

111TH CONGRESS
1ST SESSION

H. R. 1880

To establish a system of regulation and supervision for insurers, insurance agencies, and insurance producers chartered or licensed under Federal law that ensures the stability and financial integrity of those insurers, agencies, and producers and that protects policyholders and other consumers served by such insurers, agencies, or producers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Ms. BEAN (for herself and Mr. ROYCE) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a system of regulation and supervision for insurers, insurance agencies, and insurance producers chartered or licensed under Federal law that ensures the stability and financial integrity of those insurers, agencies, and producers and that protects policyholders and other consumers served by such insurers, agencies, or producers.

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

Sec. 3. Definitions.

TITLE I—OFFICE OF NATIONAL INSURANCE

**Subtitle A—Establishment of Office and Appointment of National Insurance
 Commissioner**

Sec. 101. Establishment of office and appointment of National Insurance Com-
 missioner.

Sec. 102. Duties and powers of the commissioner.

Sec. 103. Independence and GAO audit.

Sec. 104. Office personnel matters.

Sec. 105. Division of Consumer Affairs.

Sec. 106. Division of Insurance Fraud.

Sec. 107. Office of the Ombudsman.

Sec. 108. Insurance self-regulatory organizations.

Sec. 109. Relationship to State law.

**Subtitle B—Supervision of National Insurers and National Insurance
 Agencies**

Sec. 111. Prudential supervision.

Sec. 112. Examinations.

Sec. 113. Reports.

Sec. 114. Annual assessments and other fees.

Sec. 115. Appropriations during start-up period.

Sec. 116. Disclosure of information.

Sec. 117. Anti-money laundering compliance.

Subtitle C—Enforcement Powers of Commissioner

Sec. 121. Revocation or suspension of charter or license.

Sec. 122. Other enforcement powers.

Sec. 123. Insurance fraud.

Sec. 124. Foreign investigations.

Sec. 125. Prompt corrective action.

**TITLE II—SYSTEMIC RISK REGULATION, COORDINATING COUNCIL
 FOR FINANCIAL REGULATORS, INTERNATIONAL AGREEMENTS**

Sec. 201. Systemic risk regulation.

Sec. 202. Coordinating council for financial regulators.

Sec. 203. International agreements.

TITLE III—NATIONAL INSURANCE COMPANIES AND NATIONAL
INSURANCE AGENCIES

Subtitle A—Organization, Chartering, and Powers

- Sec. 301. Organization and chartering.
- Sec. 302. Corporate governance.
- Sec. 303. Charter conversions.
- Sec. 304. Powers.
- Sec. 305. Chartering commencement date.

Subtitle B—Financial, Policy and Market Conduct Standards

- Sec. 311. Financial standards.
- Sec. 312. Policy standards.
- Sec. 313. Market conduct standards.
- Sec. 314. General principles.

Subtitle C—State Taxation

- Sec. 321. State taxation of national insurers.
- Sec. 322. State taxation of national insurance agencies.
- Sec. 323. State taxation of nonadmitted and surplus lines of insurance.

TITLE IV—NATIONAL INSURANCE PRODUCERS

- Sec. 401. Licensing of national insurance producers.
- Sec. 402. Supervision and examination.
- Sec. 403. Producer database.
- Sec. 404. Duty to supervise.
- Sec. 405. Relationship to State law.
- Sec. 406. Licensing commencement date.

TITLE V—CHANGE IN CONTROL AND INSURANCE HOLDING
COMPANIES

- Sec. 501. Change in control.
- Sec. 502. Reports by and examinations of insurance holding companies.
- Sec. 503. Activities of insurance holding companies and subsidiaries.
- Sec. 504. Capital, liquidity, dividend, operational, and other standards.
- Sec. 505. Affiliate transactions.
- Sec. 506. Relationship to other laws.
- Sec. 507. No delegation permitted.

TITLE VI—CONSERVATORSHIP, RECEIVERSHIP, THE PAYMENT OF
BENEFITS AND CLAIMS TO POLICYHOLDERS, AND ASSESS-
MENTS ON NATIONAL INSURERS

- Sec. 601. Appointment of conservator or receiver.
- Sec. 602. Establishment of the National Insurance Guaranty Corporation.
- Sec. 603. Payment of claims to policyholders of national insurers.
- Sec. 604. Assessments of national insurers.
- Sec. 605. Participation in State guaranty associations.
- Sec. 606. Report to Congress.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Applicable law.

