—Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Commissioner, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than 1 year or both.

(c) EXPENSES AND ATTORNEY FEES.—

(1) IN GENERAL.—Any court having jurisdiction of any proceeding or other action instituted under this section by a national insurer or national agency, a federally licensed insurance producer, or

an insurer-affiliated party may allow any such insurer, agency, producer, or party to receive such reasonable expenses and attorney fees, as it determines to be just and proper.

(2) PAYMENT OF EXPENSES AND FEES.—Expenses and fees awarded under paragraph (1) shall be paid by the national insurer or national agency, the federally licensed insurance producer, or the insurer-affiliated party from the assets of such insurer, agency, producer, or party.

(d) RULEMAKING.—The Commissioner may promulgate such regulations as may be necessary with respect to any proceedings, claims, examinations, investigations, or other actions authorized by this subtitle.

(e) EFFECT ON BOARD OF DIRECTORS.—

(1) LACK OF QUORUM.—If the suspension of 1 or more directors under this subtitle reduces the board of directors of a national insurer or national agency below a quorum, all powers and functions vested in or exercisable by such board shall vest in, and be exercisable by, the director or directors on the board not so suspended, until a quorum is reestablished.

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

suspended under this subtitle, the Commissioner shall appoint persons to serve temporarily as directors in their place until the earlier of the date on which—

(A) the suspensions are terminated; or

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

(f) NOTICE AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an insurer-affiliated party (including a separation caused by the closing of a national insurer or national agency) shall not affect the jurisdiction and authority of the Commissioner to issue any notice against any such party under this subtitle if such notice is served before the end of the 6-year period beginning on the date on which such party ceased to be an insurer-affiliated party with respect to such national insurer or national agency.

SEC. 1148. HEARINGS AND JUDICIAL REVIEW OF SUSPENSION, REMOVAL, OR PROHIBITION ORDER.

(a) JUDICIAL HEARING.—

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

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

(B) shall be held in the Federal judicial district in which the main office of the national insurer or national agency is located or in which the federally licensed insurance producer or the insurer-affiliated party is located, unless the party afforded the hearing consents to another place.

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

(A) render a decision;

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

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

(b) JUDICIAL REVIEW.—

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

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

(A) BEFORE APPEAL.—Until a petition for review is timely filed in a court of appeals of the United States, in accordance with paragraph (3), the Commissioner may modify, terminate, or set aside any order under this section.

(B) AFTER APPEAL.—After an appeal described under subparagraph (A) is filed, the Commissioner may not modify, terminate, or set aside any order under this section without the permission of the court.

(3) FILING OF PETITION.—

(A) IN GENERAL.—Except as provided under subparagraph (B), any party to a proceeding under this section may obtain judicial review of any order served under subsection (a) by filing a written petition in a court of appeals described in subparagraph (C) not later than 30 days after the date of service of such order, requesting that the order of the Commissioner be modified, terminated, or set aside.

(B) EXCEPTION.—Judicial review shall not be available for an order issued under subsection (d) with the consent of the national insurer or national agency, the federally licensed insurance producer, or the insurer-affiliated party.

(C) JURISDICTION.—After a petition is filed under this paragraph, the following courts shall have exclusive jurisdiction to modify, terminate, or set aside, in whole or in part, the order of the Commissioner:

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

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

(II) the federally licensed insurance producer or the insurer-affiliated party is located.

(ii) The United States Court of Appeals for the District of Columbia circuit.

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

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

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

(c) ENFORCEMENT OF COMMISSIONER ORDER.—

(1) APPLICATION.—The Commissioner may submit an application, to enforce any effective and outstanding notice or order issued under this section, to the United States district court for the judicial district in which—

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

(B) the federally licensed insurance producer is located; or

(C) the insurer-affiliated party is located.

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

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

(B) except as otherwise provided in this subtitle, shall not have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under this subtitle, or to review, modify, suspend, terminate, or set aside any such notice or order.

SEC. 1149. CIVIL AND CRIMINAL PENALTIES.

(a) CIVIL MONEY PENALTY.—

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

(A) violates any law or regulation;

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

(C) violates any condition imposed in writing by the Commissioner in connection with the grant of any application or other request by such national insurer or national agency, producer or party; or

(D) violates any written agreement between such national insurer or national agency, producer, or party and the Commissioner.

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

(A) during which such person—

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

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

(iii) breaches any fiduciary duty; and

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

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to such national insurer or State insurer; or

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

(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), a national insurer, national agency, federally licensed insurance producer, or any insurer-affiliated party shall pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such person—

(A) knowingly—

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

(II) engages in any conduct that is hazardous to a national insurer, State insurer, or national agency and that involves an undue risk to the policyholders, as a whole, of such national insurer, State insurer, or the policyholders, as a whole, serviced by such national agency; and

(ii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such national insurer, State insurer, or national agency or a substantial pecuniary gain or other benefit to such producer or affiliated party by reason of such violation, conduct, or breach.

(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed under paragraph (3) for any violation, practice, or breach described in such paragraph is $1,000,000.

(5) ASSESSMENT.—

(A) WRITTEN NOTICE.—Any penalty imposed under paragraph (1), (2), or (3) may be assessed and collected by the Commissioner by written notice, which shall contain a statement of the facts constituting the basis for the assessment of any penalty imposed under paragraph (1), (2), or (3).

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

(6) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Commissioner may compromise, modify, or remit any penalty which the Commissioner may

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

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

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

(B) the gravity of the violation;

(C) the history of previous violations; and

(D) such other matters as justice may require.

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

(9) COLLECTION.—

(A) REFERRAL.—If any national insurer, national agency, or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Commissioner shall recover the amount assessed by action in the appropriate United States district court.

(B) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under subparagraph (A), the validity and appropriateness of the penalty shall not be subject to review.

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

(b) PREJUDGMENT ATTACHMENT.—

(1) IN GENERAL.—In any action brought by the Commissioner under this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by the Commissioner, the court may, upon application of the Commissioner, issue a restraining order that—

(A) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property; and

(B) appoints a temporary receiver to administer the restraining order.

(2) STANDARD.—

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

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as rule 65, the relief sought under paragraph (1) may be requested under the laws of such State.

(c) CRIMINAL PENALTY.—

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

"§ 404. Violation of order by Commissioner of National Insurance

"Any person who, being subject to an order under section 1145 or 1146 of the National Insurance Act of 2007, without the prior written approval of the Commissioner of National Insurance, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any national insurer or national agency shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 21 of title 18, United States Code, is amended by adding at the end the following:

"Sec. 404. Violation of order by Commissioner of National Insurance.".

SEC. 1150. PUBLIC DISCLOSURES OF FINAL ORDERS AND AGREEMENTS.

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

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

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

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

(b) HEARINGS.—All hearings on the record with respect to any notice of charges issued by the Commissioner shall be open to the public, unless the Commissioner determines that holding an open hearing would be contrary to the public interest.

(c) TRANSCRIPT OF HEARING.—A transcript containing all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to section 1148. A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(d) DOCUMENTS FILED UNDER SEAL.—

(1) IN GENERAL.—The Commissioner may file any document or part of a document under seal in any administrative hearing commenced by the Commissioner if the Commissioner determines that disclosure of all or part of the document would be contrary to the public interest.

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

(e) RETENTION OF DOCUMENTS.—The Commissioner shall maintain a record for not less than 6 years of—

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

(2) all informal enforcement agreements and other supervisory actions and supporting documents issued in connection with any administrative enforcement proceeding initiated by the Commissioner.

(f) DISCLOSURES TO CONGRESS.—No provision of this section may be construed to authorize the withholding, or to prohibit the disclosure, of any information to Congress.

SEC. 1151. FOREIGN INVESTIGATIONS.

(a) REQUESTING ASSISTANCE FROM FOREIGN GOVERNMENTS.—In conducting any investigation, examination, or enforcement action under this subtitle, the Commissioner may request the assistance of any foreign government.

(b) PROVIDING ASSISTANCE TO FOREIGN GOVERNMENTS.—

(1) IN GENERAL.—The Commissioner may assist any foreign government that is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to insurance matters or currency transactions administered or enforced by such foreign government.

(2) INVESTIGATION BY COMMISSIONER.—The Commissioner may investigate and collect information and evidence pertinent to a request for assistance under paragraph (1). Any such investigation shall comply with the laws of the United States and the policies and procedures of the Commissioner.

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

(A) whether the requesting authority has agreed to provide reciprocal assistance with respect to insurance matters within the jurisdiction of the Commissioner; and

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

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Commissioner or any other Federal agency to provide or receive assistance or information to or from any foreign governmental authority with respect to any matter.

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

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

(b) REMOVAL OF OFFICER OR DIRECTOR.—If an officer, director, or other person associated with a non-United States insurer fails to appear promptly as a party in any case in which an action or proceeding is brought, pursuant to an allegation under subsection (a), for the suspension or removal of such officer, director, or other person, or fails to comply with any effective order or judgment therein, any failure by the non-United States insurer to secure the removal of the officer, director, or other person from any office such person holds in such insurer and from any further participation in its affairs shall constitute grounds for ordering the non-United States insurer to terminate the sale, solicitation, negotiation, and underwriting of insurance and all other insurance operations in the United States.

(c) VENUE.—

(1) IN GENERAL.—Except as provided under paragraph (2), if the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the main office of a national insurer, the venue of such a proceeding shall be within the judicial district or other relevant jurisdiction in which the non-United States insurer has 1 or more offices.

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

(A) shall be in the jurisdiction within which the office or offices involved in the proceeding are located; and

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

(d) SERVICE OF PROCESS.—

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

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

SEC. 1153. COOPERATION BETWEEN COMMISSIONER AND STATE COMMISSIONERS.

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

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

(2) The entry of a formal order that the national insurer restrict its premium writing, obtain additional contributions to surplus, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

(3) The placement of a national insurer into receivership.

Subtitle D—Insurance Fraud

SEC. 1161. INVESTIGATION OF INSURANCE FRAUD.

(a) INVESTIGATIVE AUTHORITY OF COMMISSIONER.—The Commissioner may investigate suspected fraudulent insurance acts by insurance persons engaged in the business of insurance or by other persons.

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

(c) MANDATORY REPORTING OF FRAUDULENT INSURANCE ACTS.—A national insurer, or an insurance person engaged in the business of insurance, that knows or reasonably believes that a fraudulent insurance act is being, will be, or has been committed, shall submit such information to the Commissioner in a form and manner prescribed by the Commissioner.

(d) IMMUNITY FROM LIABILITY.—

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

ble to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such act, if the information is provided to or received from—

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

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

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

(D) a person involved in the prevention and detection of fraudulent insurance acts or that person's agents, employees, or representatives; or

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

(2) MALICE.—

(A) IN GENERAL.—Paragraph (1) shall not apply to false statements made with actual malice.

(B) CONTENTS OF COMPLAINT.—In an action brought against a person for filing a report or furnishing other information concerning a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (1) does not apply because the person filed the report or furnished the information with actual malice.

(3) PRESERVATION OF PRIVILEGE AND IMMUNITIES.—This subsection does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (1).

(e) CONFIDENTIALITY REGULATIONS.—The Commissioner shall, by regulation, establish standards for the protection of confidential information submitted or obtained in an investigation of a suspected or actual fraudulent insurance act, the ability of the Commissioner to testify in private civil actions concerning any such confidential information and the sharing by the Commissioner of any such confidential information with other regulators, self-regulatory organizations, and other persons.

SEC. 1162. PENALTIES.

If a person committing an offense under subsection (a) or (c) of section 1033 of title 18, United States Code, is a national insurer, a national agency, or other federally licensed insurance producer, or an insurer-affiliated party, the Commissioner may, in addition to the punishment set forth in section 1034 of title 18, United States Code—

(1) revoke, suspend, or restrict the Federal license of such national insurer, national agency, or other federally licensed insurance producer, or insurer-affiliated party pursuant to subtitle C; and

(2) order such national insurer, national agency, or other federally licensed insurance producer, or insurer-affiliated party to make restitution to persons aggrieved by such offenses.

SEC. 1163. CIVIL REMEDY.

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

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

(2) reasonable attorney fees, related legal expenses, including internal legal expenses and court costs; and

(3) all other economic damages directly resulting from the act.

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

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

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

(c) SOLE PRIVATE REMEDY.—The remedy provided under this section shall be the only private remedy for commission of a fraudulent insurance act, and no additional remedies shall be implied, nor shall the remedy provided under this section be used in conjunction with or in addition to any other remedies available at law or in equity to duplicate recovery for the same element of economic damage.

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.

(a) AUTHORIZATION.—

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

(A) provide for the organization, incorporation, operation, and regulation of national insurance companies and national insurance agencies; and

(B) issue charters therefor.

(2) RULEMAKING.—The Commissioner shall issue regulations that permit the organization of national insurers in stock, mutual, reciprocal, or fraternal form, and address such other matters related to the chartering and licensing of national insurers and national agencies, as the Commissioner determines appropriate.

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

(b) CHARTERING CRITERIA.—

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

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

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

(2) INFORMATION.—The Commissioner shall request such information from the applicant as the Commissioner determines necessary to make the evaluation required under paragraph (1).

(3) CORPORATE NAME.—

(A) NATIONAL INSURERS.—The corporate name of each national insurer shall include at the end the words ''national insurer'' or the initials ''N.I.''.

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

(C) SAVINGS PROVISION.—Nothing in this Act shall preclude a State insurer or State insurance agency from using the word ''national'' or ''Federal'' in its corporate name if such word was included in the corporate name of the State insurer or agency on or before the date of enactment of this Act.

(c) ISSUANCE OR DENIAL OF CHARTER.—

(1) DETERMINATION.—Not later than 60 days after the receipt of the articles of incorporation or other organization document from a proposed national insurer or national agency, and such other information required under subsection (b)(2), the Commissioner shall—

(A) issue a charter certificate to the applicant; or

(B) provide the applicant with a written explanation of the grounds for denying a charter.

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

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

(A) the applicant fails to—

(i) comply with all applicable formation requirements; and

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

(B) the applicant lacks—

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

(ii) the character or competence to operate the national insurer or national agency in accordance with the standards under this Act; or

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

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

(e) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority conferred under this section with respect to—

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

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

(f) MAIN OFFICE.—

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

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

(3) CHANGE IN MAIN OFFICE.—With the approval of the Commissioner, a national insurer or national agency may change the designation of its main office, including to another existing office of the national insurer or national agency.

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

(g) INSURER IN FRATERNAL FORM.—Any charter granted to a national insurer in fraternal form in connection with a conversion from a State insurer shall include provisions that allow the national insurer to operate as an insurer in fraternal form in a manner consistent with the requirements of its former State charter.

SEC. 1202. UNITED STATES BRANCHES OF NON-UNITED STATES INSURERS.

(a) AUTHORIZATION OF NON-UNITED STATES INSURER.—A non-United States insurer may transact insurance in the United States through a United States branch by qualifying and licensing the United States branch to do business as a national insurer under this Act, under such regulations as the Commissioner may prescribe.

(b) TRUST ACCOUNT.—

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

(2) ASSETS.—The trusteed assets of a United States branch shall be held pursuant to a deed of trust with a United States bank that meets such requirements as the Commissioner may prescribe, in trust for the exclusive benefit, security, and protection of the policyholders, or policyholders and creditors, of the United States branch in the United States maintained as long as there is outstanding

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

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

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

(c) SUBJECT TO APPLICABLE LAWS.—Except as otherwise provided under this section, a United States branch established under this section—

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

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

SEC. 1203. FEDERAL LICENSING OF NATIONAL INSURERS.

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

(b) ISSUANCE OF FEDERAL LICENSES.—

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

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

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

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

(A) a national insurer may hold a license to sell, solicit, negotiate, and underwrite property/casualty insurance;

(B) a national insurer that holds a license to sell, solicit, negotiate, and underwrite life insurance may also sell, solicit, negotiate, and underwrite disability income insurance, long-term care insurance, annuities, and funding agreements; and

(C) no national insurer may obtain—

(i) a Federal license to engage in the sale, solicitation, negotiation, and underwriting of property/casualty insurance; and

(ii) a Federal license to engage in the sale, solicitation, negotiation, and underwriting of life insurance, annuities, or funding agreements.

(3) AUTHORITY TO LIMIT SCOPE OF INSURANCE.—Subject to paragraph (2), the regulations prescribed by the Commissioner pursuant to paragraph (1) may provide that a national insurer that holds a license to sell, solicit, negotiate, and underwrite specified lines of insurance may not hold a license to sell, solicit, negotiate, and underwrite other specified lines of insurance.

(4) TITLE INSURANCE.—The Commissioner shall not license any person to engage in the business of title insurance, except that nothing in this Act shall prevent a provider of title insurance from being affiliated with a national insurer or national agency.

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

(A) surrendered by the national insurer; or

(B) revoked or suspended by the Commissioner in accordance with the provisions of this Act.

(c) REINSURANCE.—A national insurer may—

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

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

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

(2) confine its business to reinsurance.

(d) NONDISCRIMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2) and section 1202, the Commissioner may not impose any condition for the granting of a Federal license to a national insurer under this section solely because the national insurer is—

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

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

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

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

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

(B) if the Commissioner makes a written finding that the conditions are related to the protection of policyholders and are the minimum conditions necessary to achieve the purposes of this Act.

SEC. 1204. CORPORATE GOVERNANCE.

(a) COMPLIANCE WITH THIS ACT AND APPLICABLE REGULATIONS.—The corporate governance procedures of a national insurer and a national agency shall be consistent with the provisions of this Act and all regulations issued by the Commissioner under this Act.

(b) ADHERENCE TO STATE LAW.—

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

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

(3) DISCRIMINATORY PROVISION.—If the Commissioner determines that any provision of a State corporate governance law is discriminatory as applied to national insurers or national agencies, such insurer or agency—

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

(B) may follow such other provision of law as the Commissioner determines to be appropriate.

(c) INDEPENDENT AUDIT COMMITTEE FOR NATIONAL INSURERS.—

(1) ESTABLISHMENT.—Each national insurer shall establish an audit committee of its board of directors, which shall be composed entirely of outside directors who are independent of management of the national insurer.

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

(A) any person that controls the national insurer has established an audit committee of its board of directors entirely composed of outside directors who are independent of management of such controlling person; and

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

SEC. 1205. PARTICIPATING POLICY PROCEDURES.

(a) CHOICE OF PROCEDURES.—A national life insurer in mutual form shall, at the time of its initial chartering and licensing under sections 1201 and 1203, or its conversion under section 1206, elect to either—

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

(2) adhere to the participating policy procedures established by regulation of the Commissioner under subsection (b).

(b) REGULATIONS.—The Commissioner shall, by regulation, establish participating policy procedures, as the Commissioner determines to be appropriate to carry out this Act.

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

SEC. 1206. CONVERSION OF STATE INSURER TO NATIONAL INSURER OR STATE INSURANCE AGENCY TO NATIONAL AGENCY.

(a) AUTHORIZATION TO CONVERT.—

(1) IN GENERAL.—Notwithstanding any other provision of law and subject to the approval of the Commissioner, a State insurer may convert to a national insurer and a State insurance agency may convert to a national agency.

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

(A) retain an organizational form permitted under section 1201(a)(2); or

(B) change directly to another organizational form that is permitted under section 1201(a)(2).

(b) CONVERSION PROCEDURES.—

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

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

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

(C) the issuance of charters to such converted insurers and agencies.

(2) RULEMAKING.—Regulations issued by the Commissioner under this section shall be consistent with—

(A) the regulations issued by the Commissioner under section 1201; and

(B) the provisions of section 1242 or 1243, as applicable, in the case of a change of form effected at the time of a conversion of a State insurer into a national insurer.

(c) EFFECT OF CONVERSION.—

(1) IN GENERAL.—Except as provided under paragraph (2), a State insurer or State insurance agency that converts under this section—

(A) shall be subject to the provisions of this Act and to examination and regulation as provided under this Act to the same extent as other national insurers and national agencies organized under this Act;

(B) shall be deemed to be a continuation of the corporate existence of the State insurer or State insurance agency, as applicable; and

(C) shall, by operation of law and without further action, hold and be subject to all rights, privileges, liabilities, property interests, and other interests and obligations that the State insurer or State insurance agency held, or was subject to, immediately before the conversion.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), a State insurer or State insurance agency that converts under this section—

(A) shall not be subject to any requirement to maintain deposits with State insurance regulatory authorities;

(B) shall not hold any State license to sell, solicit, negotiate, and underwrite insurance that was held by the State insurer or State insurance agency; and

(C) shall obtain, in accordance with section 1203 or 1301, as applicable, a Federal license for all lines of insurance that it sells, solicits, negotiates, or underwrites.

(d) SPECIAL AUTHORITY.—The Commissioner may, subject to such conditions as the Commissioner may prescribe by regulation, permit a national insurer or national agency resulting from the conversion of a State insurer or State insurance agency, as applicable, to retain, hold, or exercise assets, liabilities, powers, and authorities that do not conform to the legal requirements otherwise applicable to national insurers or national agencies to the extent the Commissioner determines is appropriate.