Sec. 702. Application of the Federal antitrust laws.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to ensure the financial stability and integ-
4 rity of national insurers, national insurance agen-
5 cies, and national insurance producers through a
6 comprehensive system of national supervision and
7 regulation; and

8 (2) to ensure the fair and equitable treatment
9 of policyholders, claimants, and other consumers
10 served by national insurers, national insurance agen-
11 cies, and national insurance producers.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

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

17 (2) **ANNUITY.**—The term “annuity” means all
18 agreements to make periodical payments for a period
19 certain or where the making or continuance of all or
20 some of a series of such payments, or the amount
21 of any such payment, depends upon the continuance
22 of human life.

23 (3) **ANTI-FRAUD ORGANIZATION.**—The term
24 “anti-fraud organization” means an organization—

1 (A) whose purposes include investigation,
2 prevention, and detection of insurance-related
3 crime and fraud, including assistance to and co-
4 operation with State and national public offi-
5 cials and law enforcement officers in their anti-
6 fraud activities; and

7 (B) described in section 501(c)(3) of the
8 Internal Revenue Code of 1986 and exempt
9 from tax under section 501(a) of such Code.

10 (4) BUSINESS OF INSURANCE.—The term
11 “business of insurance” has the meaning given such
12 term in section 1033(f) of title 18, United States
13 Code.

14 (5) COMMISSIONER.—The term “Commis-
15 sioner” means the National Insurance Commissioner
16 appointed under section 101.

17 (6) COMPANY.—The term “company” means
18 any corporation, partnership, business trust, associa-
19 tion, or similar organization.

20 (7) CONTROL.—The term “control”—

21 (A) means the power of a person—

22 (i) with an ownership interest in a na-
23 tional insurer or national insurance agency
24 (whether direct or indirect) to direct the

1 management or policies of such national
2 insurer or national insurance agency; or

3 (ii) to vote 25 percent or more of any
4 class of voting securities of a national in-
5 surer or national insurance agency; and

6 (B) does not include a person that pos-
7 sesses power referred to in subparagraph (A) as
8 a result of an official position, corporate office,
9 or fiduciary relationship held by such person.

10 (8) CORPORATION.—The term “Corporation”
11 means the National Insurance Guaranty Corporation
12 established under section 601.

13 (9) FEDERAL BANKING AGENCIES.—The term
14 “Federal banking agencies” means the Office of the
15 Comptroller of the Currency, the Board of Gov-
16 ernors of the Federal Reserve System, the Federal
17 Deposit Insurance Corporation, and the Office of
18 Thrift Supervision.

19 (10) INSURANCE OPERATIONS.—The term “in-
20 surance operations” includes—

21 (A) the business of insurance;

22 (B) all acts and transactions relating to
23 the sale, solicitation, negotiation, and under-
24 writing of insurance;

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

3 (D) all acts and transactions relating to
4 the establishment of rates, rules, risk classifica-
5 tions, rating classifications, rating territories,
6 and forms (including, endorsements,
7 addendums, and policy language) for insurance;

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

10 (F) financial condition and solvency;

11 (G) holding company transactions; and

12 (H) corporate governance.

13 (11) INSURANCE PRODUCER.—The term “in-
14 surance producer” means any person that sells, so-
15 licits, or negotiates policies of insurance, non-
16 admitted insurance, and surplus lines of insurance,
17 but does not include a person that provides adminis-
18 trative services to an insurer.

19 (12) INSURER-AFFILIATED PARTY.—The term
20 “insurer-affiliated party” means—

21 (A) any director, officer, employee, or con-
22 trolling shareholder of, or agent for, a national
23 insurer or a national insurance agency;

24 (B) any shareholder, consultant, joint ven-
25 ture partner, and any other person as deter-

1 mined by the Commissioner who participates in
2 the conduct of the affairs of a national insurer
3 or a national insurance agency; and

4 (C) any independent contractor (including
5 any attorney, actuary, or accountant) of a na-
6 tional insurer or a national insurance agency
7 who in that capacity knowingly or recklessly
8 participates in any violation of any law or regu-
9 lation, any breach of fiduciary duty, or any con-
10 duct that involves an undue risk of loss to the
11 policyholders of a national insurer, and which
12 violation, breach, or conduct caused or is likely
13 to cause more than a minimal financial loss to,
14 or a significant adverse effect on, a national in-
15 surer or the policyholders of a national insurer.