(e) Mutual Holding Company Controlling State Insurers in Stock Form.—

(1) In general.—If a State insurer converting under this section is an insurer in stock form that is controlled by a mutual holding company as a result of a previous conversion under State law from an insurer in mutual form to an insurer in stock form, and, after the conversion under this section, the mutual holding company would not control any other State insurers having policies in force that give rise to membership in the mutual holding company, then, notwithstanding any other provision of law, in accordance with this section and regulations issued by the Commissioner—

(A) upon the conversion under this section, the mutual holding company may remain a corporation organized under the law of the State under which it was incorporated or may merge into a mutual holding company incorporated under the law of another State; and

(B) upon and after the conversion under this section, the mutual holding company—

(i) shall, to the extent provided in regulations issued by the Commissioner, be subject to—

(I) title V; and

(II) examination, reporting, regulation, and other supervision under this Act; and

(ii) shall not be subject to any form of licensing, examination, reporting, regulation, or other supervision by reason of being a mutual holding company or relating to the rights of members, the sale, solicitation, negotiation, or underwriting of insurance (including all products of national insurers) or any other insurance operations except as authorized under Federal law and except as provided in section 1125(b), as if the mutual holding company were a national insurer under this Act.

(2) CONVERSION TO A CORPORATION IN STOCK FORM.—Notwithstanding any other provision of law and in accordance with this subsection and regulations issued by the Commissioner, a mutual holding company described in paragraph (1) may convert to a corporation in stock form in a manner that—

(A) is found by the Commissioner to be fair and equitable to the mutual holding company and its members; and

(B) is generally similar to conversion of an insurer in mutual form to a national insurer in stock form pursuant to section 1243.

(f) NO DELEGATION PERMITTED.—The Commissioner may not delegate any authority under this section involving the conversion of a State insurer into a national insurer or a State insurance agency into a national agency to any insurance self-regulatory organization.

SEC. 1207. CONVERSION OF NATIONAL INSURER TO STATE INSURER OR NATIONAL AGENCY TO STATE AGENCY.

(a) IN GENERAL.—Subject to such notification procedures as the Commissioner may prescribe by regulation, a national insurer may convert into a State insurer and a national agency may convert into a State insurance agency, in accordance with applicable State law.

(b) SAVINGS PROVISION.—Nothing in this section or in the conversion of a national insurer into a State insurer or a national agency into a State insurance Agency shall operate to abrogate any rights, privileges, liabilities, property interests, or other interests or obligations that a national insurer or national agency held or was subject to immediately before the conversion.

SEC. 1208. POWERS.

(a) IN GENERAL.—Upon issuance of its charter, a national insurer or national agency shall have the power, subject to such regulations as the Commissioner may prescribe—

(1) to have, alter, use, and reproduce a corporate seal, or a facsimile of it;

(2) to have perpetual succession until such time as it is liquidated, dissolved, merged, or otherwise wound up in accordance with applicable law;

(3) to adopt, amend, and repeal by-laws;

(4) to sue or be sued, complain and defend, and otherwise litigate in any court and participate, as a party or otherwise, in any judicial, administrative, arbitral, or other proceeding, in its corporate name;

(5) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the national insurer or national agency), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, improve, employ, use, and otherwise deal in and with real and personal property or other assets, or any interest therein, and sell, convey, mortgage, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein;

(7) to lend money, invest, and reinvest its funds and receive and hold real and personal property as security for repayment;

(8) to participate with others in any corporation, partnership, limited partnership, joint venture, or other association, or in any transaction, undertaking, or arrangement, which the national insurer or national agency would have power to conduct by itself, whether or not such participation involves sharing or delegating control with or to others;

(9) to elect or appoint directors, officers, employees, and agents of the national insurer or national agency, define their duties, fix their compensation, and lend them money and credit;

(10) to pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and other benefit or

incentive plans for any or all current or former directors, officers, employees, and agents of the national insurer or national agency, its subsidiaries or its affiliates;

(11) to provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring, at the death of such shareholder, shares of its stock owned by such shareholder;

(12) in the case of a national life insurer—

(A) to establish and maintain 1 or more separate accounts and allocate amounts to such accounts (including any proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance, annuities, disability income insurance, long-term care insurance, or funding agreements (and incidental benefits), payable in fixed or variable amounts (or both) from such accounts or from the general account (or both);

(B) to hold and accumulate funds pursuant to funding agreements; and

(C) to provide investment advice and investment management services;

(13) in the case of a national insurer—

(A) to engage in the sale, solicitation, negotiation, and underwriting of insurance;

(B) to establish and maintain 1 or more protected cells in connection with an insurance securitization and attribute to such cells insurance and reinsurance obligations with respect to its general account, obligations relating to the insurance securitization, and assets to fund such obligations; and

(C) to engage in all other insurance operations and exercise all such incidental powers as shall be necessary to carry on insurance operations;

(14) in the case of a national agency—

(A) to engage in the sale, solicitation, and negotiation of—

(i) policies of insurance issued by any national insurer or State insurer; and

(ii) surplus lines insurance and non-admitted insurance for a non-admitted insurer; and

(B) to exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustment and settlement, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

(15) to provide benefits or payments to its directors, officers, and employees, subsidiaries or affiliates, and to their estates, families, dependents, or beneficiaries, in recognition of the past services of the directors, officers, and employees to the national insurer or national agency or its subsidiaries or affiliates;

(16) to make donations and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes;

(17) to serve as a promoter, partner, member, associate, or manager of any business entity;

(18) to provide loss control, advice, exposure identification, and reduction strategies, and recommend and expedite risk financing alternatives;

(19) to engage in any other lawful activity that is necessary or convenient to further its activities and affairs; and

(20) to exercise the powers granted by this Act in any State and in any foreign jurisdiction.

(b) EFFECT ON STATE LAW.—No State may, by statute, regulation, order, interpretation, or otherwise, prevent or restrict a national insurer or national agency from exercising any power conferred by this section or by any regulation authorized by this section.

(c) SUBSIDIARIES.—

(1) NATIONAL INSURERS.—

(A) AUTHORIZATION.—

(i) IN GENERAL.—A national insurer may establish, invest in, or otherwise acquire 1 or more subsidiaries engaged or organized to engage in any business lawful under the laws of the jurisdictions in which the subsidiaries are organized.

(ii) RESTRICTION.—Without the prior written approval of the Commissioner, not more than 20 percent of the national insurer's assets may be invested in any 1 subsidiary described in clause (i) and not more than 40 percent of a national insurer's assets may be invested in 2 or more subsidiaries engaged in such other activities.

(B) CALCULATION.—In calculating the amount invested by a national insurer in a subsidiary under subparagraph (A), there shall be included only the following:

(i) Total net monies or other consideration expended and obligations assumed by the national insurer in the acquisition or formation of the subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(ii) All amounts expended by the national insurer in acquiring additional common stock, preferred stock, debt obligations, and other securities of the subsidiary.

(iii) All contributions by the national insurer to the capital or surplus of the subsidiary subsequent to its acquisition or formation.

(C) QUALIFICATION OF INVESTMENT; WHEN DETERMINED.—Whether any investment made pursuant to subparagraph (A) meets the applicable requirements of such subparagraph shall be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(D) EXCEPTION.—The limitations provided for in subparagraph (A) shall not apply to investments by a national insurer in—

(i) any subsidiary engaged primarily in the sale, solicitation, negotiation, and underwriting of any line of insurance that the national insurer is authorized to sell, solicit, negotiate, and underwrite; or

(ii) any subsidiary whose sole business function is to own assets (including other subsidiaries) that the national insurer itself is authorized to own.

(E) NOTICE.—A national insurer shall notify the Commissioner, in writing, not later than 20 calendar days after establishing, investing in, or acquiring a subsidiary, unless the transaction requires the prior written approval of the Commissioner under subparagraph (A).

(2) NATIONAL AGENCIES.—

(A) AUTHORIZATION.—A national agency may establish, invest in, or otherwise acquire 1 or more subsidiaries engaged or organized to engage in any business activity that is lawful for a national agency under this Act.

(B) NOTICE.—A national agency shall notify the Commissioner, in writing, not later than 30 calendar days after establishing, investing in, or acquiring a subsidiary.

(d) DIVIDENDS AND DISTRIBUTIONS TO SHAREHOLDERS.—

(1) SHAREHOLDER DIVIDENDS AND DISTRIBUTIONS PERMITTED.—A national insurer may declare and pay dividends or make other distributions in cash, bonds, or property on its outstanding shares, unless—

(A) the national insurer is insolvent or would be made insolvent by such payment; or

(B) the declaration, payment, or distribution would be contrary to any restrictions contained in the charter of the national insurer.

(2) SOURCE OF SHAREHOLDER DIVIDENDS AND DISTRIBUTIONS.—A national insurer may only declare and pay dividends or make other distributions out of surplus if the assets of the national insurer

after such declaration, payment, or distribution is not less than the amount of its capital.

(3) OTHER PROVISIONS.—Shareholder dividends and distributions made pursuant to this subsection shall be subject to—

(A) the standards set forth in section 1403(a)(1)(E); and

(B) the notice requirements of section 1403(b).

SEC. 1209. SEPARATE ACCOUNTS OF NATIONAL LIFE INSURER.

(a) OWNERSHIP.—Any amount allocated by a national life insurer to a separate account shall be owned by the national life insurer, the assets therein shall be the property of the national life insurer, and no national life insurer by reason of such account shall be or hold itself out to be a trustee.

(b) LIABILITIES.—Assets allocated by a national life insurer to a separate account shall not be chargeable with liabilities arising out of any other business of the national life insurer to the extent so provided in the applicable agreements.

(c) SECURITY INTERESTS PERMITTED.—A national life insurer may allow for a security interest to attach to assets allocated to a separate account if the security interest is in favor of a creditor of the separate account and otherwise allowed under applicable law.

SEC. 1210. PROTECTED CELLS.

(a) ESTABLISHMENT.—A national insurer may, in connection with an insurance securitization, establish 1 or more protected cells with the approval of the Commissioner.

(b) PROTECTED CELL ASSETS.—

(1) OWNERSHIP.—All amounts attributed to a protected cell established under this section, including assets transferred to a protected cell account, shall be owned by the national insurer.

(2) TRUSTEE.—The national insurer may not be, nor hold itself out to be, a trustee with respect to the protected cell assets of the protected cell account described in paragraph (1).

(3) LIABILITIES.—The assets of a protected cell established under this section shall not be chargeable with liabilities arising out of any other business of the national insurer.

(c) SECURITY INTERESTS PERMITTED.—A national insurer may allow for a security interest to attach to protected cell assets or a protected cell account if the security interest is in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(d) REACH OF CREDITORS AND OTHER CLAIMANTS.—

(1) AVAILABILITY.—Protected cell assets shall only be available to the creditors of a national insurer that are creditors in respect to that protected cell.

(2) RECOURSE.—Creditors with respect to a protected cell shall have no recourse against the protected cell assets of other protected cells or the general account assets of the national insurer.

(3) FRAUD.—The establishment of a protected cell shall not, in and of itself, constitute a fraudulent conveyance, an intent by a national insurer to defraud creditors, or the carrying out of business by a national insurer for any other fraudulent purpose.

(e) RULEMAKING.—The Commissioner shall promulgate regulations that establish standards for protected cells established by national insurers.

(f) EFFECT ON STATE LAW.—No State may, by statute, regulation, order, interpretation, or otherwise, require licensing or otherwise regulate in any manner—

(1) an investor in an insurance securitization, solely by reason of its investment, as an insurer, reinsurer, or other person transacting insurance; or

(2) an underwriter or selling agent (or its partners, directors, officers, members, managers, employees, agents, representatives, or advisors) in an insurance securitization as an insurance or reinsurance agent, broker, producer, intermediary, advisor, consultant, or similar insurance professional by virtue of its activities in connection with the insurance securitization.

SEC. 1211. CHARTERING AND LICENSING COMMENCEMENT DATE.

(a) NATIONAL INSURER.—The Commissioner may not charter or license a national insurer until after the following regulations have been published in final form or interim final form:

(1) The fee and assessment regulations required by section 1122.

(2) The reporting regulations required by section 1124.

(3) The organizational regulations required by section 1201.

(4) The licensing regulations required by section 1203.

(5) The participating policy procedures regulations required by section 1205.

(6) The charter conversion regulations required by section 1206.

(7) The transitional financial regulations required by section 1212.

(8) The product regulations required by section 1214.

(9) The market conduct regulations required by section 1216.

(10) The control regulations required by section 1231.

(11) The merger, consolidation, and acquisition regulations required by section 1232.

(12) The bulk transfer regulations required by section 1233.

(13) The conversion regulations required by sections 1242 and 1243.

(14) The holding company regulations required by sections 1402 and 1403.

(15) The receivership regulations required by section 1504.

(16) The insolvency protection regulations required by section 1609.

(b) NATIONAL AGENCIES.—The Commissioner may charter or license a national agency after the following regulations have been published in final form, including interim final form:

(1) The fee and assessment regulations required by section 1122.

(2) The reporting regulations required by section 1124.

(3) The organizational regulations required by section 1201.

(4) The charter conversion regulations required by section 1206.

(5) The market conduct regulations required by section 1216.

(6) The merger, consolidation, and acquisition regulations required by section 1232.

(7) The producer licensing regulations required by section 1301.

(8) The holding company regulations required by sections 1402 and 1403.

(c) TIMING AND NOTICE.—

(1) TIMING.—The regulations described in subsections (a) and (b) shall be published in final form or interim final form, not later than 2 years after the date of the initial appointment and confirmation of the Commissioner.

(2) NOTICE.—At such time as the regulations described in subsections (a) or (b) have been issued in final form or interim final form, the Commissioner shall publish a notice in the Federal Register announcing that the Office is prepared to act on chartering and licensing applications.

(3) CONSIDERING AND ACTING UPON APPLICATIONS.—Notwithstanding any challenge to the regulations described in subsections (a) and (b), the Commissioner shall have the authority to consider, and act upon, chartering and licensing applications immediately upon publication of the notice described in paragraph (2).

Subtitle B—Financial, Product, and Market Regulations

SEC. 1212. TRANSITIONAL FINANCIAL REGULATIONS.

(a) PROMULGATION OF FINANCIAL REGULATIONS THAT ARE CONSISTENT WITH NAIC STANDARDS AND MODELS.—The Commissioner shall establish, by regulation, the following:

(1) Accounting principles for a national insurer, which are consistent with the statutory accounting practices promulgated by the NAIC in its ‘‘Accounting Practices and Procedures Manual’’.

(2) Auditing standards for a national insurer, which are consistent with the guidance prescribed by the NAIC in its ‘‘Model Regulation Requiring Annual Audited Financial Reports’’.

(3) Investment standards for a national insurer, which are consistent with the ‘‘Investment of Insurers Model Act (Defined Standards Version)’’ of the NAIC, except that such investment standards shall not be bound by the provisions of the Model Act related to authorized classes of investments, class or individual investment limitations, or prohibited investments.

(4) Risk-based capital standards for a national insurer, which are consistent with the ‘‘Risk-Based Capital (RBC) for Insurers Model Act’’ and the related ‘‘RBC Instructions’’ of the NAIC and nondisclosure rules and remedies for failing to meet such standards.

(5) Valuation standards for the obligations and liabilities of a national life insurer, which are consistent with the statutory valuation practices promulgated by the NAIC in its ‘‘Accounting Practices and Procedures Manual’’.

(6) Continuing and alternative (nonforfeiture) benefits standards applicable to national life insur-

ers, which are consistent with the ‘‘Standard Nonforfeiture Law for Life Insurance, Variable Life Insurance Model Regulation, Standard Nonforfeiture Law for Individual Deferred Annuities, Long-Term Care Insurance Model Act, and Long-Term Care Insurance Model Regulation’’ of the NAIC.

(7) Standards for the preparation and filing of an annual actuarial opinion on the adequacy of the assets of a national life insurer to meet its reasonably expected obligations and liabilities, which are consistent with the ‘‘Actuarial Opinion and Memorandum Regulation’’ of the NAIC.

(8) Standards for the preparation and filing of an annual actuarial opinion on the loss and loss adjustment expense reserves of a national property/casualty insurer, which are consistent with the NAIC's ‘‘Property and Casualty Actuarial Opinion Model Law’’ and applicable ‘‘NAIC Property and Casualty Annual Statement Instructions’’.

(b) NAIC STANDARDS, MODELS, PRACTICES, AND INSTRUCTIONS.—The NAIC standards, models, practices, and instructions referred to in subsection (a) shall be the standards, models, practices, and instructions adopted by the NAIC as of May 24, 2007.

(c) EFFECTIVE DATE AND FIVE-YEAR TRANSITIONAL PERIOD FOR INITIAL FINANCIAL REGULATIONS.—The financial regulations specified in subsection (a) shall be issued in final form no later than 2 years following the initial appointment and confirmation of the Commissioner, and each regulation shall remain in effect for 5 years following the date upon which it becomes effective.

(d) NAIC AMENDMENTS.—If, after May 24, 2007, the NAIC amends any standard, model, practice, or instruction upon which the initial financial regulations are based, the Commissioner shall determine, by regulation, whether such amendment shall apply to a national insurer. If the Commissioner determines that an NAIC amendment to a standard, model, practice, or instruction should apply to a national insurer, the Commissioner may specify, by regulation, whether the amendment applies in whole or in part.

(e) REVISIONS OR MODIFICATIONS TO INITIAL FINANCIAL REGULATIONS BY COMMISSIONER.—

(1) IN GENERAL.—Subject to paragraph (2), after an initial financial regulation specified in subsection (a) has been in effect for 5 years, the Commissioner may, by regulation, revise or modify the regulation.

(2) SPECIAL CIRCUMSTANCE.—The Commissioner may, by regulation, revise or modify an initial financial regulation at any time if the Commissioner determines that any such revision or modification is necessary to protect policyholders or prevent hazardous conduct by a national insurer.

(f) ACCOUNTING PRINCIPLES.—Notwithstanding subsections (c), (d), and (e), accounting principles for a national property/casualty insurer shall be consistent with the statutory accounting practices promulgated by the NAIC for State property/casualty insurers in its ‘‘Accounting Practices and Procedures Manual’’, including any amendments thereto.

SEC. 1213. OTHER FINANCIAL REGULATIONS.

In addition to the financial regulations specified in section 1212, the Commissioner may issue other financial regulations as the Commissioner determines necessary.

SEC. 1214. PRODUCT REGULATION FOR NATIONAL LIFE INSURERS.

(a) APPLICABILITY.—This section shall apply to the insurance business of national life insurers.

(b) UNDERWRITING STANDARDS.—A national insurer may classify or underwrite risks if any decision to refuse to insure, to continue to insure, to limit the amount, extent, or kind of coverage, or to charge a different rate for the same coverage is—

(1) based on sound actuarial principles; or

(2) related to actual or reasonably anticipated experience.

(c) LAW APPLICABLE TO INSURANCE POLICIES OR OTHER PRODUCTS OF NATIONAL INSURERS.—

(1) LAW SPECIFIED BY PARTIES.—Subject to any applicable Federal law, the provisions of any insurance policy or other product of a national insurer shall be interpreted in accordance with the law of the jurisdiction specified by the parties to the insurance policy or other product if the parties have specified the law of—

(A) the jurisdiction in which the main office of the national insurer is located;

(B) the jurisdiction in which the principal place of business of the national insurer is located; or

(C) the jurisdiction in which the insurance policy or other product is delivered.

(2) DEFAULT LAW.—If the parties to an insurance policy or other product of a national insurer have not specified the jurisdiction whose law shall govern the provisions of the insurance policy or

other product, such provisions shall be interpreted in accordance with the law of the jurisdiction in which the insurance policy or other product is delivered.

(3) RULEMAKING.—The Commissioner shall establish, by regulation, choice of law rules and standards under this subsection.

(d) STANDARDS FOR POLICIES.—

(1) POLICY.—In this subsection, the term ''policy''—

(A) means a policy, contract, certificate, or other evidence of life insurance, disability income insurance, or long-term care insurance, or an annuity contract or a rider or endorsement thereto; and

(B) does not include—

(i) a funding agreement;

(ii) a reinsurance contract; or

(iii) an agreement, special rider, or endorsement relating only to the manner of distributing benefits or to the reservation of rights and benefits used at the request of the individual policyholder.

(2) RULEMAKING.—The Commissioner shall establish, by regulation, standards for policies issued by a national insurer.

(3) TYPES OF POLICY REQUIREMENTS.—The standards established under paragraph (2) may include general policy requirements and requirements regarding particular classes of policies.

(e) PRODUCT FILINGS.—

(1) FORM FILING.—A national insurer shall not issue a policy until the form of the policy has been received by the Commissioner.

(2) EXEMPTIONS.—The Commissioner may, by regulation, exempt particular categories of policies from the filing requirement.

(3) COMPLIANCE CERTIFICATE.—In accordance with regulations promulgated by the Commissioner, any filing of a policy form shall be accompanied by written certification by an officer of the national insurer that the policy form complies with the standards applicable to such form.

(f) INTERPRETIVE RULINGS.—

(1) PROCEDURES.—The Commissioner shall establish procedures by which national insurers may obtain interpretive rulings from the Office regarding the interpretation and application of the standards established under this section.

(2) PUBLIC AVAILABILITY.—Except as provided under paragraph (3), requests by national insurers

for interpretive rulings from the Office and the complete text of such interpretive rulings shall not be made available to the public.

(3) PUBLICATION OF SUMMARIES.—Notwithstanding paragraph (2), the Commissioner shall publish a summary of each interpretive opinion, excluding the name of the national insurer and any other identifying information, either promptly after the issuance of such opinion or, upon the request of the national insurer, after such delay as the Commissioner determines appropriate.

(g) GROUP, BLANKET, AND FRANCHISE INSURANCE.—

(1) AUTHORIZATION.—A national insurer may—

(A) sell, solicit, negotiate, and underwrite group, blanket, and franchise insurance policies; and

(B) extend group, blanket, or franchise insurance policies to insure the dependents of employees or members, or any class of employees or members.

(2) RULEMAKING.—The Commissioner shall, by regulation, establish standards for kinds and quali-

fications of permissible groups for group, blanket, and franchise insurance policies.

(h) INSURABLE INTEREST.—

(1) REGULATIONS REQUIRED.—The Commissioner shall, by regulation—

(A) define the term ‘‘insurable interest’’;

(B) identify what persons have an insurance interest in the health and bodily safety of an individual;

(C) establish circumstances under which an insurance policy issued with respect to an individual, other than a group insurance policy, may be effectuated, including any insured consent requirements; and

(D) establish rules for insurance policy transfers and assignments, which transactions shall be permitted for insurance policies written or sold in compliance with the regulations.

(2) LIMITATION ON APPLICABILITY.—The regulations required by paragraph (1) shall not apply to an annuity contract or a funding agreement.

(i) EFFECT OF STATE LAW.—No State may, by statute, regulation, order, interpretation, or otherwise, impose any standard, relating to any matter addressed in this section, on national insurers or persons who purchase insurance from national insurers.

SEC. 1215. PRODUCT REGULATION FOR NATIONAL PROPERTY/CASUALTY INSURERS.

(a) APPLICATION.—This section shall apply to the business of national property/casualty insurers.

(b) MAINTENANCE OF COPIES OF POLICIES.—A national insurer shall maintain for inspection a copy of every insurance policy form that it uses to insure risks.

(c) ANNUAL POLICY FORM LISTING.—A national insurer shall annually provide the Commissioner with a list of all standard policy forms it uses to insure risks.

(d) RATES, RATING ELEMENTS, PRICE, AND FORMS.—The Act does not authorize the Commissioner to require a national insurer to use any particular rate, rating element, price, or form.

SEC. 1216. REGULATION OF SALES AND MARKETING.

(a) PURPOSE.—The purpose of this section is to ensure appropriate Federal regulation of the sales and marketing practices of national insurers, national agencies, and federally licensed insurance producers to prevent unfair methods of competition and unfair and deceptive acts and practices in the advertising, sale, issuance, distribution, and administration of insurance policies and other products of national insurers, and claims under insurance, policies and other products of national insurers.

(b) RULEMAKING.—The Commissioner shall promulgate such regulations, applicable to national insurers, national agencies, and federally licensed insurance producers, as the Commissioner determines to be necessary to carry out the purpose of this section, including rules governing the advertising, sale, issuance, distribution, and administration of insurance policies and other products of national insurers and claims under insurance policies and other products of national insurers.

SEC. 1217. PROMPT CORRECTIVE ACTION.

(a) RULEMAKING.—

(1) IN GENERAL.—Not later than the expiration of the 6-month period beginning upon the date of submission of the report under subsection (b)(3) to the Commissioner, the Commissioner shall promulgate such regulations, applicable to national insurers, as the Commissioner determines appropriate and consistent with the recommendation in that report to ensure that prompt corrective action is taken to resolve any hazardous financial condition of a national insurer.

(2) AUTHORIZED CONTENT.—Rules required by this subsection may include such capital measures

and categories, capital standards, supervisory criteria, restrictions on permissible actions of such insurers, requirements for such insurers, procedures, provisions regarding conservatorship and receivership of such insurers, and other provisions as the Commissioner considers are appropriate and consistent with any recommendations in the report and the regulations issued pursuant to section 1212(a)(4).

(b) GAO STUDY AND REPORT.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study to identify an appropriate structure of procedures and requirements for taking prompt corrective actions with respect to national insurers, to ensure that any hazardous financial condition of such a national insurer is resolved effectively and efficiently, with the fewest possible losses.

(2) REQUIREMENTS.—In conducting the study required by this subsection, the Comptroller General shall analyze and evaluate various proposals, structures, methods, and systems for taking prompt corrective actions with respect to various financial entities and institutions, including—

(A) the prompt corrective action requirements under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) with respect to insured depository institutions; and

(B) the "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition" of the NAIC, as updated in 2006.

(3) REPORT.—

(A) IN GENERAL.—Not later than the expiration of the 6-month period beginning on the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Commissioner, regarding the study required under this subsection.

(B) CONTENTS.—The report required under this paragraph shall describe the study and the results of the evaluations conducted under the study, and shall include a specific recommendation to the Commissioner for establishment of an appropriate structure of procedures 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-

mation submitted by the applicant and may conduct further examinations and investigations, as necessary, to determine whether the applicant satisfies the standards for a license under this section.

(2) PUBLICATION OF FINDINGS.—The Commissioner shall publish the Commissioner's findings and determination under paragraph (1).

(3) ISSUANCE OF FEDERAL LICENSE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if the Commissioner determines that the applicant has satisfied the applicable requirements of this section, the Commissioner shall issue a Federal license to provide reinsurance.

(B) RESTRICTION.—The Commissioner shall not issue a Federal license for reinsurance until after the Commissioner is authorized to charter and license a National Insurer pursuant to section 1211.

(c) MINIMUM STANDARDS FOR LICENSING OF NON-UNITED STATES INSURERS.—The Commissioner shall not issue a license under this section to any insurer that is not a State insurer or a United States branch of a non-United States insurer unless the insurer agrees to—

(1) report its financial statements to the Commissioner on a basis that the Commissioner determines to be substantially similar to that required of National Insurers under section 1124;

(2) submit to the jurisdiction of Federal, State, and local courts in the United States; and

(3) demonstrate that all judgments of all United States courts would be enforceable and collectible by—

(A) being organized or incorporated in a jurisdiction with which the United States has entered into a treaty on the recognition and enforcement of judgments rendered by Federal, State, and local courts in the United States; or

(B) agreeing to post prejudgment security in the United States upon the commencement of any litigation or arbitration in the United States, subject to such regulations as the Commissioner may prescribe.

(d) REVOCATION OF LICENSE.—

(1) IN GENERAL.—The Commissioner may revoke, suspend, or restrict a Federal reinsurer's license in accordance with subtitle C of title I.

(2) STATUS OF FEDERALLY LICENSED REINSURER.—For purposes of this subsection, a federally

licensed reinsurer shall be deemed to be a National Insurer under subtitle C of title I.

(e) ANNUAL REPORTS.—The Commissioner shall require each reinsurer licensed under this section to submit an annual report of its financial condition and an annual report on the condition of any trust fund regulated under this subtitle in such form as may be prescribed by the Commissioner.

SEC. 1222. CREDIT FOR INSURANCE CEDED BY A NATIONAL INSURER OR FEDERALLY LICENSED REINSURER.

(a) CREDIT FOR INSURANCE CEDED TO A NATIONAL INSURER OR A FEDERALLY LICENSED REINSURER.—A national insurer may establish an asset or reduce its liabilities, to the extent of such liabilities, for insurance ceded to another national insurer or federally licensed reinsurer.

(b) OTHER ASSET OR REDUCTION FROM LIABILITY FOR INSURANCE CEDED.—A national insurer may establish an asset or reduce its liabilities, to the extent of such liabilities, for insurance—

(1) that is ceded to—

(A) a State insurer;

(B) a United States branch entered through a State; or

(C) a non-United States insurer; and

(2) if such insurance is ceded consistent with the standards established by the Commissioner pursuant to subsection (c).

(c) REGULATION.—The Commissioner shall establish, by regulation, standards governing insurance ceded by a national insurer, as the Commissioner may determine to be necessary to protect the policyholders of a national insurer.

SEC. 1223. RELATIONSHIP TO STATE LAW.

(a) DOMICILIARY STATE DISCRIMINATION PROHIBITED.—Except as provided in section 1224(b), no State may, by statute, regulation, order, interpretation, or otherwise, prevent or interfere with a State insurer domiciled in such State or a United States branch entered through such State from establishing an asset or reducing its liability as a result of insurance ceded to a national insurer or a federally licensed reinsurer, to the same extent as the State would allow such insurer, if the insurance were ceded to another State insurer domiciled in such State.

(b) NON-DOMICILIARY ACTION PROHIBITED.—No State may, by statute, regulation, order, interpretation, or otherwise, prevent or interfere with a State insurer not domiciled in that State or a United States branch entered through another State from establishing an asset or reducing its liability as a result of insurance ceded to a national insurer or a federally licensed reinsurer, if the domicile of the ceding insurer allows such asset or reduction.

SEC. 1224. FREEDOM OF COMMERCIAL CONTRACT.

(a) PROHIBITION.—Except as provided in subsection (b), a State may not—

(1) deny a State insurer or a United States branch entered through a State all or part of any asset, or require any increase in liability for insurance ceded to any national insurer or federally licensed reinsurer because its reinsurance contract contains, or does not contain, 1 or more specific contract terms; or

(2) otherwise require specific language or terms in any reinsurance contract.

(b) CONSTRUCTION.—Notwithstanding subsection (a), a State may require a State insurer domiciled in such State or a United States branch entered through that State to use contract terms that are substantially equivalent to those required under section 1222(c).

SEC. 1225. REVIEW BY THE COMMISSIONER.

(a) REVIEW.—The Commissioner shall review any State action taken pursuant to subsection (b) of section 1224 to determine if the State action meets the standards set forth in that subsection.

(b) STANDARDS OF REVIEW.—Any State action taken pursuant to section 1224(b) shall meet the standards of this section, if—

(1) it is closely based on standards established by the Commissioner pursuant to section 1222(c);

(2) it is made in consultation with the Commissioner;

(3) it serves a legitimate State interest; and

(4) it does not frustrate the subject reinsurance contract.

(c) NOTICE OF FAILURE; EFFECT OF FAILURE.—If the Commissioner finds that any State action taken pursuant to subsection (b) of section 1224 fails to meet any of the standards set forth in that subsection, the Commissioner shall provide the applicable State and State insurer with notice of, and reasons for, such failure, and such State action shall be deemed to be subject to section 1224(a), notwithstanding the terms of section 1224(b).

(d) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority conferred under this section with respect to review by the Commissioner of any State action taken pursuant to section 1224(b).

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

SEC. 1231. ACQUISITION OF CONTROL OF NATIONAL INSURERS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''national insurer'' includes any person controlling a national insurer; and

(2) the term ''person'' does not include any securities broker holding, in the usual and customary functions of the broker, less than 20 percent of the voting securities of a national insurer or of any person who controls a national insurer.

(b) COMMISSIONER APPROVAL REQUIRED.—

(1) IN GENERAL.—No person, other than the issuer, shall make a tender offer for, make a request or invitation for tenders of, or enter into any agreement to exchange securities for, or acquire, in the open market or otherwise, any voting security of a national insurer if, after the consummation of such transaction, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the national insurer. No person shall enter into an agreement to merge with or otherwise acquire control of a national insurer or

any person controlling a national insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved—

(A) such person has filed with the Commissioner and has sent to the national insurer, a statement that complies with the regulations prescribed under paragraph (3); and

(B) the offer, request, invitation, agreement, or acquisition has been approved by the Commissioner.

(2) SAVINGS PROVISION.—Nothing in this subsection shall be construed to prohibit a person from making an offer, request, or invitation or entering into an agreement to acquire control of a national insurer, if such transaction is conditioned upon obtaining the approval of the Commissioner in accordance with paragraph (1).

(3) FORM AND CONTENT OF STATEMENT.—The Commissioner shall, by regulation, prescribe the form and content of the statement to be filed under paragraph (1)(A).

(4) APPROVAL BY COMMISSIONER.—The Commissioner 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

(E) the acquisition is likely to be hazardous to the insurance-buying public.

(c) HEARING.—

(1) IN GENERAL.—The Commissioner may, in his sole discretion, hold a hearing on a merger or other acquisition of control that is subject to this section and for which a statement has been filed under subsection (b)(1)(A).

(2) PROCEDURES.—A hearing under this subsection shall be subject to the procedures under section 1148, except that the Commissioner may determine the location of such hearing.

(d) EXEMPTIONS.—The provisions of this section shall not apply to—

(1) any offer, request, invitation, agreement, or acquisition exempted by the Commissioner for not having been made or entered into for the purpose, and not having the effect, of changing or influencing the control of a national insurer, or as otherwise not comprehended within the purposes of this section; or

(2) a merger, consolidation, or acquisition subject to section 1232.

(e) VOTING OF SECURITIES.—

(1) PROHIBITION.—No security which is the subject of any agreement or arrangement regarding

acquisition, or which is acquired or to be acquired, in contravention of the provisions of this section may be voted at any shareholder meeting, or may be counted for quorum purposes.

(2) EFFECT ON SHARES.—Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities described under paragraph (1) were not issued and outstanding.

(3) INVALIDATION OF ACTION.—No action taken at any meeting described under paragraph (1) shall be invalidated by the voting of the securities, unless—

(A) the action would affect control of the national insurer; or

(B) such invalidation is ordered by a court.

(4) ACQUISITION IN CONTRAVENTION OF THIS ACT.—If a national insurer or the Commissioner has reason to believe that any security of the national insurer has been or is about to be acquired in contravention of the provisions of this section, the national insurer or the Commissioner may apply to the United States district court for the judicial district in which the main office of the national insurer is

located or the United States District Court for the District of Columbia—

(A) to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of this section;

(B) to enjoin the voting of any security so acquired;

(C) to void any vote of the security already cast at any meeting of shareholders; and

(D) for such other equitable relief as the nature of the case and the interest of the national insurer's policyholders, the creditors and shareholders of the national insurer or the public may require.

(f) SEQUESTRATION OF VOTING SECURITIES.—

(1) IN GENERAL.—If a person has acquired or is proposing to acquire any voting securities in violation of this section, the national insurer or the Commissioner may request the United States district court for the judicial district in which the main office of the national insurer is located or the United States District Court for the District of Columbia to—

(A) seize or sequester any voting securities of the national insurer owned directly or indirectly by the person; and

(B) issue such order as may be appropriate to carry out the provisions of this section.

(2) SITUS OF OWNERSHIP.—Notwithstanding any other provision of law, for the purposes of this section, the situs of ownership of the securities of a national insurer shall be deemed to be the State in which the main office of the national insurer is located.

(g) CONFLICT WITH OTHER FEDERAL LAWS.—This section shall be interpreted and applied so as not to conflict with or supersede the provisions of any other Federal law or regulation governing the regulation of holding companies, including financial holding companies (as defined in section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p))).

(h) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority conferred under this section with respect to any merger or other acquisition of control of a national insurer.

SEC. 1232. MERGERS, CONSOLIDATIONS, AND ACQUISITIONS OF NATIONAL INSURERS.

(a) NATIONAL INSURER AS RESULTING INSURER.—

(1) IN GENERAL.—Notwithstanding any other provision of law, except as provided under subsection (e), a national insurer may, with the approval of the Commissioner, merge, consolidate with, acquire all or substantially all the assets of, or assume all or substantially all the liabilities of, another national insurer or a State insurer in a transaction in which a national insurer is the resulting insurer, the acquiring insurer, or the assuming insurer, regardless of whether the insurers involved in the transaction are in stock form, mutual form, or fraternal form.

(2) MERGER, CONSOLIDATION, AND ACQUISITION PROCEDURES.—The Commissioner shall establish, by regulation, procedures for—

(A) the merger or consolidation of a national insurer with another national insurer or a State insurer in a transaction in which a national insurer is the resulting insurer; and

(B) the acquisition or assumption by a national insurer of all or substantially all the assets or liabilities of another national insurer or a State insurer in a transaction in which the national insurer is the acquiring insurer or assuming insurer.

(3) EFFECT OF MERGER OR CONSOLIDATION.—Upon the merger or consolidation of a national insurer with another national insurer or a State insurer under this section—

(A) the corporate existence of each of the merging or consolidating insurers shall be merged or consolidated into the resulting insurer, and the resulting insurer shall be deemed to be the same corporation as each insurer participating in the merger or consolidation;

(B) except as provided under subparagraph (D), the resulting insurer shall hold and be subject to all rights, privileges, liabilities, property interests, and other interests and obligations that each insurer participating in the merger or consolidation held or was subject to immediately prior to the merger or consolidation;

(C) the resulting insurer shall obtain, in accordance with section 1203, a Federal license for all lines of insurance that it sells, solicits, negotiates, or underwrites, except for those lines of insurance for which a national insurer participating in the merger or consolidation held a Federal license immediately before the merger or consolidation; and

(D) the resulting insurer shall not hold any State license to sell, solicit, negotiate, or underwrite insurance that was held by a State insurer participating in the merger or consolidation.

(4) SPECIAL AUTHORITY.—The Commissioner may, subject to such conditions as the Commissioner shall prescribe, permit a national insurer resulting from a merger or consolidation under this section to retain, hold, or exercise such assets, liabilities, powers, and authorities that do not conform to the legal requirements applicable to national insurers, as the Commissioner determines appropriate.

(b) STATE INSURER AS RESULTING INSURER.—

(1) IN GENERAL.—Subject to applicable State law and such notification procedures as the Commissioner shall prescribe by regulation, a State insurer may merge with, consolidate with, acquire assets of, or assume liabilities of, a national insurer in a transaction in which a State insurer is the resulting insurer.

(2) SAVINGS PROVISION.—Nothing in this subsection or in a transaction under this subsection shall abrogate any rights, privileges, liabilities, property interests, or other interests or obligations that the national insurer held or was subject to immediately before the transaction.

(c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the liabilities of a national insurer are assumed by another national insurer or a State insurer in accordance with this Act, the national insurer shall be released from all such liabilities upon their assumption by the other national insurer or a State insurer.

(d) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority conferred under this section with respect to any merger, consolidation, acquisition of assets, or assumption of liabilities involving a national insurer.

(e) COORDINATION.—This section shall not apply to any bulk transfer (as defined in section 1233(a)(2)) that is subject to approval of the Commissioner in accordance with section 1233(b).

SEC. 1233. BULK TRANSFERS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASSUMING INSURER.—The term ‘‘assuming insurer’’ means the insurer that purchases or otherwise acquires existing insurance policies from another insurer by bulk transfer.

(2) BLOCK OF BUSINESS.—The term ‘‘block of business’’ means all those insurance policies of an insurer under a particular policy form.

(3) BULK TRANSFER.—The term ‘‘bulk transfer’’—

(A) means the transfer by an insurer to another insurer of existing insurance policies constituting all or substantially all of 1 or more of its lines of business or blocks of business; and

(B) does not include—

(i) any sale in which the transferring insurer retains direct or indirect control of the assets supporting the transferred insurance policies;

(ii) any transaction effected by an agreement under which the transferring insurer continues to remain directly liable to the policyholders under the insurance policies;

(iii) the substitution of 1 insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new policy of insurance by that insurer;

(iv) the transfer of policies of insurance pursuant to merger or consolidation of 2 or more insurers to the extent that those transactions are regulated by statute;

(v) any transaction effected by an insurer subject to a judicial order of receivership, liquidation, or rehabilitation; or

(vi) any transfer of liabilities from 1 insurer to another under a single group insurance policy upon the request of the group policyholder.

(4) PERMITTED NATIONAL INSURER.—The term ''permitted national insurer'' means—

(A) a State insurer that is converting to a national insurer under section 1206; or

(B) a national insurer that is being newly chartered under section 1201 and licensed under section 1203.

(5) TRANSFERRED INSURANCE POLICIES.—The term ''transferred insurance policies'' means the insurance policies that are subject to the bulk transfer.

(6) TRANSFERRING INSURER.—The term ''transferring insurer'' means the insurer in privity of contract with the policyholders under the existing insurance policies that are subject to the bulk transfer.

(b) BULK TRANSFERS AUTHORIZED.—The following bulk transfers are authorized:

(1) A State insurer as the transferring insurer and a permitted national insurer as the assuming insurer.

(2) A permitted national insurer as the transferring insurer and a State insurer as the assuming insurer.

(3) A national insurer as the transferring insurer and a national insurer as the assuming insurer.

(4) A State insurer as the transferring insurer and a national insurer that is not a permitted national insurer as the assuming insurer.

(5) A national insurer that is not a permitted national insurer as the transferring insurer and a State insurer as the assuming insurer.

(c) COMMISSIONER APPROVAL.—

(1) IN GENERAL.—A national insurer shall not effect a bulk transfer as either the transferring insurer or the assuming insurer as authorized under paragraph (1), (2), (3), or (5) of subsection (b) without the prior approval of the Commissioner, in accordance with such regulations as the Commissioner shall prescribe.