16 (13) INSURER IN FRATERNAL FORM.—The
17 term “insurer in fraternal form” means an incor-
18 porated society, order, or supreme lodge without
19 capital stock that—

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

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

1 (C) has a representative form of govern-
2 ment;

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

5 (E) operates for one or more social, intel-
6 lectual, educational, charitable, benevolent,
7 moral, fraternal, patriotic, or religious purposes
8 for the benefit of its members, which may also
9 be extended to others.

10 (14) LIFE INSURANCE.—The term “life insur-
11 ance” means every insurance upon the lives of
12 human beings, and every insurance appertaining
13 thereto, including disability income insurance, long-
14 term care insurance, and supplemental health insur-
15 ance.

16 (15) NAIC.—The term “NAIC” means the Na-
17 tional Association of Insurance Commissioners.

18 (16) NATIONAL INSURANCE AGENCY.—The
19 term “national insurance agency” means a national
20 insurance agency chartered under section 301.

21 (17) NATIONAL INSURANCE HOLDING COM-
22 PANY.—The term “national insurance holding com-
23 pany” means a company that controls a national in-
24 surer or national insurance agency.

1 (18) NATIONAL INSURANCE PRODUCER.—The
2 term “national insurance producer” means a na-
3 tional insurance agent or broker licensed under sec-
4 tion 401.

5 (19) NATIONAL INSURER.—The term “national
6 insurer” means a national insurance company char-
7 tered under section 301.

8 (20) NATIONAL LIFE INSURER.—The term “na-
9 tional life insurer” means a national insurer that is
10 chartered under section 301 to sell, solicit, negotiate,
11 and underwrite life insurance.

12 (21) NONADMITTED INSURANCE.—The term
13 “nonadmitted insurance” means property and cas-
14 ualty insurance permitted by the Commissioner to be
15 placed directly or through an insurance producer
16 with a nonadmitted insurer eligible to accept such
17 insurance.

18 (22) NONADMITTED INSURER.—The term
19 “nonadmitted insurer” means an insurer that is not
20 licensed to engage in the business of insurance in a
21 State and that—

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

1 (B) is not a national insurer.

2 (23) OFFICE.—The term “Office” means the
3 Office of National Insurance established under sec-
4 tion 101.

5 (24) PERSON.—The term “person” means any
6 natural person, business entity, governmental body
7 or entity, voluntary organization, or similar organi-
8 zation.

9 (25) POLICY.—The term “policy” means a pol-
10 icy, contract, certificate, or other evidence of insur-
11 ance, or an annuity contract or a rider or endorse-
12 ment thereto, but does not include a funding agree-
13 ment, a reinsurance contract, or an agreement, spe-
14 cial rider, or endorsement relating only to the man-
15 ner of distributing benefits or to the reservation of
16 rights and benefits used at the request of the indi-
17 vidual policyholder.

18 (26) PROPERTY AND CASUALTY INSURANCE.—
19 The term “property and casualty insurance” means
20 a policy that insures, guarantees, or indemnifies
21 against liability, loss of life, loss of health, or loss
22 through damage to or destruction of property, in-
23 cluding surety bonds, private passenger or commer-
24 cial automobile, homeowners, mortgage guaranty, fi-
25 nancial guaranty, commercial multiperil, general li-

1 ability, professional liability, workers' compensation,
2 fire and allied lines, farm or ranch owners,
3 multiperil, aircraft, fidelity, surety, medical mal-
4 practice, ocean marine, inland marine, and boiler
5 and machinery insurance.

6 (27) PROTECTED CELL.—The term “protected
7 cell” means an identified pool of assets and liabil-
8 ities of a national insurer segregated and insulated
9 from the remainder of the national insurer’s assets
10 and liabilities.

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

18 (29) STATE INSURER.—The term “State in-
19 surer” means an insurer incorporated in or orga-
20 nized under the laws of a State that is not chartered
21 as a national insurer under this Act.

22 (30) SUPPLEMENTAL HEALTH INSURANCE.—
23 The term “supplemental health insurance” means a
24 group or individual policy that provides coverage for
25 hospital, medical or surgical benefits and is sold sep-

1 arately and not dependent upon comprehensive
2 health or medical insurance, including a policy for
3 accidents, accidental death and dismemberment,
4 credit disability, dread disease, dental, hospital acci-
5 dent, hospital indemnity, hospital confinement in-
6 demnity, limited benefit medical, medical/surgical
7 policies, Medicare supplement, retiree medical, spe-
8 cific treatment policies, travel, and vision.