(2) STANDARD OF APPROVAL.—The Commissioner shall approve a bulk transfer under paragraph (1), after notice and a hearing, unless the Commissioner determines that the bulk transfer is likely to be hazardous to policyholders of transferred insurance policies, policyholders of the transferring insurer, or policyholders of the assuming insurer.

(d) POLICYHOLDER CONSENT.—

(1) NO CONSENT REQUIRED.—Notwithstanding any other provision of law, a national insurer may, upon the approval of the Commissioner, effect a bulk transfer under paragraph (1) or (2) of subsection (b), as either the transferring insurer or the assuming insurer, without obtaining policyholder consent.

(2) BETWEEN NATIONAL INSURERS.—Notwithstanding any other provision of law, a national insurer may, upon the approval of the Commissioner,

effect a bulk transfer under subsection (b)(3) as either the transferring insurer or the assuming insurer, in accordance with the requirements prescribed by the Commissioner. Such requirements shall specify whether policyholder consent to such a bulk transfer is required and, if policyholder consent is required, the form in which such consent is required to be given.

(3) ADDITIONAL PROVISIONS.—In addition to any policyholder consent required by any other applicable provision of law, the Commissioner may prescribe, by regulation, whether policyholder consent is required for a bulk transfer authorized under subsection (b)(5) and, if policyholder consent is required, the form in which such consent is required to be given.

(e) RELEASE FROM LIABILITY.—Upon the completion of a bulk transfer under this section, the transferring insurer shall be released from its obligations under the transferred insurance policies.

(f) STATE LAW.—

(1) PROHIBITION.—Except as provided in paragraph (2), a State may not, by statute, regulation, order, interpretation, or otherwise—

(A) require a national insurer, a permitted national insurer, or a State insurer to—

(i) obtain policyholder consent to a bulk transfer; or

(ii) submit the bulk transfer to State review or action (including approval and nondisapproval); or

(B) prevent or significantly interfere with a bulk transfer effected pursuant to this section.

(2) CONSTRUCTION.—Paragraph (1) shall not be construed to prohibit any State from—

(A) collecting, reviewing, and taking action (including approval or disapproval) on applications and other documents or reports concerning a proposed bulk transfer permitted under—

(i) paragraph (2), (4), or (5) of subsection (b) to which a State insurer (other than a permitted national insurer) domiciled in that State is a party; or

(ii) paragraph (4) or (5) of subsection (b) to which a State insurer (other than a permitted national insurer), other than a State insurer domiciled in that State, is a party, if the review or action meets the standards set forth in paragraph (3); or

(B) requiring policyholder consent of a proposed bulk transfer permitted under paragraph (4) or (5) of subsection (b).

(3) STANDARDS.—A review or action meets the standards under this paragraph, if it—

(A) is based on standards that are not more onerous than those imposed by the Commissioner;

(B) occurs within a reasonable time frame that advances the purposes of this section;

(C) is made in close consultation and cooperation with the Commissioner;

(D) is without bias or discrimination toward either the transferring insurer or the assuming insurer;

(E) serves a legitimate State interest; and

(F) does not frustrate the proposed bulk transfer.

(4) NOTICE OF FAILURE.—If the Commissioner finds that any State review or action under paragraph (2)(A) fails to meet any of the standards set forth in paragraph (3), the Commissioner may pro-

vide the applicable State with notice of such failure and the reasons for such failure.

(g) DIFFERENTIAL TREATMENT PROHIBITED.—A State may not, by statute, regulation, order, interpretation, or otherwise, treat a national insurer, a permitted national insurer, or a State insurer entering into a bulk transfer agreement with a national insurer, a permitted national insurer, a State insurer, or any affiliate or subsidiary of such insurer, differently than any other insurer operating in that State.

(h) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority conferred under this section with respect to any bulk transfer involving a national insurer.

SEC. 1234. DOMESTICATION OF UNITED STATES BRANCH OF A NON-UNITED STATES INSURER.

(a) DOMESTICATION PERMITTED.—Notwithstanding any other provision of law, any non-United States insurer having its United States branch entered through a State or established pursuant to section 1202, and owning beneficially, directly or indirectly, all outstanding shares of a national insurer may, upon the written approval by the Commissioner, domesticate its United States branch by agreeing in writing with such national insurer to the acquisition of the business and assets, and the assumption of all liabilities, of the United States branch, by the national insurer for no consideration except such assumption.

(b) APPROVAL BY COMMISSIONER.—If the Commissioner determines that the domestication of a United States branch of a non-United States insurer complies with the provisions of this section and that the interests of policyholders and creditors of the United States branch are not materially affected in an adverse manner by such domestication, the Commissioner may approve the domestication in accordance with this section.

(c) EFFECTIVE DATE OF DOMESTICATION.—

(1) IN GENERAL.—The domestication of the United States branch shall be effective on the date on which a certified copy of the instrument of transfer and assumption is filed with the Commissioner.

(2) EFFECT OF DOMESTICATION.—On the date described in paragraph (1)—

(A) all rights, franchises, and interests of such United States branch in and to every species of property, real, personal, and mixed, and things in action belonging to such branch, shall be deemed transferred to and vested in the acquiring national insurer;

(B) the acquiring national insurer shall be deemed to have assumed all liabilities of the United States branch;

(C) all deposits of the United States branch held by State officers or other State regulatory agencies under State law shall be released; and

(D) the non-United States insurer and the United States branch shall be released from all liabilities so assumed.

(d) RELEASE OF DEPOSITS.—At the time of the domestication of a United States branch under this section, the Commissioner shall—

(1) transfer to the account of the acquiring national insurer the securities deposited by such United States branch in compliance with the provisions of this Act; and

(2) consent that the trustee of the trusteed assets deposited by such United States branch in compliance with the provisions of this Act shall withdraw from the trust and transfer and deliver to the acquiring national insurer all assets held by such trustee.

(e) WITHDRAWAL AND TRANSFER OF TRUSTEED ASSETS.—

(1) In general.—At the time of the domestication of a United States branch established under State law, the trustee of any trusteed assets deposited by such United States branch in compliance with applicable State law shall, with the consent of the Commissioner—

(A) withdraw the trusteed assets from the trust; and

(B) transfer and deliver to the acquiring national insurer all assets held by such trustee.

(2) Limitation.—No State may, by statute, regulation, order, interpretation, or otherwise, prevent, significantly interfere with, review, approve, or disapprove the withdrawal of trusteed assets or other deposits of a United States branch established under State law that is domesticated pursuant to this section, if such withdrawal is made contemporaneously with or subsequent to the consummation of a domestication of the United States branch under this section.

(f) No Delegation Permitted.—The Commissioner may not delegate to any insurance self-regulatory organization any authority under this section with respect to the domestication of a United States branch of a non-United States insurer.

SEC. 1235. MERGERS, CONSOLIDATIONS, AND ACQUISITIONS OF NATIONAL AGENCIES.

(a) NATIONAL AGENCY RESULTING.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a national agency may, with the approval of the Commissioner, merge, consolidate with, acquire all or substantially all the assets of, or assume all or substantially all the liabilities of, another national agency or a State insurance agency in a transaction in which a national agency is the resulting agency, the acquiring agency, or the assuming agency.

(2) MERGER, CONSOLIDATION, AND ACQUISITION PROCEDURES.—The Commissioner is authorized, under such regulations as the Commissioner may prescribe, to provide for—

(A) the merger or consolidation of a national agency with another national agency or a State insurance agency in a transaction in which a national agency is the resulting agency; and

(B) the acquisition or assumption by a national agency of all or substantially all the assets or all or substantially all the liabilities of another national agency or a State insurance agency in a transaction in which the national agency is the acquiring or assuming agency.

(3) EFFECT OF MERGER OR CONSOLIDATION.—Upon the merger or consolidation of a national agency with another national agency or a State insurance agency under this section—

(A) the corporate existence of each of the merging or consolidating agencies shall be merged or consolidated into the resulting agency, and the resulting agency shall be deemed to be the same corporation as each agency participating in the merger or consolidation; and

(B) except as provided under paragraph (4), the resulting agency shall have all the rights, privileges, liabilities, property interests, and other interests and obligations that each agency participating in the merger or consolidation had immediately before the merger or consolidation.

(4) LIMITATION.—Upon a merger or consolidation under this subsection, the resulting agency—

(A) shall not hold any State license to sell, solicit, or negotiate insurance that was held by a State agency participating in the merger or consolidation; and

(B) shall obtain, in accordance with section 1301, appropriate licenses for all lines of insurance that it sells, solicits, or negotiates except for those lines of insurance for which a national agency participating in the merger or consolidation held a Federal producer's license immediately before the merger or consolidation.

(5) SPECIAL AUTHORITY.—The Commissioner may, subject to such regulations as the Commissioner may prescribe, permit a national agency resulting from a merger or consolidation under this subsection to retain, hold, or exercise such assets, liabilities, powers, and authorities that do not conform to the legal requirements applicable to national agencies as the Commissioner determines to be appropriate.

(b) STATE INSURANCE AGENCY RESULTING.—

(1) IN GENERAL.—Subject to such notification procedures as the Commissioner may prescribe by regulation, a State insurance agency may merge, consolidate with, acquire assets of, or assume liabilities of, a national agency in a transaction in which a State insurance agency is the resulting agency, in accordance with applicable State law.

(2) SAVINGS PROVISION.—Nothing in this subsection or in a transaction pursuant to this subsection shall abrogate any rights, privileges, liabilities, property interests, other interests, or obligations that the national agency had immediately before the transaction.

(c) EFFECT OF ASSUMPTION OF LIABILITIES.—If the liabilities of a national agency are assumed by another national agency or a State insurance agency in accordance with the provisions of this Act, such national agency from whom the liabilities are assumed shall be released from all liabilities so assumed upon their assumption by the other national agency or a State insurance agency.

(d) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority conferred under this section with respect to any merger, consolidation, or acquisition of assets or assumption of liabilities involving a national agency.

Subtitle E—Conversions

SEC. 1241. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) ADOPTION DATE.—The term ‘‘adoption date’’ means the date on which the board of direc-

tors of the converting mutual insurer or converting stock insurer adopts the plan of conversion.

(2) CONVERTED MUTUAL INSURER.—The term "converted mutual insurer" means the national life insurer in mutual form into which a stock life insurer has been converted in accordance with the provisions of section 1242.

(3) CONVERTED STOCK INSURER.—The term "converted stock insurer" means the national insurer in stock form into which a mutual insurer has been converted in accordance with the provisions of section 1243.

(4) CONVERTING MUTUAL INSURER.—The term "converting mutual insurer" means the mutual insurer that is converting under a plan of conversion under section 1243.

(5) CONVERTING STOCK INSURER.—The term "converting stock insurer" means the stock life insurer that is converting under a plan of conversion under section 1242.

(6) MEMBERSHIP INTERESTS.—The term "membership interests"—

(A) means the interests of members and policyholders of the mutual insurer arising under the charter and bylaws of the mutual insurer or otherwise by applicable law;

(B) includes the right to vote for directors of the mutual insurer and the right to vote on any plan of merger or consolidation of the mutual insurer; and

(C) does not include rights in surplus, if any.

(7) MUTUAL INSURER.—The term ‘‘mutual insurer’’ means the State insurer in mutual form or national insurer in mutual form that is converting to a national insurer in stock form pursuant to a plan of conversion adopted in accordance with section 1243.

(8) PLAN OF CONVERSION OR PLAN.—The terms ‘‘plan of conversion’’ and ‘‘plan’’ mean a plan of conversion adopted by a stock life insurer or a mutual insurer in accordance with this subtitle.

(9) RIGHTS IN SURPLUS.—The term ‘‘rights in surplus’’—

(A) means rights, if any, of members or policyholders of the mutual insurer to a return of that portion of the surplus that has not been apportioned or declared by the board of directors for policyholder dividends;

(B) includes rights of members or policyholders of the mutual insurer to a distribution of surplus in liquidation or conservation of the insurer under applicable law, or in a dissolution or winding up; and

(C) does not include any right expressly conferred solely by the terms of an insurance policy.

(10) STOCK LIFE INSURER.—The term ''stock life insurer'' means the State life insurer in stock form or national life insurer in stock form that is converting to a national life insurer in mutual form pursuant to a plan of conversion adopted in accordance with section 1242.

SEC. 1242. CONVERSION OF STOCK LIFE INSURER TO NATIONAL LIFE INSURER IN MUTUAL FORM.

(a) AUTHORITY TO CONVERT.—Notwithstanding any other provision of law, a stock life insurer may convert to a national insurer in mutual form in accordance with a plan of conversion approved by the Commissioner under this section that meets the requirements of this section, and by complying with the requirements of this section and rules issued by the Commissioner under this Act.

(b) PLAN OF CONVERSION.—

(1) IN GENERAL.—The plan of conversion required by this section—

(A) shall be adopted by the board of directors of the converting stock insurer; and

(B) shall provide for the conversion of the converting stock insurer into a national life insurer in mutual form.

(2) ISSUANCE OF STOCK AFTER ADOPTION DATE.—No additional shares of capital stock shall be issued after the adoption date, except that—

(A) stock options to purchase capital stock may continue to be issued under existing contracts; and

(B) outstanding options may continue to be exercised until the effective date of the plan of conversion.

(3) CONTENTS.—The plan of conversion shall provide for—

(A) the purchase by the converting stock insurer of all of its outstanding capital stock, at a price either specified in the plan or to be determined under a formula specified in the plan, for cash or other consideration as set forth in the plan; and

(B) the termination, upon terms specified in the plan, of any contractual obligation inconsistent with the nature of a mutual insurer, including any obligation to issue stock options or issue capital stock upon exercise of options.

(c) APPROVAL OF PLAN BY COMMISSIONER.—The Commissioner shall approve the plan of conversion required by this section, if the Commissioner finds, after a hearing, that—

(1) the plan is fair and equitable to the policyholders, shareholders, and holders of options to acquire capital stock of the converting stock insurer;

(2) the plan does not violate the law; and

(3) the converted mutual insurer will, after the conversion, satisfy the requirements for the issuance of a license to write the lines of insurance for which it is licensed.

(d) VOTE ON APPROVAL OF PLAN.—

(1) STOCKHOLDERS.—The plan of conversion shall be submitted to the holders of record on the adoption date of the converting stock insurer's shares entitled to vote thereon and shall be subject to approval of the holders of a majority of such shares.

(2) POLICYHOLDERS.—

(A) SUBMISSION.—The plan of conversion shall be submitted to policyholders of the converting stock insurer—

(i) who are insured for at least $1,000; and

(ii) whose policy of insurance is in force—

(I) for a period of at least 1 year before the adoption date;

(II) on the adoption date; and

(III) on the date of the meeting of policyholders called for the purpose of approving the plan of conversion.

(B) APPROVAL.—The plan of conversion shall be subject to the approval of a majority of the votes cast by the policyholders described in subparagraph (A).

(e) EFFECT OF CONVERSION ON CONVERTED MUTUAL INSURERS.—

(1) IN GENERAL.—On the effective date of the plan of conversion, the stock insurer shall become a national life insurer in mutual form and shareholders eligible to receive consideration under the plan of conversion are entitled to receive the consideration specified in the plan in exchange for their

shares of capital stock of the converting stock insurer.

(2) NO EFFECT ON EXISTING RIGHTS AND LIABILITIES.—The converted mutual insurer is a continuation of the original stock life insurer, and the conversion shall not annul, modify, or change any of the original stock life insurer's existing suits, rights, contracts, or liabilities, except as provided in the plan of conversion.

(3) RIGHTS AFTER CONVERSION.—After conversion, the converted mutual insurer shall—

(A) exercise all the rights and powers and perform all the duties conferred or imposed by law upon insurers writing the classes of insurance written by the converted mutual insurer; and

(B) retain the rights and contracts existing prior to conversion, subject to the effect of the plan.

(f) TIME LIMITS FOR PLAN ACTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, actions concerning any plan of conversion or proposed plan of conversion under this section or any acts taken or proposed to be taken under this section shall be commenced not later than

30 days after the date on which the plan of conversion is approved by the Commissioner under subsection (c).

(2) PLAN WITHDRAWN.—If the plan of conversion is withdrawn, the actions described in paragraph (1) shall be commenced not later than 30 days after the date on which the board of directors approves a resolution to withdraw the plan.

(g) EFFECT ON STATE LAW.—No State may, by statute, regulation, order, interpretation, or otherwise, prevent or interfere with a conversion under this section or impede the activities of, take any action against, or apply any provision of law or regulation to, any such stock life insurer because the stock life insurer plans to convert, or has converted, to a national life insurer in mutual form under this section.

(h) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority under this section with respect to the conversion of a stock life insurer.

SEC. 1243. CONVERSION OF MUTUAL INSURER TO NATIONAL INSURER IN STOCK FORM.

(a) AUTHORITY TO CONVERT.—Notwithstanding any other provision of law, a mutual insurer may convert to a national insurer in stock form in accordance with a plan of conversion approved by the Commissioner under this section that meets the requirements of this section, and by complying with the requirements of this section and the rules issued by the Commissioner under this Act.

(b) PLAN OF CONVERSION.—

(1) IN GENERAL.—The plan of conversion—

(A) shall be adopted by the board of directors of the converting mutual insurer;

(B) shall provide for the conversion of the converting mutual insurer into a national insurer in stock form; and

(C) may provide for effecting the conversion by merger of the mutual insurer with another company.

(2) CONTENTS.—The plan of conversion shall provide that—

(A) all membership interests and rights in surplus are extinguished;

(B) each eligible person will receive, without payment by the person, consideration that is allocated among the eligible persons using a fair and equitable formula; and

(C) eligible persons may receive 1 or more kinds of consideration, including—

(i) cash;

(ii) shares of capital stock of the converting mutual insurer;

(iii) shares of capital stock (or interests in shares of capital stock) of a corporation that, after the conversion, directly or indirectly, controls the converted stock insurer;

(iv) premium credits;

(v) enhanced insurance benefits; or

(vi) in the case of a converting mutual insurer that is a life insurer, credits to insurance policy account values, as set forth in the plan.

(c) APPROVAL OF PLAN BY COMMISSIONER.—The Commissioner shall approve the plan of conversion required by this section, if the Commissioner finds, after a hearing, that—

(1) the plan is fair and equitable to the insurer and its policyholders;

(2) the plan does not violate the law; and

(3) the converted stock insurer will, after the conversion, satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is licensed.

(d) VOTE ON APPROVAL OF PLAN.—The plan of conversion shall be submitted to those persons who are eligible to vote on the plan and shall be subject to approval of a majority of the votes cast by such persons.

(e) EMPLOYEE STOCK PURCHASES; STOCK OPTIONS.—Subject to regulations prescribed by the Commissioner, the converted insurer or a corporation that, after the conversion, directly or indirectly, controls the converted insurer, may establish stock option, incentive, and share ownership plans customary for publicly traded companies in the same and similar industries.

(f) EFFECT OF CONVERSION ON CONVERTED STOCK INSURERS.—

(1) IN GENERAL.—On the effective date of the plan of conversion—

(A) the mutual insurer shall become a national insurer in stock form;

(B) all membership interests and rights in surplus shall be extinguished; and

(C) persons eligible to receive consideration under the plan of conversion shall be entitled to receive the consideration specified in the plan in exchange for membership interests and liquidation of rights in surplus.

(2) NO EFFECT ON EXISTING RIGHTS AND LIABILITIES.—The converted stock insurer is a continuation of the original mutual insurer, and the conversion shall not annul, modify, or change any of the original mutual insurer's existing suits, rights, contracts, or liabilities, except as provided in the plan of conversion.

(3) RIGHTS AFTER CONVERSION.—After conversion, the converted stock insurer shall—

(A) exercise all the rights and powers and perform all the duties conferred or imposed by law upon insurers writing the classes of insurance written by the converted stock insurer; and

(B) retain the rights and contracts existing prior to conversion, subject to the effect of the plan.

(g) LIMITATIONS ON ACQUIRING CONVERTED STOCK INSURER.—

(1) IN GENERAL.—During the 5-year period beginning on the effective date of the plan of conversion, no person or group of persons acting in concert shall directly or indirectly offer to acquire, or acquire in any manner, the beneficial ownership of 5 percent or more of any class of voting securities of

a converted insurer or of a person that controls the converted insurer, without the prior consent of the Commissioner.

(2) EFFECT OF VIOLATION.—Upon the violation of paragraph (1), or any action that, if consummated, would constitute such a violation, all voting securities of the converted insurer or of the person acquired by any person in excess of the maximum amount permitted to be acquired by the person under paragraph (1) shall be deemed to be nonvoting securities of the converted stock insurer or of that person.

(3) ENFORCEMENT.—

(A) COMMENCEMENT.—A violation or action described in paragraph (1) may be enforced or enjoined by appropriate proceeding commenced by the converted stock insurer or the Commissioner in—

(i) the United States district court for the judicial district in which the main office of the converted stock insurer is located;

(ii) the United States District Court for the District of Columbia; or

(iii) any other court having jurisdiction.

(B) ORDER.—The court may issue any order it finds necessary to cure the violation or to prevent the proposed action.

(h) TIME LIMITS FOR PLAN ACTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, actions concerning any plan of conversion or proposed plan of conversion under this section or any acts taken or proposed to be taken under this section shall be commenced not later than 30 days after the date on which the plan of conversion is approved by the Commissioner under subsection (c).

(2) PLAN WITHDRAWN.—If the plan of conversion is withdrawn, the actions shall be commenced not later than 30 days after the date on which the board of directors approves a resolution to withdraw the plan.

(i) EFFECT ON STATE LAW.—No State may, by statute, regulation, order, interpretation, or otherwise, prevent or interfere with a conversion under this section or impede the activities of, take any action against, or apply any provision of law or regulation to, any such mutual insurer because that mutual insurer plans to convert, or has converted, to a national insurer in stock form under this section.

(j) NO DELEGATION PERMITTED.—The Commissioner may not delegate to any insurance self-regulatory organization any authority under this section with respect to the conversion of a mutual insurer.

Subtitle F—State Taxation

SEC. 1251. STATE TAXATION OF NATIONAL INSURERS.

(a) STATE TAXATION RULE.—Except as provided in subsection (b) and section 1610, a national insurer doing business in any State shall be subject to all applicable State and local taxes, assessments, and charges including insurance retaliatory taxes or other similar taxes, and shall be entitled to all applicable tax credits, deductions, and offsets provided under State law, as well as all policyholder surcharge provisions under State law, to the same extent and in the same manner as an insurer licensed to do business in such State and chartered in the State where the national insurer is considered domiciled under subsection (c) or (d), except that, such national insurer shall not be subject to—

(1) any additional taxes, assessments, and charges imposed by such State (or local government) by reason of the failure of the national insurer to be

licensed or otherwise authorized to conduct business or write or sell insurance policies, by such State; or

(2) special assessments and charges that fund services that the State does not provide with respect to the national insurer.

(b) EXCEPTION.—No State shall have power to impose an insurance retaliatory tax on any national insurer, unless—

(1) for any tax purpose for which State of domicile is relevant, every national insurer is treated by such State as domiciled in the State designated by each national insurer under subsection (c); and

(2) the insurance retaliatory tax is imposed by such State on every national insurer to the same extent and in the same manner as it is imposed on every insurer chartered in the State where the national insurer is considered domiciled under subsection (c).

(c) DESIGNATION OF DOMICILE.—

(1) IN GENERAL.—A national insurer may designate, as its State of domicile, by filing such designation in writing with the Commissioner—

(A) the State in which the national insurer's principal place of business in the United States is located; or

(B) in the case of an insurer that has converted from a State insurer to a national insurer under this Act, the State in which such insurer was domiciled immediately before such conversion.

(2) NO DESIGNATION BY NATIONAL INSURER.—If a national insurer does not make a designation of a State of domicile under this subsection, the national insurer shall be deemed to have designated as its State of domicile the State in which its principal place of business in the United States is located.

(d) CHANGE IN DOMICILE.—A national insurer may change its State of domicile, with the approval of the Commissioner, to any other State meeting the requirements under subsection (c).

(e) STATUS OF NATIONAL INSURER.—For purposes of State taxation, a national insurer—

(1) shall not be considered a department, agency, or instrumentality of the Federal Government; and

(2) except as provided in this section, a national insurer shall not be exempt from any State tax or subject to a lesser burden of any State tax, solely by reason of its status as a national insurer under this Act.

SEC. 1252. STATE TAXATION OF NATIONAL AGENCIES.

(a) STATE TAXATION RULE.—A national agency shall be subject to all taxes imposed under any applicable provision of State law, to the same extent and in the same manner as an agency chartered in the State in which the national agency is considered domiciled pursuant to subsection (b).

(b) STATE OF DOMICILE.—For purposes of this section, the State of domicile of a national agency shall be deemed to be the State in which the principal place of business of the national agency in the United States is located.

(c) STATUS OF NATIONAL AGENCY.—For purposes of State taxation, a national agency shall not—

(1) be considered to be a department, agency, or instrumentality of the Federal Government; and

(2) except as provided in this section, be exempt from any State tax or subject to a lesser burden of any State tax, solely by reason of its status as a national agency under this Act.

SEC. 1253. STATE TAXATION OF NON-ADMITTED AND SURPLUS LINES INSURANCE.

(a) IN GENERAL.—No State, other than the State in which an insured maintains its principal place of business or, in the case of an individual, maintains a principal residence, may require any Premium Tax for Non-Admitted Insurance or Surplus Lines Insurance.

(b) DEFINITION.—For purposes of this section, the term ''Premium Tax for Non-Admitted or Surplus Lines Insurance'' means any tax, fee, assessment, or other charge imposed by a State on an insured, either directly or through a producer that is based upon any payment made as consideration for Non-Admitted Insurance or Surplus Lines Insurance, and any other compensation given in consideration for a contract of insurance.

TITLE III—INSURANCE PRODUCERS AND OTHER INSURANCE SERVICING PERSONS

SEC. 1301. FEDERAL LICENSING OF INSURANCE PRODUCERS.

(a) COMMISSION AUTHORITY.—The Commissioner—

(1) shall have authority to issue Federal producer licenses; and

(2) shall, by regulation—

(A) define the line or lines of insurance for which a person may obtain a Federal producer license, which shall include surplus lines of insurance or non-admitted insurance; and

(B) specify educational and examination requirements for persons seeking a Federal producer license, other than national agencies that are subject to chartering criteria under section 1201.

(b) NATIONAL AGENCIES.—The Commissioner shall issue a Federal producer license to a national agency upon the issuance of a charter certificate to such Agency pursuant to section 1201.

(c) AUTHORITY OF PERSON HOLDING A FEDERAL PRODUCER LICENSE.—A Federal producer license issued under this section authorizes the person to sell, solicit, or negotiate insurance in any State for any line or lines of insurance specified in such license, and exercise all such incidental powers, as shall be necessary to carry out such activities, including claims adjustments and settlement, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities.

(d) EXAMINATIONS AND REPORTS.—In addition to the examination and reporting requirements applicable to national agencies pursuant to sections 1124 and 1125, the Commissioner may—

(1) provide for the examination of federally licensed insurance producers that are not national agencies only in response to a complaint or any evi-

dence that the federally licensed insurance producer 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 Federal producer license; or

(C) any written agreement entered into with the Commissioner; and

(2) require federally licensed insurance producers that are not national agencies to make such reports, containing such information and in such form, as the Commissioner may prescribe by regulation, to the extent necessary to require compliance with this Act.

(e) INFORMATION PRACTICES.—The Commissioner may, by regulation, provide that there shall be no civil liability imposed on and no cause of action shall arise from a national insurer or national agency, an insurer-affiliated party, or a federally licensed insurance producer submitting any statement or information required under this Act or any regulation thereunder or requested in writing by the Commissioner relating to the conduct of a federally licensed insurance producer, provided that—

(1) this protection may not apply to false statements made with actual malice; and

(2) such regulation shall not abrogate or modify any existing common law or statutory privileges or immunities.

(f) AUTHORITY OF STATE LICENSED INSURANCE PRODUCER.—An insurance producer licensed by a State may sell, solicit, or negotiate insurance in such State on behalf of a national insurer without a Federal producer license.

SEC. 1302. PRODUCER DATABASE.

(a) IN GENERAL.—The Commissioner shall adopt regulations for the development of an electronic database consisting of information relating to federally licensed insurance producers and an electronic communication network that links the Commissioner with State insurance regulators and insurers for an electronic exchange of such information.

(b) MAINTENANCE.—The Commissioner, by rule or order, may delegate authority over the maintenance of each database described in subsection (a) to an insurance self-regulatory organization. In making any such rule or entering any such order, the Commissioner shall take into consideration the regulatory capabilities and procedures of the insurance self-regulatory organization, availability of staff, convenience of location, avoidance of unnecessary regulatory duplication, and any other factors the Commissioner may consider appropriate to the protection of policyholders, the efficiency of the producer licensing system, and the cooperation and coordination among regulatory organizations.

SEC. 1303. SUPERVISION AND OVERSIGHT OF FEDERALLY LICENSED INSURANCE PRODUCERS.

(a) PURPOSE.—The purpose of this section is to establish when a national insurer, national agency, or other federally licensed insurance producer has a duty to supervise a federally licensed insurance producer who is an individual. The duty to supervise as required in this section shall be in addition to the authority of the Commissioner to exercise its powers under section 1102(b).

(b) DUTY TO SUPERVISE.—

(1) NATIONAL INSURERS.—A national insurer shall have a duty to supervise the sales and marketing practices of a federally licensed insurance producer who is an individual with respect to the sale, solicitation, or negotiation of insurance policies of such national insurer, if—

(A) such producer is an—

(i) employee of the national insurer; or

(ii) agent of the national insurer; and

(B) the entire or principal business activity of such producer is devoted to the sale, solicitation, or negotiation of insurance policies for such insurer, the supervision of the agents for such insurer, or both.

(2) NATIONAL AGENCIES AND OTHER FEDERALLY LICENSED PRODUCERS.—A national agency or other federally licensed insurance producer has a duty to supervise the sales and marketing practices of a federally licensed insurance producer who is an individual with respect to the sale, solicitation, or negotiation of insurance policies, if such producer—

(A) is an employee of such agency or other producer, and the sale, solicitation, and negotiation of insurance is within the scope of employment of the producer; or

(B) is an agent of such agency or other producer, and the sale, solicitation, and negotiation of insurance is pursuant to the terms of an agreement between the agent and such national agency or other producer.

(3) STANDARDS FOR SUPERVISION.—The Commissioner shall, by regulation, establish standards for the duties established in paragraphs (1) and (2). Such standards shall not conflict with the rules

adopted by any self-regulatory organization approved by the Securities and Exchange Commission pursuant to its authority under section 19(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(1)) for broker-dealer supervision of registered representatives.

(4) EXEMPTION.—The Commissioner may, by regulation, exempt any class of persons from the duties established under paragraphs (1) and (2), if the Commissioner determines that, given the nature of the business relationship with the federally licensed insurance producer who is an individual, it would be unreasonable or inappropriate to require the class member to supervise such producer.

(5) NO DUTY.—A national insurer, national agency, or other federally licensed insurance producer shall not have a duty to supervise the sales and marketing practices of persons not described in paragraph (1) or (2).

(6) OVERSIGHT OF INDIVIDUAL INDEPENDENT FEDERALLY LICENSED INSURANCE PRODUCERS.—

(A) IN GENERAL.—The sales and marketing practices of a federally licensed insurance producer who is an individual with respect to the sale, solicitation, or negotiation of insurance policies shall be subject to the direct oversight of the Commissioner, if such producer is not a person subject to supervision under the terms of paragraph (1) or (2).

(B) STANDARDS AND PROCEDURES.—The Commissioner shall, by regulation, establish standards and procedures for the direct oversight of the sales and marketing practices of federally licensed insurance producers described in subparagraph (A).

(c) WHOLESALE LIFE INSURANCE BROKERAGE AGENCIES.—This section shall not apply to any wholesale life insurance brokerage agency, as that term is defined by the Commissioner.

SEC. 1304. RELATIONSHIP TO STATE LAW.

(a) NO STATE RESTRICTIONS.—No State may, by statute, regulation, order, interpretation, or otherwise, prevent or restrict a national insurer from engaging in the acts described in subsection (b) for any person, or from engaging the services of a person who engages in such acts for the national insurer, nor shall any State require that a person be licensed by reason of engaging in such acts for a national insurer.

(b) ACTS PROTECTED FROM STATE RESTRICTIONS.—The acts referred to in subsection (a) are the following:

(1) Investigating, evaluating, ascertaining, or determining the amount of or negotiating, settling, or adjusting or otherwise participating in the disposal of claims, losses, or damages arising under insurance policies written by a national insurer, whether the person performing the act is called an adjuster, independent adjuster, or another name.

(2) Soliciting, negotiating, or placing reinsurance cessions or retrocessions on behalf of a ceding national insurer without the authority or power to bind reinsurance on behalf of such national insurer, whether the person performing the act is called a reinsurance intermediary or another name.

(3) Having authority to bind or manage all or part of the assumed reinsurance business of a national insurer that is a reinsurer (including the management of a separate division, department, or underwriting office) and acting as an agent for such reinsurer, whether the person performing the act is called a reinsurance intermediary-manager, manager, or another name.

(4) Directly or indirectly underwriting, collecting charges or premiums, or adjusting or settling claims, in connection with policies of insurance written by a national insurer.

(c) ACTIVITIES OF FEDERALLY LICENSED INSURANCE PRODUCERS.—No State may—

(1) by statute, regulation, order, interpretation, or otherwise, prevent or restrict a federally licensed insurance producer from engaging in any activity within the scope of authority granted under section 1301(c); or

(2) require such producer to be licensed by reason of engaging in such acts on behalf of a national insurer, State insurer, or a United States branch of a non-United States insurer.

(d) ACTIVITIES OF STATE PRODUCERS.—No State may, by statute, regulation, order, interpretation, or otherwise, prevent or restrict an insurance producer licensed by such State from selling, soliciting, or negotiating insurance in such State on behalf of a national insurer.

SEC. 1305. LICENSING COMMENCEMENT DATE.

(a) FEDERALLY LICENSED INSURANCE PRODUCERS.—The Commissioner shall not license a Federal insurance producer until after the following regulations have been published in final form or interim final form:

(1) The fee and assessment regulations required by section 1122.

(2) The reporting regulations required by section 1124.

(3) The market conduct regulations required by section 1216.

(4) The producer licensing regulations required by section 1301.

(5) Such other regulations that the Commissioner determines, at the discretion of the Commissioner, to be necessary prior to the initial licensing of Federal insurance producers.

(b) TIMING AND NOTICE.—

(1) TIMING.—The regulations described in subsection (a) shall be published in final form, not later than 2 years after the initial appointment and confirmation of the Commissioner.

(2) NOTICE.—At such time as the regulations described in subsection (a) have been issued in final form, the Commissioner shall publish a notice in the Federal Register announcing that the Office is prepared to act on licensing applications under this title.

TITLE IV—HOLDING COMPANIES

SEC. 1401. DEFINITIONS.

In this title, the following definitions shall apply:

(1) EXTRAORDINARY DIVIDEND OR DISTRIBUTION.—Except as may otherwise be specified by the Commissioner by regulation, the term ''extraordinary dividend or distribution'' means a dividend or distribution of cash or other property on its outstanding shares (excluding pro rata distributions of any class of the national insurer's own shares), whose fair market value, together with that of other dividends or distributions made within the prior 12 months, exceeds the greater of—

(A) 10 percent of the policyholder surplus of the national insurer, as of the prior December 31; or

(B) the net income of the national insurer for the 12-month period ending on the prior December 31.

(2) INSURANCE HOLDING COMPANY SYSTEM.—The term ''insurance holding company system'' means 2 or more affiliated persons, 1 or more of which is a national insurer.

SEC. 1402. REGISTRATION.

(a) REGISTRATION.—Each national insurer that is a member of an insurance holding company system shall register with the Commissioner.

(b) REGISTRATION STATEMENT.—The Commissioner shall, by regulation, prescribe—

(1) the form and content of the registration statement to be filed pursuant to subsection (a); and

(2) the time and place where the registration statement is required to be filed with the Commissioner.

(c) TERMINATION OF REGISTRATION.—The Commissioner shall terminate the registration of any national insurer which demonstrates that it no longer is a member of an insurance holding company system.

(d) CONSOLIDATED REGISTRATION STATEMENT.—The Commissioner may require or allow 2 or more affiliated national insurers to file a consolidated registration statement.

(e) EXEMPTIONS.—The provisions of this section shall not apply to any national insurer, information, or transaction if, and to the extent that, the Commissioner by regulation or order, exempts such insurer, information, or transaction from the provisions of this section.

(f) DISCLAIMER.—Any person may file with the Commissioner a disclaimer of affiliation with any national insurer or a disclaimer may be filed by the national insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the national insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the national insurer shall be relieved of any duty to register or report under this section which may arise out of the national insurer's relationship with the person unless and until the Commissioner disallows the disclaimer. The Commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

SEC. 1403. STANDARDS AND MANAGEMENT OF A NATIONAL INSURER WITHIN AN INSURANCE HOLDING COMPANY SYSTEM.

(a) TRANSACTIONS WITHIN AN INSURANCE HOLDING COMPANY SYSTEM.—

(1) STANDARDS.—Transactions within an insurance holding company system to which a national insurer subject to registration under section 1402 is a party shall be subject to the following standards:

(A) The terms shall be fair, reasonable, and at least as favorable to the national insurer as those that would be offered to, or would apply to, a nonaffiliate.

(B) Charges or fees for services performed shall be reasonable and at least as favorable to the national insurer as those that would be offered to, or would apply to, a nonaffiliate.

(C) Expenses incurred and payment received shall be allocated to the national insurer in conformity with customary insurance accounting practices consistently applied.

(D) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(E) The national insurer's surplus following any dividends or distributions to shareholders shall be reasonable in relation to the outstanding liabilities of the national insurer and adequate to meet its financial needs.

(2) APPROVAL OF CERTAIN TRANSACTIONS.—The Commissioner shall, by regulation, specify certain transactions involving a national insurer and

any person in its insurance holding company system that are not permissible for a national insurer unless the national insurer has notified the Commissioner in writing of its intention to enter into the transaction and the Commissioner either has approved or not disapproved the transaction within a specified time period.

(3) COMPLIANCE WITH STANDARDS.—The Commissioner, in reviewing any transaction for which notice is required pursuant to paragraph (2), shall consider whether the transaction complies with the standards set forth in paragraph (1) and whether the transaction may adversely affect the interests of policyholders.

(b) EXTRAORDINARY DIVIDENDS.—

(1) IN GENERAL.—No national insurer that is a member of an insurance holding company system shall pay any extraordinary dividend or distribution to its shareholders until 30 days after the Commissioner has received notice of the declaration in a form prescribed by the Commissioner.

(2) CONDITIONAL DIVIDEND OR DISTRIBUTION.—A national insurer that is a member of an insurance holding company system may declare an extraordinary dividend or distribution which is con-

ditional upon the Commissioner's approval, and the declaration shall confer no rights upon shareholders unless—

(A) the Commissioner has approved the payment of the dividend or distribution; or

(B) the Commissioner has not disapproved payment within the 30-day period referred to in paragraph (1).

SEC. 1404. RELATIONSHIP TO STATE LAW.

(a) PERMITTED AFFILIATION.—A national insurer that is part of an insurance holding company system may be affiliated with an insurer or agency that is not chartered or licensed under this Act.

(b) REINSURANCE POOLING AGREEMENTS.—The Commissioner shall have exclusive jurisdiction over reinsurance pooling agreements to which 1 or more national property/casualty insurers and affiliated State property/casualty insurers, or agency are parties under which policies of insurance sold, solicited, negotiated, and underwritten by and reinsurance assumed by affiliated national property/casualty insurers and State property/casualty insurers are pooled.

SEC. 1405. CONFLICT WITH OTHER FEDERAL LAWS.

This title shall be interpreted and applied so as not to conflict with or supersede the provisions of any other

Federal law or regulation governing the regulation of holding companies, including financial holding companies, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), and saving and loan holding companies, as defined in section 10 of the Homeowners' Loan Act (12 U.S.C. 1467a).

SEC. 1406. NO DELEGATION PERMITTED.

The Commissioner may not delegate to any insurance self-regulatory organization any authority conferred under this title with respect to regulation of a national insurer that is a member of an insurance holding company system.

TITLE V—RECEIVERSHIP

SEC. 1501. APPOINTMENT OF OFFICE AS RECEIVER.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if any of the grounds under subsection (c) exist, at the discretion of the Commissioner, the Commissioner may establish a receivership for a national insurer for the purpose of rehabilitation or liquidation, as appropriate.

(b) APPOINTMENT.—In any receivership established under this title, the Commissioner shall appoint the Office as receiver.

(c) GROUNDS FOR APPOINTMENT.—The grounds for establishing a receivership for the purpose of rehabilitating or liquidating a national insurer are as follows:

(1) INSOLVENCY.—The national insurer is insolvent.

(2) SUBSTANTIAL DISSIPATION.—The national insurer has substantial dissipation of assets or earnings due to—

(A) any violation of any provision of Federal or State law; or

(B) any hazardous practice.

(3) HAZARDOUS CONDITION.—The national insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to policyholders, creditors, or the public.

(4) CEASE-AND-DESIST ORDERS.—The national insurer has willfully violated a cease-and-desist order that has become final.

(5) CONCEALMENT.—The national insurer has concealed the books, papers, records, or assets of the national insurer, or has refused to submit the books, papers, records, or affairs of the national insurer, for inspection to any examiner or to any lawful agent of the Commissioner.

(6) INABILITY TO MEET OBLIGATIONS.—The national insurer is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

(7) VIOLATIONS OF LAW.—The national insurer has willfully and continuously violated any law or regulation, or committed any hazardous practice or condition, that is likely to—

(A) cause insolvency or substantial dissipation of assets or earnings; or

(B) weaken the condition of the national insurer.