9 (31) SURPLUS LINES OF INSURANCE.—The
10 term “surplus lines of insurance” means insurance
11 on properties, risks, or exposures located or to be
12 performed in a State with a nonadmitted insurer
13 that is sold, solicited, or negotiated by a national in-
14 surance agency, national insurance producer, or
15 other insurance producer.

16 (32) TITLE INSURANCE.—The term “title in-
17 surance” or “business of title insurance” means any
18 of the following:

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

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

1 (ii) Unmarketability of the insured
2 title.

3 (iii) Invalidity, lack of priority, or un-
4 enforceability of any liens or encumbrances
5 on the stated property.

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

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

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

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

18 (D) Handling escrows, settlements, or clos-
19 ings done in conjunction with subparagraph
20 (A), (B), (C), (E), or (F).

21 (E) Any product or service defined by the
22 laws of any State as title insurance.

23 (F) Doing or proposing to do any business
24 substantially equivalent to any of the activities

1 described in this paragraph, in a manner de-
2 signed to evade the provisions of this Act.

3 (33) TITLE INSURER.—The term “title insurer”
4 means a company organized under the laws of a
5 State for the purpose of conducting the business of
6 title insurance.

7 **TITLE I—OFFICE OF NATIONAL** 8 **INSURANCE**

9 **Subtitle A—Establishment of Office** 10 **and Appointment of National In-** 11 **urance Commissioner**

12 **SEC. 101. ESTABLISHMENT OF OFFICE AND APPOINTMENT** 13 **OF NATIONAL INSURANCE COMMISSIONER.**

14 (a) IN GENERAL.—There is established in the De-
15 partment of the Treasury the Office of National Insur-
16 ance.

17 (b) NATIONAL INSURANCE COMMISSIONER.—

18 (1) IN GENERAL.—There is established the po-
19 sition of the National Insurance Commissioner, who
20 shall be the head of the Office.

21 (2) APPOINTMENT.—The Commissioner shall be
22 appointed by the President, by and with the advice
23 and consent of the Senate, from among individuals
24 who are citizens of the United States, for a term of

1 5 years, unless removed before the end of such term
2 for cause by the President.

3 (3) VACANCY.—A vacancy in the position of the
4 Commissioner shall be filled in the manner estab-
5 lished under paragraph (2). The Commissioner ap-
6 pointed to fill the vacancy shall be appointed only
7 for the remainder of the term of the preceding Com-
8 missioner.

9 (4) SERVICE AFTER TERM.—An individual may
10 serve as the Commissioner after the expiration of
11 the term for which appointed until such time as a
12 successor has been appointed in accordance with
13 paragraph (2).

14 (5) PROHIBITION ON FINANCIAL INTERESTS.—
15 The Commissioner may not have a direct or indirect
16 financial interest in any national insurer or national
17 insurance agency, except that the Commissioner may
18 own, directly or indirectly, or may have a direct or
19 indirect beneficial interest in an insurance policy
20 written or sold by a national insurer, national insur-
21 ance agency, or national insurance producer.

22 (6) GENERAL OVERSIGHT.—The Commissioner
23 shall be subject to the general oversight of the Sec-
24 retary of the Treasury, but the Secretary may not
25 intervene in any matter or proceeding before the

1 Commissioner unless otherwise specifically provided
2 by law.

3 (7) EXECUTIVE SCHEDULE.—Section 5314 of
4 title 5, United States Code, is amended by adding
5 at the end following new item:

6 “National Insurance Commissioner.”.

7 **SEC. 102. DUTIES AND POWERS OF THE COMMISSIONER.**

8 (a) DUTIES.—The Commissioner shall—

9 (1) oversee the organization, incorporation, op-
10 eration, regulation, and supervision of national in-
11 surers and national insurance agencies and shall
12 issue charters therefore; and

13 (2) license, regulate, and supervise national in-
14 surance producers.

15 (b) INCIDENTAL POWERS.—The Commissioner may
16 exercise such incidental powers as may be necessary to ful-
17 fill the duties specified in subsection (a).