(8) CONSENT.—The national insurer, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(9) MONEY LAUNDERING.—The Attorney General notifies the Commissioner in writing that the national insurer has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

(d) DIRECTORS NOT LIABLE.—The members of the board of directors of a national insurer shall not be liable to the shareholders, members, policyholders, or creditors of the insurer for acquiescing in, or consenting in good faith to, the appointment of the Office as a receiver.

(e) OFFICE NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.—When acting as receiver, the Office shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Office.

SEC. 1502. EFFECT OF RECEIVERSHIP PROCEEDING.

Any order issued placing a national insurer into a receivership under this title for purposes of liquidation shall be deemed to be and have the effect of an order of liquidation by a court of competent jurisdiction with a finding of insolvency against the insurer for purposes of any provision of State law relating to guaranty associations.

SEC. 1503. POWERS AND DUTIES.

(a) IN GENERAL.—The Office, as receiver, shall have all of the powers of the directors, officers, and managers of the national insurer, whose authority shall be suspended, except as they are redelegated by the receiver.

(b) SPECIFIC POWERS.—In addition to those powers otherwise provided by this title, the Office, as receiver, shall have the power to—

(1) use, sell, or lease property of the insurer;

(2) after notice and a hearing, borrow money on the security of the national insurer's assets, borrow money without security, and execute and deliver all documents necessary to such transaction for the purpose of facilitating the receiver;

(3) collect all debts and monies due and claims belonging to the national insurer, wherever located;

(4) institute and pursue legal actions and to continue any pending action, in any jurisdiction;

(5) suspend, limit, or permit insurance policy withdrawals in connection with insurance policies;

(6) do other acts as are necessary or expedient to collect, marshal, or protect the assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as the receiver considers best and that are consistent with this title;

(7) enter into contracts necessary to carry out the order of rehabilitation or liquidation;

(8) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing and, in connection with these powers, require the production of books, papers, records, or other documents that the receiver considers relevant to the inquiry; and

(9) exercise all powers held or conferred upon receivers by the laws of the United States that are not inconsistent with the provisions of this title.

SEC. 1504. RULEMAKING.

(a) IN GENERAL.—The Commissioner shall establish, by regulation, standards and procedures for receivership proceedings commenced under this title, including provisions regarding automatic stays and other stays of proceedings, procedures, and priorities for the allowance or disallowance of claims, standards for the treatment of reinsurance, and such other matters as the Commissioner determines appropriate.

(b) MODEL.—Except as otherwise provided in this title, the regulations issued by the Commissioner under subsection (a) shall be substantially similar to the corresponding provisions of the Uniform Receivership Law adopted by the Interstate Insurance Receivership Compact Commission in September 1998.

(c) RULES REGARDING COORDINATION WITH STATE GUARANTY ASSOCIATIONS.—In order to facilitate insolvency protection of consumers pursuant to title VI, the regulations issued by the Commissioner under subsection (a) shall contain provisions that are substantially similar to sections 8I, 8J, 8K, and 14C of the Life and Health Insurance Guaranty Association Model Act, as promulgated by the NAIC, and in effect on May 24, 2007, and provisions substantially similar to sections 405 and 612 of the Insurer Receivership Model Act, promulgated by the NAIC in December 2005.

SEC. 1505. JUDICIAL REVIEW.

(a) NATIONAL INSURERS.—

(1) IN GENERAL.—Whenever the Office is appointed as a receiver for a national insurer, the national insurer may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the principal place of business of such insurer is located, or in the United States District Court for the District of Columbia, for an order requiring the Office to remove itself as receiver.

(2) REVIEW.—Upon the filing of an action under paragraph (1), the court shall, upon the merits dismiss such action or direct the Office to remove itself as such receiver.

(b) CLAIMANTS.—If the Office, acting as a receiver, disallows a claim against the receivership, a claimant may, within 60 days of the notice of disallowance, bring an action in the United States District Court for the judicial district in which the principal place of business of the national insurer is located, or in the United States District Court for the District of Columbia, to challenge the disallowance.

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.

SEC. 1602. QUALIFIED AND NONQUALIFIED ASSOCIATIONS.

(a) QUALIFIED ASSOCIATION.—In this title, the term ''qualified association'' means a State insurance guaranty association or State insurance guaranty fund that—

(1) admits as members both State and national insurers;

(2) in the event that a member is placed into receivership, provides benefits or coverage to the policyholders of such member that are not less than the benefits or coverage described in section 1604 (for life and health insurance guaranty associations or funds) or section 1605 (for property and casualty guaranty funds); and

(3) has a board of directors that is—

(A) representative of insurers on a basis that does not unfairly discriminate against national insurers; and

(B) fairly representative of insurers of different sizes and lines of insurance written.

(b) DETERMINATION, ELECTION, AND RECERTIFICATION.—

(1) DETERMINATION.—Before the third anniversary of the date of enactment of this Act (referred to in this section as the ''pre-publication period''), the Commissioner shall—

(A) review all existing State insurance guaranty associations and State insurance guaranty funds;

(B) publish a list of those associations and funds that the Commissioner has determined to be qualified associations in accordance with the requirements of subsection (a); and

(C) give the reasons why any State insurance association or State insurance guaranty fund is not determined to be a qualified association, in accordance with the requirements of subsection (a).

(2) PETITION AND ELECTION.—After the prepublication period, any association or fund—

(A) that is not identified on the list published pursuant to paragraph (1) may petition the Commissioner for a determination that the association or fund is a qualified association, and the Commissioner shall make such a determination if the association or fund establishes to the satisfaction of the Commissioner that the requirements of subsection (a) have been met; and

(B) that is named on the list published pursuant to paragraph (1) shall have an additional 1-year period of time following the prepublication period (referred to in this section as the ‘‘post-publication period’’) in which to notify the Commissioner of the decision of the association or fund to be a nonqualified association, as defined in subsection (d).

(3) PREEMPTION.—Any association or fund that elects to be a nonqualified association shall be subject to Federal preemption according to subsections (e) and (f).

(4) RECONSIDERATION.—

(A) LETTER TO COMMISSIONER.—A State insurance guaranty association or State insurance guaranty fund may seek qualification as a qualified association by letter to the Commissioner, if the Commissioner—

(i) determines that a State insurance guaranty association or State insurance guaranty fund does not meet the requirements of subsection (a), after the reasons for such denial have been addressed; or

(ii) revokes the status of a State insurance guaranty association or State insurance guaranty fund as a qualified association pursuant to subsection (c), after the reasons for such revocation have been addressed.

(B) OTHER ELECTIONS.—An association or fund may seek qualification as a qualified association by letter to the Commissioner after it meets the terms of the definition of a qualified association, as set forth in subsection (a), in any case in which a State insurance guaranty association or State insurance guaranty fund—

(i) elects to be a nonqualified association pursuant to paragraph (2)(B); or

(ii) refuses to assume responsibilities of a qualified association pursuant to subsection (f).

(c) REVOCATION.—The Commissioner shall revoke a determination that an association or fund is a qualified association, if, at any time, the Commissioner determines that the association or fund fails to satisfy the terms of the definition of a qualified association, as set forth in subsection (a). In such event, the Commissioner shall provide a written notice of the revocation to the affected association or fund, and the relevant State insurance regulator, and the association or fund or the State insurance regulator may seek a review of the revocation under the terms of section 1706.

(d) NONQUALIFIED ASSOCIATION.—For purposes of this title, any State insurance guaranty association or State insurance guaranty fund that is not a qualified association shall be a ‘‘nonqualified association’’.

(e) PREEMPTION.—

(1) CONSERVATION, REHABILITATION, OR LIQUIDATION.—Except as provided in paragraph (2) and in subsection (f), a nonqualified association may not levy an assessment upon a national insurer or State insurer to pay claims for a member insurer that is subject to an order of conservation, rehabilitation, or liquidation.

(2) EXCEPTION.—In the event that a conservation, rehabilitation, or liquidation of a national insurer or State insurer referred to in paragraph (1) commences at a time when a State insurance guaranty association or State insurance guaranty fund is a qualified association, but such association or fund subsequently becomes a nonqualified association, such association or fund shall be entitled to levy assessments in respect of such pending conservation, rehabilitation, or liquidation on all companies doing business in the State where the association or fund resides as if the association or fund remained a qualified association, unless the Commissioner finds

that such association or fund has failed to provide protection to consumers in accordance with State law or is unfairly discriminating in coverage or assessments between national insurers and State insurers (in which case the Commissioner may, by order, transfer all coverage responsibilities and assessment powers of the association or fund to the Corporation).

(3) CORPORATION AUTHORITY.—The Corporation may contract with a nonqualified association described in paragraph (2) for the purpose of assuming the responsibilities of such nonqualified association. The Corporation also may contract with a State insurance guaranty association or State insurance guaranty fund that has been determined to be a qualified association pursuant to subsection (b)(4) for the purpose of permitting such association or fund to assume the responsibilities of the Corporation in a State where the association or fund resides in respect to a conservation, rehabilitation, or liquidation that commenced at a time when such association or fund was a nonqualified association.

(f) TEMPORARY PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), in the event of a conservation, rehabilita-

tion, or liquidation of a State insurer or national insurer during the temporary period, a State insurance guaranty association or State insurance guaranty fund, in addition to its existing powers under State law, may—

(A) assess national insurers in an insolvency of a State insurer; and

(B) assess State insurers and national insurers in an insolvency of a national insurer.

(2) EXCEPTION.—Assessments may not be made under paragraph (1) if, not later than 6 months after the date of enactment of this Act or on the date of levying any such assessment, whichever occurs first, the State association or fund provides notice to the Commissioner that it does not intend to levy such assessments or provide coverage or benefits to persons holding insurance policies issued by national insurers. If a State association or fund provides such notice and does not withdraw the notice during the temporary period, the Corporation shall provide coverage or benefits in respect to any conservation, rehabilitation, or liquidation that would have otherwise been the responsibility of the State association or fund during the temporary period.

(3) DEFINITION.—In this subsection, the term ''temporary period'' means the 4-year period beginning on the date of enactment of this Act.

SEC. 1603. ESTABLISHMENT OF THE NATIONAL INSURANCE GUARANTY CORPORATION.

(a) ESTABLISHMENT OF THE CORPORATION.—

(1) IN GENERAL.—In the event that the list published under section 1602(b)(1) indicates that in any State, the principal life and health or property and casualty guaranty association or fund (or both) in such State has not been determined to be a qualified association, and if the Commissioner has not granted any petition to reconsider any such determination before the end of the 4-year period beginning on the date of enactment of this Act, the Commissioner shall establish the National Insurance Guaranty Corporation (in this section referred to as the ''Corporation''), in accordance with this section.

(2) NONPROFIT AND SUCCESSION.—The Corporation shall be a nonprofit corporation and shall have succession until dissolved by an Act of Congress.

(3) APPLICATION OF DISTRICT OF COLUMBIA NONPROFIT CORPORATION ACT.—The Corporation shall, except as otherwise provided in this title, be

subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, 29–301.01 et seq., or any successor thereto).

(b) MEMBERSHIP OF THE CORPORATION.—

(1) IN GENERAL.—The membership of the Corporation shall consist of member insurers.

(2) DEFINITION.—In this title, the term ''member insurer''—

(A) means any national insurer or a State insurer that operates in a State that does not have a qualified association for the line of insurance offered by such national insurer or State insurer in such State, if such line of insurance is the subject of coverage by the Corporation; and

(B) does not include—

(i) a hospital or medical service organization, whether for profit or not-for-profit;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory or voluntary State pooling plan;

(v) a mutual assessment company or other person that operates on an assessment basis;

(vi) a surplus lines carrier, a risk retention group, or a State insurer writing business on a non-admitted or unlicensed basis;

(vii) an organization whose lines of business include only charitable gift annuities; or

(viii) an entity similar to any entity described in any of clauses (i) through (vii).

(c) CORPORATE GOVERNANCE.—

(1) GOVERNING BODY.—The board of directors of the Corporation shall be the governing body of the Corporation and shall be vested with all powers necessary for the management and administration of the affairs of the Corporation and the promotion of the purposes of the Corporation, as authorized by this Act. The authority of the board of directors shall be specified in the bylaws of the Corporation.

(2) ELECTION OR APPOINTMENT.—The initial board of directors of the Corporation shall be elected by the membership of the Corporation, provided that

if the membership fails to elect the initial board of the Corporation on or before the end of the 4-year period specified in section 1602(f), then the initial board shall be appointed from among the membership by the Commissioner. Membership on the board of directors shall be fairly representative of members of differing size and lines of business written.

(3) INITIAL BYLAWS AND RULES.—The Commissioner shall prescribe the initial bylaws and rules governing the Corporation, which shall set forth the composition of the board of directors, the term of board members, filling of board vacancies, board compensation, election of officers and procedures to call board meetings, and all matters necessary for the governance of the Corporation not addressed by the District of Columbia Nonprofit Corporation Act (D.C. Code, 29–301.01 et seq.).

(4) AMENDMENTS TO BYLAWS AND RULES.—An amendment to the bylaws and rules of the Corporation following the establishment of the initial bylaws and rules as provided in paragraph (3) shall be adopted by the board of directors of the Corporation following the approval of the amendment by the Commissioner.

(d) RELATIONSHIP OF CORPORATION TO THE FEDERAL GOVERNMENT.—

(1) SUPERVISION AND OVERSIGHT.—The Corporation shall be subject to supervision and oversight by the Commissioner.

(2) NOT AN AGENCY OR INSTRUMENTALITY OF THE FEDERAL GOVERNMENT.—The Corporation shall not be an agency or instrumentality of the United States Government.

(3) FULL FAITH AND CREDIT.—The obligations of the Corporation shall not be backed, directly or indirectly, by the full faith and credit of the United States. The Corporation shall receive no financial assistance from or have any authority to borrow from the United States.

(4) FUNDS NOT INCLUDED IN THE FEDERAL BUDGET.—Funds held by or due to the Corporation shall not be included in the budget of the United States, nor may the United States borrow or pledge such funds.

(e) CONTRACTING WITH PERSON TO ADMINISTER BENEFITS.—The Corporation may contract, with the approval of the Commissioner, with another person to administer the benefits to be provided by the Corporation, or otherwise as necessary to fulfill the responsibilities of the Corporation under this title.

(f) ACCOUNTS FOR ADMINISTRATION AND ASSESSMENTS.—For purposes of administration and assessments, the Corporation shall establish and separately maintain 6 accounts as follows:

(1) A life insurance account.

(2) An annuity account.

(3) A health account.

(4) A workers' compensation account.

(5) An automobile insurance account.

(6) An account for all other lines of property/casualty insurance to which this title applies.

SEC. 1604. BENEFITS FOR POLICYHOLDERS OF NATIONAL LIFE INSURERS.

(a) IN GENERAL.—If a national life insurer or State life insurer is doing business in a State that does not have a qualified association, as defined in section 1602, for the line of insurance offered by such national life insurer or State life insurer in such State (and if such line of insurance is covered by the Corporation), and such national life insurer or State life insurer is placed into receivership for purposes of liquidation, the Corporation shall provide benefits as specified in subsections (b) and (c).

(b) COVERED PERSONS.—Benefits shall be made available as follows:

(1) To persons who, regardless of where the persons reside, are the beneficiaries, assignees, or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under the insurance policies, and in each case who are residents of the State in which the nonqualified association is located.

(3) This title shall not provide coverage to a person who is a payee (or beneficiary) of a policy owner, if the payee (or beneficiary) is afforded any coverage by a qualified association.

(4) This title is intended to provide coverage to persons who are residents of States in which non-qualified associations are located and, in special circumstances, to persons who are not residents of such States. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this title is provided coverage under the laws of any State other than the State in which the nonqualified association is located, the person shall not be provided coverage under this title. In determining the application of the provisions of this paragraph in situations where a person could be covered by the asso-

ciation of more than 1 State, whether as a policy owner, payee, beneficiary, or assignee, this title shall be construed in conjunction with the laws of such States to result in coverage by only 1 association or by the Corporation.

(c) INSURANCE POLICIES COVERED AND COVERAGE LIMITS.—

(1) REGULATION.—The Commissioner shall establish, by regulation, the lines of insurance covered, the scope of coverage, defenses, exclusions, and the coverage limits on benefits for policyholders.

(2) NAIC MODEL.—The regulations described in paragraph (1) shall be substantially similar to the "Life and Health Insurance Guaranty Association Model Act" of the NAIC in effect on May 24, 2007, subject to the exclusions and benefits described in paragraphs (3) and (4), respectively.

(3) EXCLUSIONS FROM COVERAGE.—There shall be excluded from coverage under this title—

(A) any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner;

(B) any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(C) any portion of a policy or contract, to the extent that the rate of interest on which it is based—

(i) averaged over the period of 4 years prior to the date on which the Corporation becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from the average corporate bond yield, as determined by the Commissioner, averaged for that same 4-year period or for such lesser period, if the policy or contract was issued less than 4 years before the Corporation became so obligated; and

(ii) on and after the date on which the Corporation becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from the average corporate bond yield, as most recently available, as determined by the Commissioner;

(D) any portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under—

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(E) any portion of a policy or contract, to the extent that it provides for—

(i) dividends or experience rating credits;

(ii) voting rights; or

(iii) payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(F) any portion of a policy or contract, to the extent that the assessments required by section 1608 with respect to the policy or contract are preempted by Federal or State law;

(G) any obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including—

(i) claims based on marketing materials;

(ii) claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(iii) misrepresentations of or regarding policy benefits;

(iv) extra-contractual claims; or

(v) a claim for penalties or consequential or incidental damages;

(H) any contractual agreement that establishes the obligations of the member insurer to provide a book value accounting guaranty for defined contribution benefit plan participants 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

(bb) $300,000 for disability insurance; or

(III) $100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; and

(ii) each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if deceased), $100,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any, except that, in no event shall benefits exceed—

(I) an aggregate of $300,000 in benefits with respect to any 1 life under clause (i) and this clause; or

(II) with respect to 1 policy owner of multiple nongroup insurance policies of life insurance, or 1 policy owner of 1 or more group insurance policies of life insurance insuring the lives of multiple insureds, where the policy owner (or any benefit plan, trust, or other entity sponsored or controlled by the policy owner) is also the beneficiary, whether the policy owner is an individual, firm, corporation, or other person, and whether the individuals insured are officers, managers, employees, or other individuals, more than $5,000,000 in benefits, regardless of the number of such policies held by the policy owner.

(5) RULE OF CONSTRUCTION.—The limitations set forth in this subsection are limitations on benefits under this title before taking into account either the subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies.

(6) USE OF ASSETS.—The obligations for benefits under this title may be met by the use of assets attributable to covered policies or reimbursed to the Corporation pursuant to the subrogation and assignment rights in section 1607.

(d) OTHER EXCLUSIONS.—The Corporation shall not be required to guarantee, assume, reinsure, or perform or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy that do not materially affect the economic values or economic benefits of the covered policy.

SEC. 1605. CLAIMS COVERED FOR POLICYHOLDERS OF NATIONAL PROPERTY/CASUALTY INSURERS.

(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) ASSOCIATION.—The term ''Association'' means any property/casualty insurance guaranty association created under the laws of the relevant State, no matter how denominated, which performs the role of an association or fund paying certain property/casualty claims made under policies of an insolvent insurer to or on behalf of policyholders residing in the State.

(2) CLAIMANT.—The term ''claimant'' means any insured making a first party claim or any person instituting a liability claim, except that no person who is an affiliate of the insolvent insurer may be a claimant.

(3) COVERED CLAIM.—The term ''covered claim''—

(A) means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this title applies issued by a member insurer, if—

(i) such member insurer becomes an insolvent insurer after the effective date of this title; and

(ii) either—

(I) the claimant or insured is a resident of a State that does not have a qualified association covering the type of risk insured at the time of the insured event (for which purpose, in the case of an entity other than an individual, the residence of a claimant, insured, or policyholder is the State in which its principal place of business is located at the time of the insured event); or

(II) the claim is a first party claim for damage to property with a permanent location in the State; and

(B) does not include—

(i) any amount awarded as punitive or exemplary damages;

(ii) any amount sought as a return of premium under any retrospective rating plan;

(iii) any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation, or self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise, and no such claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, or self-insurer may be asserted against a person insured under a policy issued by an insolvent insurer, other than to the extent that such claim exceeds the obligation limitations of the Corporation set forth in this Act;

(iv) any first party claim by an insured whose net worth exceeds $25,000,000 on December 31 of the year prior to the year in which the member insurer becomes an insolvent insurer (for which purpose, the net worth of the insured on that date shall be deemed to include the aggregate net worth of the insured and all of its affiliates and subsidiaries, as calculated on a consolidated basis); or

(v) any first party claim by an insured which is an affiliate of the insolvent insurer.

(4) INSOLVENT INSURER.—The term ''insolvent insurer'' means an insurer with a line of business covered by the Corporation and doing business in a State without a qualified association, covering the type of risk insured, and against whom a final order of liquidation with a finding of insolvency has been issued pursuant to title V and the regulations promulgated thereunder.

(b) IN GENERAL.—If a national property and casualty insurer or a State property and casualty insurer is doing business in a State that does not have a qualified association for the line of insurance offered by such insurer in such State (and if such line of insurance is covered by the Corporation), and such insurer is placed into receivership for purposes of liquidation, the Corporation shall provide benefits as specified in this section.

(c) INSURANCE LINES INCLUDED.—This title shall provide coverage for covered claims on all lines of direct insurance (other than those specified in subsection (d))—

(1) existing prior to the order of liquidation;

(2) arising not later than 30 days after the order of liquidation;

(3) arising before the insurance policy expiration date, if earlier than 30 days after the order or liquidation; or

(4) arising before the insured replaces the insurance policy or causes its cancellation, if the insured does so not later than 30 days after the order of liquidation.

(d) INSURANCE LINES EXCLUDED.—This title shall not provide coverage on claims for—

(1) life, annuity, health, or disability insurance (except as provided in section 1604);

(2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;

(3) fidelity or surety bonds, or any other bonding obligations;

(4) credit insurance, vendors single interest insurance, or collateral protection insurance or any

similar insurance protecting the interests of the creditor arising out of a creditor-debtor transaction;

(5) insurance of warranties or service contracts including insurance that provides for the repair, replacement, or service of goods or property, indemnification for repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits;

(6) title insurance;

(7) ocean marine insurance;

(8) any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or

(9) any insurance provided by or guaranteed by any State or the Federal Government.

(e) COVERAGE LIMITATIONS.—

(1) IN GENERAL.—The obligation to a claimant under this section shall be satisfied by paying to the claimant—

(A) the full amount of a covered claim for the benefits under a workers' compensation insurance coverage;

(B) an amount not exceeding $10,000 per policy for a covered claim for return of unearned premiums, less a deductible of $100; and

(C) an amount not exceeding $300,000 per claim for all other covered claims, except that for purposes of such limitation, all claims of any kind whatsoever arising out of, or related to, bodily injury or death to any 1 person shall constitute a single claim, regardless of the number of insurance policies issued by the insolvent insurer, the number of claims made, or the number of claimants.

(2) LIMITATION.—In no event shall a claimant be entitled to an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises.

(3) EXCLUSIONS.—Notwithstanding any other provisions of this title, for purposes of this subsection, a covered claim shall not include—

(A) a claim filed more than 18 months after the entry of the order of liquidation or the final date set for the filing of claims against the liquidator or receiver of the insolvent insurer pursuant to title V and the regulations promulgated thereunder, whichever date occurs first; or

(B) any claim filed with the Corporation or the receiver for losses incurred but not reported under the policy of the insured.

(f) EXHAUSTION OF OTHER COVERAGE.—

(1) IN GENERAL.—Any person having a claim under an insurance policy, whether or not it is a policy issued by a member insurer, and the claim under such other policy arises from the same facts, injury, or loss that gave rise to a covered claim against the Corporation, shall be required first to exhaust all coverage provided by any such policy.

(2) REDUCTIONS.—Any amount payable on a covered claim under this title shall be reduced by the full applicable limits stated in such other insurance policy, and the Corporation shall receive a full credit for such stated limits, or, where there are no applicable stated limits, the claim shall be reduced by the total recovery.

(3) LIMITATION.—Notwithstanding paragraphs (1) and (2)—

(A) no person shall be required to exhaust any right under the policy of an insolvent insurer;

(B) a claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the insolvent insurer that gives rise to the covered claim shall be considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the Corporation;

(C) a claim under an insurance policy shall also include, for purposes of this section—

(i) a claim against a health maintenance organization, a hospital plan corporation, or a professional health service corporation; and

(ii) any amount payable by or on behalf of a self-insurer; and

(D) to the extent that the obligation of the Corporation is reduced by the application of this section, the liability of the person insured by the policy of the insolvent insurer for the claim shall be reduced in the same amount.

(4) ORDER OF RECOVERY.—Any person having a claim which may be recovered under more than 1 qualified association shall seek recovery first, from the qualified association of the place of residence of the insured (or the Corporation, if the place of residence is a State that does not have a qualified association), except that if it is a first party claim for damage to property with a permanent location, the person shall seek recovery first from the qualified association (or the Corporation, if applicable) of the location of the property, and if it is a workers' compensation claim, the person shall seek recovery first from the qualified association (or the Corporation, if applicable) of the residence of the claimant. Any recovery under this Act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

(g) RIGHT TO RECOVER.—The Corporation shall have the right to recover all amounts paid the Corporation on behalf of a person, whether for indemnity, defense, or otherwise, in the case of—

(1) any insured whose net worth on December 31 of the year immediately preceding the date on which the insurer becomes an insolvent insurer exceeds $25,000,000 (and for such purpose, the net

worth of an insured on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates, as calculated on a consolidated basis); and

(2) any person who is an affiliate of the insolvent insurer.

(h) PAYMENT OF CLAIMS.—Payment of claims under this title by the Corporation shall be made from the appropriate property and casualty account established pursuant to section 1603.

SEC. 1606. POWERS AND DUTIES OF THE CORPORATION.

(a) POWERS AND DUTIES RELATED TO CERTAIN NATIONAL LIFE INSURERS AND STATE LIFE INSURERS.—

(1) NATIONAL LIFE INSURERS AND STATE LIFE INSURERS WHO ARE MEMBER INSURERS SUBJECT TO REHABILITATION.—Subject to the provisions of this title, if a national life insurer or a State life insurer is a member insurer placed into receivership for purposes of rehabilitation, the Corporation may, in its discretion, and subject to any conditions imposed by the Corporation that do not impair the contractual obligations of the national life insurer or State life insurer, and that are approved by the Commissioner—

(A) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the insurance policies of the national life insurer or State life insurer; or

(B) provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate subparagraph (A) and assure payment of the contractual obligations of the national life insurer or State life insurer, pending action under subparagraph (A).

(2) NATIONAL LIFE INSURERS AND STATE LIFE INSURERS WHO ARE MEMBER INSURERS SUBJECT TO LIQUIDATION.—

(A) IN GENERAL.—Subject to the provisions of this title, if a national life insurer or a State life insurer is a member insurer placed into receivership for purposes of liquidation, the Corporation shall, in its discretion, take either the actions specified in subparagraph (B) or the actions specified in subparagraph (C).

(B) ASSUMPTION OF OBLIGATIONS OF NATIONAL LIFE INSURER OR STATE LIFE INSURER WHO IS A MEMBER INSURER.—The Corporation—

(i) shall—

(I) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the insurance policies of the national life insurer or State life insurer; or

(II) assure payment of the contractual obligations of the national life insurer or State life insurer; and

(ii) shall provide monies, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the duties imposed by this section.

(C) PROVISION OF BENEFITS TO POLICYHOLDERS.—The Corporation—

(i) with respect to life insurance policies and annuities, shall assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the insurance policies of the national life insurer or State life insurer who is a member insurer, for claims incurred—

(I) with respect to group insurance policies, not later than the earlier of the next renewal date under those insurance policies or 45 days, but not less than 30 days, after the date on which the Corporation becomes obligated under this section with respect to such policies; and

(II) with respect to nongroup insurance policies, not later than the earlier of the next renewal date (if any) under the insurance policies or 1 year, but not less than 30 days, from the date on which the Corporation becomes obligated under this section with respect to such policies;

(ii) shall make diligent efforts to provide all known insureds or annuitants (for nongroup insurance policies), or group policyholders with respect to group insurance policies, 30 days advance notice of the termination (pursuant to clause (i)) of the benefits provided;

(iii) with respect to nongroup insurance policies covered by this title, shall make available to each known insured or annuitant and to each individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of clause (iv), if the insured or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the national life insurer or State life insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class;

(iv) in providing the substitute coverage required under clause (iii), may offer either to reissue the terminated coverage or to issue an alternative policy, which alternative or reissued insurance policies—

(I) shall be offered without requiring evidence of insurability;

(II) may not provide for any waiting period or exclusion that would not have applied under the terminated policy; and

(III) may be reinsured by the Corporation; and

(v) shall obtain the approval of the Commissioner of all alternative policies adopted or issued by the Corporation under this paragraph.

(D) TERMINATION OF BENEFITS.—Benefits under this title with respect to coverage under any policy of an insolvent national life insurer or under any reissued or alternative policy shall cease on the date on which the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the Corporation.

(3) TREATMENT OF PREMIUMS.—

(A) NONPAYMENT OF PREMIUMS.—The nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or substitute coverage provided pursuant to paragraphs (1) or (2) shall terminate benefits under this title with respect to the policy, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with the provisions of this title.

(B) PREMIUMS DUE AFTER LIQUIDATION INITIATED.—Premiums due for coverage under covered policies after the Commissioner has initiated the liquidation of a national life insurer or a State life insurer who is a member insurer shall belong to and be payable at the direction of the Corporation, and the Corporation shall be liable for unearned premiums due to the policyholders under the covered policies.

(4) PERMANENT AND TEMPORARY LIENS.—In carrying out the duties under paragraph (2), the Corporation may, subject to the approval of the Commissioner—

(A) impose permanent policy liens in connection with a guarantee, assumption, or reinsurance contract, if the Corporation finds that the amounts which can be assessed under this title are less than the amounts needed to assure full and prompt performance of the protections provided under this title, or that the economic or financial conditions as they affect the insurance industry are sufficiently adverse to render the imposition of such permanent policy liens to be in the public interest; or

(B) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with insurance policies, in addition to any contractual provisions for deferral of cash or policy loan value.

(5) INDEXED INSURANCE POLICIES.—

(A) IN GENERAL.—In carrying out its duties in connection with paragraphs (1) or (2), the Corporation may, subject to the approval of the Commissioner, issue substitute coverage for an insurance policy that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the insurance policy employed in calculating returns or changes in value by issuing an alternative insurance policy in accordance with subparagraph (B).

(B) APPLICABILITY.—Subparagraph (A) 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,

the Corporation shall exercise the powers and duties specified in this subsection.

(2) ASSUMPTION OF OBLIGATIONS.—The Corporation shall be deemed the insurer to the extent of its obligation on covered claims and to that extent, shall have all rights, duties, and obligations of the insolvent national property/casualty insurer or State property/casualty insurer, as if such insurer had not become insolvent, including the right to pursue and retain salvage and subrogation recoverable on covered claims obligations to the extent paid by the Corporation.

(3) INVESTIGATION AND PAYMENT OF CLAIMS.—The Corporation shall investigate claims brought against the Corporation and adjust, compromise, settle, and pay covered claims, to the extent of the obligations of the Corporation. The Corporation shall pay claims in any order that it determines reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The Corporation may review settlements, releases, and adjustments to which the insolvent national property/casualty insurer or State property/casualty insurer or its insured were parties to determine the extent to which the settlements, re-

leases, and judgments may be properly contested. The Corporation shall have the right to appoint or substitute and to direct legal counsel retained under liability insurance policies for the defense of covered claims.

(c) OTHER CORPORATION POWERS.—In addition to the rights and powers provided elsewhere in this title, the Corporation may—

(1) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this title;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 1608 and to settle claims or potential claims against the Corporation;

(3) borrow money to effect the purposes of this title (and any notes or other evidence of indebtedness of the Corporation not in default shall be legal investments for national insurers and may be carried as assets);

(4) employ or retain such persons as are necessary or appropriate to handle the financial transactions of the Corporation and to perform such other functions as become necessary or proper under this title;

(5) take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(6) exercise, for the purposes of this title and to the extent approved by the Commissioner, the powers of a national insurer, except that the Corporation may not issue insurance policies or annuity contracts other than those issued to provide the protections under this title;

(7) request information from a person seeking protection under this title in order to aid the Corporation in determining its obligations under this title with respect to the person, which person shall promptly comply with the request; and

(8) take other necessary or appropriate action to discharge the duties and obligations of the Corporation under this title or to exercise the powers of the Corporation under this title.

SEC. 1607. SUBROGATION.

(a) IN GENERAL.—Persons receiving benefits or payments for claims under this title shall be deemed to have assigned their rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, their covered policies to the Corporation, and the Corporation shall have a claim by way of subrogation to the rights of such persons against the assets of the insolvent insurer, to the extent of the benefits received or claims paid because of this title. The Corporation shall also have the right to require an assignment to the Corporation of such rights and cause of action by any payee, policyowner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this title upon the person.

(b) COMMON LAW RIGHTS.—In addition to subsection (a), the Corporation shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the national insurer or policyowner, beneficiary, or payee of an insurance policy with respect to the policy.

(c) PRIORITY.—The priority of the subrogation rights of the Corporation against the assets of a national insurer shall be governed by the regulations issued by the Commissioner pursuant to section 1504.

(d) RESULT IF FOUND INVALID OR INEFFECTIVE.—If any other provision of this section is held to be invalid or ineffective with respect to any person or claim for any reason, the amount payable under this title with respect to the related benefits or payments under this title shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the insurance policies (or portion of the insurance policies) covered by this title.

(e) PAYMENT OF PORTION.—If benefits or payments have been provided under this title with respect to a covered obligation and a person recovers amounts as to which the Corporation has rights, as described in this section, the person shall pay to the Corporation the portion of the recovery attributable to the insurance policies (or portion of the insurance policies) covered by this title.

SEC. 1608. ASSESSMENTS.

(a) ASSESSMENTS BY CORPORATION AUTHORIZED.—For the purpose of providing the funds necessary to provide the benefits or payments under this title, the Corporation shall be authorized to assess member insurers separately for each account, at such time and for such amounts as the board of directors of the Corporation finds necessary, in accordance with this section.

(b) CLASSES OF ASSESSMENTS.—

(1) IN GENERAL.—The Corporation shall impose 3 classes of assessments in accordance with paragraphs (2) through (4).

(2) GENERAL ADMINISTRATIVE ASSESSMENTS.—

(A) IN GENERAL.—Each member insurer shall be assessed an amount necessary to cover the general administrative and legal costs of the Corporation, other than the costs specified in paragraphs (3) and (4).

(B) AMOUNT.—In setting the amount of the assessment under subparagraph (A), the Corporation shall divide such administrative and legal expenses equally among all member insurers.

(C) DEPOSIT.—The amount collected pursuant to this paragraph shall be deposited, in equal amounts, in the accounts established pursuant to section 1603(f).

(3) PROPERTY/CASUALTY ASSESSMENTS.—

(A) IN GENERAL.—The Corporation shall—

(i) allocate claims paid and expenses incurred among the workers' compensation account, the automobile insurance account, or the other property/casualty account; and

(ii) assess member insurers doing business in States without qualified associations covering the types of risks insured that are licensed to sell property/casualty insurance separately for each account described in clause (i) the amounts necessary to pay the obligations of the Corporation under section 1605 and the expenses of handling such claims.

(B) AMOUNT.—The assessment established under subparagraph (A)(ii) shall equal an amount that bears the same ratio to the total amount of claims and expenses allocated to an account pursuant to subparagraph (A)(i) as the premiums received by such member insurer in States without qualified associations on the kind of insurance in the account during the calendar year preceding the assessment bears to the premiums received by all assessed member insurers in States without qualified associations on the kind of insurance in the account during the year preceding the assessment.

(C) DEPOSIT.—The assessments received pursuant to this paragraph shall be deposited in the workers' compensation account, the automobile insurance account, or the other property/casualty account, as appropriate.

(4) LIFE AND ANNUITY ASSESSMENTS.—

(A) IN GENERAL.—The Corporation shall—

(i) allocate benefits paid and expenses incurred among the life insurance account, the annuity account, and the health account; and

(ii) assess member insurers doing business in States without qualified associations that are licensed to sell life insurance separately for each account described in clause (i) the amounts necessary to pay the obligations of the Corporation under section 1604 and the expenses of providing such benefits.

(B) AMOUNT.—The assessment established under subparagraph (A)(ii) shall equal an amount that bears the same ratio to the total of benefits and expenses allocated to an account pursuant to subparagraph (A)(i) as the premiums received by such member insurer in States without qualified associations on the kind of insurance in the account during the calendar year preceding the assessment bears to the premiums received by all assessed member insurers in States without qualified associations on the kind of insurance in the account during the year preceding the assessment.

(C) DEPOSIT.—The assessments received pursuant to this paragraph shall be deposited in the life insurance account, the annuity account, or the health account, as appropriate.

(c) NOTICE AND IMPOSITION OF ASSESSMENTS.—

(1) WRITTEN NOTICE REQUIRED.—The Corporation shall provide each member insurer a written notice of an assessment, and assessments shall be payable not earlier than 30 days after the date of receipt of such notice.

(2) LATE PAYMENT.—Member insurers that fail to pay an assessment when due shall be subject to an interest charge on the assessment, as set by the Corporation.

(3) ASSESSMENTS NOT IMPOSED UNTIL NEEDED.—The Corporation shall not impose an assessment described in paragraph (3) or (4) of subsection (b) until such funds are needed.

(4) MAXIMUM ASSESSMENT.—

(A) IN GENERAL.—The Corporation may not assess a member insurer doing business in States without qualified associations in any year on any account in an amount greater than 2 percent of the net direct written premiums of the insurer for the calendar year preceding the assessment on the kind of insurance in the account.

(B) INSUFFICIENT AMOUNT IN LIFE INSURANCE ACCOUNT, ANNUITY ACCOUNT, OR HEALTH ACCOUNT.—

(i) INSUFFICIENT AMOUNT IN LIFE INSURANCE ACCOUNT.—If the maximum assessment in any year does not provide an amount sufficient to make all necessary payments from the life insurance account, the Corporation may assess the annuity 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 life insurance account, in order to—

(I) make all necessary payments from the life insurance account; and

(II) reimburse the annuity account or the health account, or both, for the amounts assessed on behalf of the life insurance account.

(ii) INSUFFICIENT AMOUNT IN ANNUITY ACCOUNT.—If the maximum assessment 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 INSURANCE ACCOUNT, OR OTHER PROPERTY/CASUALTY INSURANCE ACCOUNT.—

(i) INSUFFICIENT AMOUNT IN WORKERS' 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 account, other property/casualty insurance account, or both, for the necessary additional amount, except that, in each subsequent year, for as long as necessary, the Corporation shall assess up to the maximum 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—

(I) make all necessary payments from the automobile insurance account; and

(II) reimburse the workers' compensation account, the other property/casualty insurance account, or both, for the amounts assessed on behalf of the automobile insurance account.

(iii) INSUFFICIENT AMOUNT IN OTHER PROPERTY/CASUALTY INSURANCE ACCOUNT.—If the maximum assessment in any year does not provide an amount sufficient to make all necessary payments from the other property/casualty insurance account, the Corporation may assess the workers' compensation account, the automobile 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 other property/casualty insurance account, in order to—

(I) make all necessary payments from the other property/casualty insurance account; and

(II) reimburse the automobile insurance account, the workers' compensation account, or both, for the amounts assessed on behalf of the other property casualty insurance account.

(d) ABATED OR DEFERRED ASSESSMENTS.—

(1) AUTHORITY OF CORPORATION.—The board of directors of the Corporation may abate or defer, in whole or in part, an assessment imposed on a member insurer under this title if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.

(2) SHARED BURDEN.—In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers doing business in States without qualified associations, in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused action under this subsection have been removed or rectified, the member insurer shall pay all assessments that

were deferred pursuant to a repayment plan approved by the board of directors of the Corporation.

(e) REFUNDS.—The board of directors of the Corporation may, by an equitable method, as established by its operating rules, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount that the board finds is necessary to carry out during the coming year the obligations of this title with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Corporation, and for future claims.

(f) ASSESSMENT PROTESTS.—

(1) IN GENERAL.—A member insurer that wishes to protest all or part of an assessment under this title shall pay when due the full amount of the assessment, as set forth in the notice provided by the Corporation. The payment shall be available to meet obligations under this title during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(2) NOTIFICATION OF DETERMINATION.—Not later than 60 days after the date of payment of an assessment under protest by a member insurer, the Corporation shall notify the member insurer in writing of the determination of the Corporation with respect to the protest, unless the Corporation notifies the insurer that additional time is required to resolve the issues raised by the protest.

(3) FINAL DECISION.—Not later than 30 days after a final decision has been made, the Corporation shall notify the protesting member insurer in writing of the final decision. Not later than 60 days after the date of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the Commissioner.

(4) REFERRAL.—In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the Corporation may refer protests to the Commissioner for a final decision, with or without a recommendation from the Corporation.

(5) PROTEST OR APPEAL UPHELD.—If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a pro-

testing member insurer shall be paid at the rate actually earned by the Corporation.

(g) TRANSITIONAL RESPONSIBILITIES.—In the event that the conservation, rehabilitation, or liquidation of a national insurer or State insurer commences at a time when a State insurance guaranty association or State insurance guaranty fund is a nonqualified association, but such association or fund subsequently becomes a qualified association, the Corporation shall continue to be responsible for such conservation, rehabilitation, or liquidation, unless and until the Corporation shall contract with such association or fund pursuant to section 1602(e)(3). The Corporation shall continue to be entitled to levy assessments in respect of such pending conservation, rehabilitation, or liquidation on all companies doing business in the State where the association or fund resides, as if the association or fund remained a nonqualified association.

(h) INFORMATION REQUESTS.—The Corporation may request information of member insurers doing business in States without qualified associations in order to aid in carrying out its duties under this section, and such member insurers shall promptly comply with such a request.

SEC. 1609. REGULATIONS.

In addition to the duties and powers enumerated elsewhere in this title, the Commissioner shall issue such regulations as the Commissioner determines necessary to facilitate the operations of the Corporation and implement the terms of this title.

SEC. 1610. STATE TAXATION.

No State shall have the power to impose its premium tax, franchise tax, income tax, retaliatory tax, or other primary tax applicable to insurance companies, on any national insurer, unless such State allows the national insurer to recoup Corporation assessments allocable to such State—

(1) in the same manner and to the same extent that a State insurer is allowed to recoup State insurance guaranty association or State insurance guaranty fund assessments in such State; or

(2) through the rates or a policyholder surcharge, at the election of the national insurer, in any State that allows State insurers to recoup State insurance guaranty association or State insurance guaranty fund assessments only through the rates.

SEC. 1611. EXAMINATION OF THE CORPORATION; ANNUAL REPORT.

The Corporation shall be subject to examination and regulation by the Commissioner. The Corporation shall submit to the Commissioner, and each State insurance commissioner in any State without a qualified association, a financial report in a form approved by the Commissioner and a report of the activities of the Corporation during the preceding fiscal year, as the activities relate to its duties and functions carried out under this title.

SEC. 1612. IMMUNITY.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, any of the following persons for any action or omission by them in the performance of their powers and duties under the State insurance guaranty association or fund or provisions of State insurance guaranty association or fund law or under this title:

(1) A member insurer and its directors, officers, employees, and agents.

(2) Any State insurance guaranty association or State insurance guaranty fund and its respective directors, officers, employees, or agents.

(3) The Corporation and its directors, officers, employees, and agents.

(4) The Commissioner and the representatives thereof.

(5) Any State insurance commissioner and representatives thereof.

TITLE VII—CONFORMING AMENDMENTS AND MISCELLANEOUS PROVISIONS

SEC. 1701. NONDISCRIMINATION.

No State may, by statute, regulation, order, interpretation, or otherwise, discriminate, in any manner, against—

(1) any State insurer because such insurer or any affiliate has applied to become, or has declared its intention to become, a national insurer chartered under this Act;

(2) any State-licensed insurance producer because such insurance producer or an affiliate has applied to become, or has declared its intention to become, a national agency chartered under this Act or a federally licensed insurance producer licensed under this Act;

(3) any affiliate of a national insurer, national agency, or a federally licensed insurance producer because the affiliate is so affiliated;

(4) any policyholder, insured, claimant, State-licensed insurance producer, or any person engaged in the acts described in section 1304(b) because of any dealing with a national insurer, national agency, a federally licensed insurance producer, or an affiliate

of a national insurer, national agency, or a federally licensed insurance producer; or

(5) any State-licensed insurance producer (including with respect to such producer's sales, solicitation, or negotiation of any insurance policy written or sold by a State insurer) because it sells, solicits, or negotiates an insurance policy written or sold by a national insurer.

SEC. 1702. APPLICATION OF THE FEDERAL ANTITRUST LAWS TO NATIONAL INSURERS, NATIONAL AGENCIES, AND FEDERALLY LICENSED INSURANCE PRODUCERS.

(a) APPLICATION.—Except as provided in subsection (b), the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936 (49 Stat. 1526) (commonly known as the Robinson-Patman Antidiscrimination Act), shall be applicable to national insurers, national agencies, and federally licensed insurance producers to the same extent as other businesses are subject to such laws, except as follows:

(1) Such laws shall not apply to the development, dissemination, or use of standard insurance policy forms (including standard endorsements, addendums, and policy language), or to activities in-

cidental thereto, by national insurers, national agencies, and federally licensed insurance producers.

(2) Section 3 of the Act of March 9, 1945 (59 Stat. 33; 15 U.S.C. 1013), shall apply to national insurers, national agencies, and federally licensed insurance producers to the extent that such insurers and producers are subject to State law.

(b) EXCEPTION.—Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) shall not apply 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.

Except to the extent expressly provided in this Act, national insurers, national agencies, and federally licensed insurance producers shall not be subject under State law to any form of licensing, examination, reporting, regulation, or other supervision relating to the sale, solicitation, or negotiation of insurance, to the underwriting of insurance, or to any other insurance operations.

SEC. 1704. FEDERAL COURT JURISDICTION.

Chapter 85 of part IV of title 28, United States Code, is amended by adding at the end the following:

“§ 1370. National insurer as party

“The district courts shall have original jurisdiction of any civil action—

“(1) commenced by the United States, or by direction of any officers thereof, against any national insurer, national agency, or any federally licensed insurance producer;

“(2) to enjoin the Commissioner of National Insurance in the Commissioner’s capacity as head of the Office of National Insurance or as the receiver of a national insurer.”.

SEC. 1705. FEDERAL COURT VENUE.

Chapter 87 of part IV of title 28, United States Code, is amended by adding at the end the following:

“SEC. 1414. NATIONAL INSURER OR NATIONAL AGENCY ACTION AGAINST COMMISSIONER OF NATIONAL INSURANCE.

“Any civil action by a national insurer or a national agency to enjoin the Commissioner of National Insurance, under the provisions of any Act of Congress relating to such insurers or agencies, may be prosecuted in the judicial district where such insurer or agency is located.”.

SEC. 1706. JUDICIAL REVIEW.

Except as otherwise expressly provided in this Act, any party aggrieved by an order of the Commissioner under this Act may obtain a review of such order in the

United States Court of Appeals within any circuit wherein such party has its main office, or in the Court of Appeals for the District of Columbia, by filing in the court, within 30 days after the entry of the Commissioner's order, a petition praying that the order of the Commissioner be set aside, modified, or terminated. A copy of such petition shall be forthwith transmitted to the Commissioner by the clerk of the court, and thereupon the Commissioner shall file in the court the record made before the Commissioner, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm, set aside, modify, or terminate the order of the Commissioner and to require the Commissioner to take such action with regard to the matter under review as the court determines proper. Review of an order under this section shall be had as provided in chapter 7 of part I of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

SEC. 1707. AMENDMENT TO THE FREEDOM OF INFORMATION ACT.

Section 552(b)(8) of title 5, United States Code, is amended by inserting ''(including national insurers, national agencies, and federally licensed insurance producers)'' after ''financial institutions''.

SEC. 1708. AMENDMENTS TO THE FEDERAL SECURITIES LAWS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 2(a)(13), by inserting ''the Commissioner of National Insurance or'' after ''subject to supervision by'';

(2) in section 2(a)(14), by inserting ''the United States or'' after ''the laws of'';

(3) in section 3(a)(8), by inserting ''the Commissioner of National Insurance or'' after ''subject to the supervision of''; and

(4) in section 4(5)(A)(ii), by inserting ''the Commissioner of National Insurance or'' after ''subject to the supervision of''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 10A(i)(1)(A) (15 U.S.C. 78j–l(i)(1)(A)), by inserting ''or Federal'' after ''purposes of State'';

(2) in section 15(b)(4)(H) (15 U.S.C. 78o(b)(4)(H))—

(A) by striking ‘‘or the National’’ and inserting ‘‘the National’’; and

(B) by inserting, ‘‘or the Commissioner of National Insurance’’ after ‘‘Union Administration’’.

(3) in section 17(i)(3)(C)(iii), by inserting ‘‘or by the Commissioner of National Insurance’’ after ‘‘appropriate State insurance regulator’’; and

(4) in section 17(i)(4)—

(A) in subparagraph (A), by striking ‘‘and’’ after the semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following:

‘‘(D) the Commissioner of National Insurance with regard to all interpretations of, and the enforcement of, the National Insurance Act of 2007 relating to the activities, conduct, and operations of national insurers, national agencies, and federally licensed insurance producers.’’.

(c) AMENDMENTS TO INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(17), by inserting ‘‘the Commissioner of National Insurance or’’ after ‘‘subject to supervision by’’;

(2) in section 2(a)(37), by inserting ‘‘the United States or’’ after ‘‘the laws of’’;

(3) in section 12(g)—

(A) by inserting ‘‘the Commissioner of National Insurance or’’ after ‘‘affect or derogate from the powers of’’; and

(B) by inserting ‘‘Federal or’’ after ‘‘affect the right under’’;

(4) in section 26(f)(2)(B)(ii), by inserting ‘‘or, in the case of a national insurer chartered under the National Insurance Act of 2007, files with the Commissioner of National Insurance,’’ after ‘‘files with the insurance regulatory authority of the State which is the domiciliary State of the insurance company,’’; and

(5) in section 26(f)(2)(B)(iii), by inserting ‘‘or, in the case of a national insurer chartered under the National Insurance Act of 2007, the Commissioner of National Insurance’’ after ‘‘insurance authority of such State’’.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 203(e)(9) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)(9)) is amended—

(1) by striking "or the National" and inserting "the National"; and

(2) by inserting ", or the Commissioner of National Insurance" after "Union Administration".

SEC. 1709. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

The Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) is amended—

(1) in section 401(b)(2)(A), by inserting "or licensed as a national insurer" after "qualified to do business in a State"; and

(2) in section 733(b)(2), by inserting "or which is licensed as a national insurer and which is subject to the authority of the Commissioner of National Insurance" after "(within the meaning of section 514(b)(2))".

SEC. 1710. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

(a) INTERAGENCY CONSULTATION.—

(1) AMENDMENTS.—Section 307 of the Gramm-Leach-Bliley Act (15 U.S.C. 6716) is amended by adding at the end the following:

"(g) OFFICE OF NATIONAL INSURANCE.—In this section, the terms 'State insurance regulator', 'State insurance regulators', and 'insurance regulator of any State' shall include the Office of National Insurance.".

(2) NO WAIVER.—The provision of information or material by the Office of National Insurance to a Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) shall not constitute a waiver of, or otherwise affect, any privilege or other form of legal protection or exemption from public disclosure to which such information or material is otherwise subject.

(b) PRIVACY.—The Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat. 1338) is amended—

(1) in section 504(a)(1), by inserting "the Commissioner of National Insurance," after "Federal banking agencies,";

(2) in section 504(a)(3), by inserting ", except that, in the case of the Commissioner of National Insurance, such regulations shall be issued in final form not later than 12 months after the date of enactment of the National Insurance Act of 2007" after "enactment of this Act";

(3) in section 505(a)(6), by inserting "(other than a person subject to the jurisdiction of the Of-

fice of National Insurance under paragraph (8))" after "providing insurance";

(4) in section 505(a)—

(A) by redesignating paragraph (7) as paragraph (8); and

(B) by inserting after paragraph (6) the following:

"(7) Under subtitle C of title I of the National Insurance Act of 2007, by the Commissioner of National Insurance with respect to any national insurer or national agency, any subsidiaries of such an entity (except any financial institution or other person subject to the jurisdiction of any agency or authority under paragraphs (1) through (6)), and any federally licensed insurance producer.";

(5) in section 505(a)(8), as redesignated by paragraph (4) of this section, by striking "through (6)" and inserting "through (7)";

(6) in section 505(b)(2), by striking "and (7)" and inserting "(7), and (8)";

(7) in section 509(2)—

(A) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(B) by inserting after subparagraph (D) the following:

"(E) the Commissioner of National Insurance;";

(8) in section 521(e), by inserting "or Federal" after "such institution under State";

(9) in section 522(b)(1)—

(A) in subparagraph (A)(iv), by striking "and" after the semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(C) by inserting after subparagraph (B) the following:

"(C) subtitle C of title I of the National Insurance Act of 2007, by the Commissioner of National Insurance with respect to any national insurer or national agency and any federally licensed insurance producer."; and

(10) in section 525, by inserting "the Commissioner of National Insurance," after "National Credit Union Administration,".

(c) OTHER CONFORMING AMENDMENTS.—The Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat. 1338) is amended—

(1) in section 104(b), by inserting ", or as required by the Commissioner of National Insurance in accordance with the National Insurance Act of 2007" after "subject to subsections (c), (d), and (e)";

(2) in section 104(f)—

(A) by striking "Subsections (c) and (d)" and inserting the following:

"(1) IN GENERAL.—Subsections (c) and (d)";

(B) by striking "(1) the jurisdiction" and inserting the following: "(A) the jurisdiction";

(C) by striking "(A) to investigate" and inserting the following: "(i) to investigate";

(D) by striking "(B) to require" and inserting the following: "(ii) to require";

(E) by striking "(2) State laws" and inserting the following: "(B) State laws"; and

(F) by adding at the end the following:

"(2) OTHER.—Notwithstanding any provision of subsection (d), paragraphs (2) and (3) of subsection (d) and subsection (e) shall not apply to any person to the extent that such person is engaged in the business of insurance or other insurance operations pursuant to authority provided under the National Insurance Act of 2007.";

(3) in section 104(g)(4), by striking "business of insurance." and inserting "business of insurance, but only to the extent that such person is doing so pursuant to a license issued under the authority of State law.";

(4) in section 112, by inserting in the heading "**COMMISSIONER OF NATIONAL INSURANCE**" after "**AUTHORITY OF STATE INSURANCE REGULATOR**";

(5) in section 301, by inserting ", except that the insurance activities of a national insurer, national agency, and a federally licensed insurance producer shall be functionally regulated by the Office of National Insurance" after "subject to section 104"; and

(6) in section 311, by inserting at the end the following: "This subtitle shall not apply to a national insurer in mutual form that is reorganizing into a mutual holding company.".

SEC. 1711. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 45, by inserting in the section heading ", **COMMISSIONER OF OFFICE OF NA-**

TIONAL INSURANCE,'' after ''**STATE INSURANCE REGULATOR**''; and

(2) in section 47(g)(1)—

(A) in subparagraph (A), by striking ''or'' after the semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(C) any authority of the Commissioner of National Insurance under the National Insurance Act of 2007.''.

SEC. 1712. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 4(k)(4)(I)(iii), by inserting ''or Federal'' after ''relevant State'';

(2) in section 5(c)(2)(E)(iii), by inserting ''or by or on behalf of the Commissioner of National Insurance'' after ''for the supervision of insurance companies'';

(3) in section 5(c)(3)(A)(ii)(I), by inserting ''or the Office of National Insurance'' after ''Securities and Exchange Commission'';

(4) in section 5(c)(4)(B), by inserting "or the Commissioner of National Insurance" after "a State insurance authority";

(5) in section 5(c)(5)(B)(iv), by inserting "or by the Commissioner of National Insurance" after "State insurance regulator";

(6) in section 5(g), by inserting in the heading ", COMMISSIONER OF NATIONAL INSURANCE" after "STATE INSURANCE REGULATOR";

(7) in section 5(g)(1)(B), by inserting "or the Commissioner of National Insurance" after "State insurance authority";

(8) in section 5(g)(2)—

(A) in the heading, by inserting ", COMMISSIONER OF NATIONAL INSURANCE," after "STATE INSURANCE AUTHORITY"; and

(B) by inserting "or the Commissioner of National Insurance" after "the Board shall promptly notify the State insurance authority"; and

(9) in section 5(g)(3), by inserting ", the Commissioner of National Insurance," after "If the Board receives a notice described in paragraph (1)(B) from a State insurance authority".

SEC. 1713. AMENDMENTS TO TITLE 18 (CRIMES AND CRIMINAL PROCEDURE).

(a) AMENDMENTS TO TITLE 18.—Section 1033(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ''removes, conceals, alters, destroys,'' after ''willfully embezzles, abstracts, purloins,''; and

(B) by inserting ''assets,'' after ''moneys, funds, premiums, credits,''; and

(2) in paragraph (2)—

(A) in the first sentence, by inserting ''removal, concealment, alteration, destruction,'' after ''embezzlement, abstraction, purloining,''; and

(B) in the second sentence, by inserting ''removed, concealed, altered, destroyed,'' after ''embezzled, abstracted, purloined,''.

(b) INSURANCE FRAUD.—Title 18, United States Code, is amended by inserting after section 1037 the following:

''§ 1037A. Insurance fraud

''(a) Whoever commits a fraudulent insurance act or whoever knowingly and intentionally interferes with the enforcement of the provisions of subtitle D of title I of the National Insurance Act of 2007 or investigations of suspected or actual violations of this section shall be punished as provided in subsection (b).

"(b)(1) Except as provided in paragraph (2), the punishment for an offense under subsection (a) is a fine as provided under this title or imprisonment for not more than 10 years, or both.

"(2) Where the person committing an offense under subsection (a) is a national insurer, national agency, insurer-affiliated party, or a federally licensed insurance producer, punishment for an offense under subsection (a) shall be a fine, the maximum of which is the greater of—

"(A) $1,000,000 per violation; or

"(B) a fine as provided under this title, or imprisonment for not more than 10 years, or both.

"(3) If the fraudulent insurance act involved an amount or value not exceeding $5,000, whoever violates subsection (a) shall be fined as provided in this title or imprisoned not more than 1 year, or both.

"(4) The punishment in this subsection shall be in addition to any other penalties under the National Insurance Act of 2007.

"(5) Any person convicted of an offense under subsection (a) shall be ordered to make monetary restitution for any financial loss or damage sustained by any other person as a result of such offense. Such restitution shall be the exclusive monetary remedy available to the victim at law or in equity after entry of judgment. However, nothing in this paragraph shall preclude the maintenance of an action pursuant to section 1163 of the National Insurance Act of 2007, absent a conviction. If the person convicted of an offense under subsection (a) holds an occupational license under any provision of State or Federal law, the court shall notify the appropriate licensing authority of the conviction.

''(c)(1) Any individual who has been convicted of any criminal felony involving dishonesty or breach of trust, and who participates in the business of insurance, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

''(2) Any insurance person who is engaged in the business of insurance who knowingly and intentionally permits the participation described in paragraph (1) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

''(3) A person described in paragraph (1) or (2) may participate in the business of insurance or permit such participation, as the case may be, if such person has the written consent of the Commissioner of National Insurance.

''(d) In this section—

"(1) the terms 'Commissioner,' 'insurance policy,' 'insurance producer,' 'insurer-affiliated party,' 'national agency,' 'national insurer,' 'person,' and 'policy of insurance' have the meanings given to the terms in section 3 of the National Insurance Act of 2007;

"(2) the term 'business of insurance' has the meaning given to the term in section 1033(f)(1);

"(3) the term 'fraudulent insurance act' means an act or omission committed by a person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits, participates in, or aids, abets, or conspires to commit or solicits another person to commit, or permits its employees or its agents to commit, 1 or more of the following—

"(A) presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a national insurer, national agency, or an insurance producer acting with respect to a policy of insurance written by a national insurer, false information as part of, in support of or concerning a fact material to 1 or more of the following—

"(i) an application for a new or renewal of an insurance policy or reinsurance contract;

"(ii) the rating of a national insurer that writes an insurance policy or enters into a reinsurance contract;

"(iii) a claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

"(iv) premiums paid on an insurance policy or reinsurance contract;

"(v) payments made in accordance with the terms of an insurance policy or reinsurance contract;

"(vi) a document filed with the Commissioner;

"(vii) the financial condition of a national insurer;

"(viii) the formation, acquisition, merger, consolidation, dissolution, or withdrawal from 1 or more lines of insurance or reinsurance by a national insurer;

"(ix) the issuance of evidence of insurance, whether in writing, electronic form, or otherwise; or "(x) the reinstatement of an insurance policy;

"(B) solicitation or acceptance of new or renewal insurance risks on behalf of a national insurer, national agency, or other persons engaged in the business of insurance by a person who knows or should know that the national insurer or other person responsible for the risk is insolvent at the time of the transaction;

"(C) removal, concealment, alteration, or destruction of the records of a national insurer, national agency, or other person engaged in the business of insurance;

"(D) transaction of the business of insurance in violation of laws requiring a license therefore under the National Insurance Act of 2007; or

"(E) attempting to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in, this paragraph; and

"(4) the term 'insurance person' means officers, directors, agents, or employees of national insurers or national agencies, or other persons authorized to act on behalf of national insurers or national agencies.''.

SEC. 1714. AMENDMENTS TO THE AMERICANS WITH DISABILITIES ACT OF 1990.

Section 501(c) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201(c)) is amended—

(1) in paragraph (1), by inserting ''or Federal'' after ''based on or not inconsistent with State'';

(2) in paragraph (2), by inserting ''or Federal'' after ''based on or not inconsistent with State''; and

(3) in paragraph (3), by inserting ''or Federal'' after ''subject to State''.

SEC. 1715. AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT.

Section 12(c)(2) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631(c)(2)) is amended by inserting ''and the Commissioner of National Insurance'' after ''after consultation with the Secretary of the Treasury''.

SEC. 1716. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT.

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking ''and'' after the semicolon;

(B) in paragraph (6), by striking the period at the end and inserting ''; and'';

(C) by inserting after paragraph (6) the following:

''(7) subtitle C of title I of the National Insurance Act of 2007, by the Commissioner of National Insurance with respect to any national insurer, national agency, and any federally licensed insurance producer.''; and

(D) by adding at the end of the undesignated matter at the end the following: ''The terms used in paragraph (7) that are not defined in this title shall have the meaning given to them in section 3 of the National Insurance Act of 2007.''; and

(2) in subsection (e), by adding at the end the following:

''(3) The Commissioner of National Insurance shall prescribe such regulations as are necessary to carry out the purpose of this title with respect to any persons identified in subsection (b)(7).''.

○