18 (c) RULEMAKING POWERS.—The Commissioner may
19 issue such rules, regulations, orders, and interpretations
20 as the Commissioner determines to be necessary to carry
21 out the purposes of this Act. The Secretary of the Treas-
22 ury may not delay or prevent the issuance of any rule,
23 regulation, order, or interpretation by the Commissioner.

24 (d) LITIGATION POWERS.—The Commissioner may
25 sue and be sued, complain and defend, and otherwise liti-

1 gate, in the Commissioner's name and through the Com-
2 missioner's own attorney, in any Federal or State court.

3 (e) ENFORCEMENT POWERS.—The Commissioner
4 may apply to the United States district court for the juris-
5 diction in which the main office of a national insurer or
6 national insurance agency is located, or in which an in-
7 surer-affiliated party, national insurance producer, or
8 other person is located, for the enforcement of any rule,
9 regulation, order, or interpretation issued pursuant to this
10 Act.

11 **SEC. 103. INDEPENDENCE AND GAO AUDIT.**

12 (a) INDEPENDENCE OF CONGRESSIONAL TESTIMONY
13 AND RECOMMENDATIONS.—Section 111 of Public Law
14 93–495 (12 U.S.C. 250) is amended by inserting “the Na-
15 tional Insurance Commissioner,” after “the Director of
16 the Office of Thrift Supervision,”.

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

21 **SEC. 104. OFFICE PERSONNEL MATTERS.**

22 (a) IN GENERAL.—The Commissioner may employ
23 such persons as are necessary to carry out the provisions
24 of this Act.

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

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

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

19 (e) DELEGATION OF POWERS.—

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

24 (2) SELF-REGULATORY ORGANIZATIONS.—Un-
25 less otherwise prohibited by this Act, the Commis-

1 sioner may, by regulation, delegate to any insurance
2 self-regulatory organization any power of the Com-
3 missioner.

4 **SEC. 105. DIVISION OF CONSUMER AFFAIRS.**

5 (a) ESTABLISHMENT.—The Commissioner shall es-
6 tablish a Division of Consumer Affairs within the Office,
7 and shall appoint a Director of the Division of Consumer
8 Affairs, who shall report to the Commissioner.

9 (b) FUNCTION.—The Director of the Division of Con-
10 sumer Affairs shall—

11 (1) act as a liaison between the Office and con-
12 sumers of insurance;

13 (2) receive questions and complaints from con-
14 sumer regarding acts or practices of national insur-
15 ers, national insurance agencies, and national insur-
16 ance producers; and

17 (3) take actions to resolve such questions and
18 complaints.

19 (c) STATE OFFICES; CALL CENTER.—The Commis-
20 sioner shall establish an office of the Division of Consumer
21 Affairs in each State and a centralized call center, toll-
22 free telephone number, and Internet address order to re-
23 ceive and act upon questions and complaints from con-
24 sumers regarding acts or practices of national insurers,

1 national insurance agencies, and national insurance pro-
2 ducers.

3 (d) **REPORTS.**—The Commissioner shall annually
4 submit to the Committee on Financial Services of the
5 House of Representatives and the Committee on Banking,
6 Housing, and Urban Affairs of the Senate a report on the
7 volume of consumer complaints received by the Division
8 of Consumer Affairs and the ability of the Office to ad-
9 dress such complaints in a timely manner.

10 **SEC. 106. DIVISION OF INSURANCE FRAUD.**

11 (a) **ESTABLISHMENT.**—The Commissioner shall es-
12 tablish a Division of Insurance Fraud within the Office,
13 and shall appoint a Director of the Division of Insurance
14 Fraud, who shall report to the Commissioner.

15 (b) **DUTIES.**—The Director of the Division of Insur-
16 ance Fraud shall carry out investigations of insurance
17 fraud in accordance with section 123.

18 **SEC. 107. OFFICE OF THE OMBUDSMAN.**

19 (a) **OFFICE OF THE OMBUDSMAN.**—The Commis-
20 sioner shall establish an Office of the Ombudsman, and
21 appoint an Ombudsman, who shall report to the Commis-
22 sioner.

23 (b) **DUTY OF THE OMBUDSMAN.**—The Ombudsman
24 shall act as a liaison between the Office and any national
25 insurer, national insurance agency, national insurance

1 producer, or insurer-affiliated party adversely affected by
2 the supervisory or regulatory activities of the Office, in-
3 cluding the failure of the Office to take a requested action.
4 The Ombudsman shall assure that safeguards exist to en-
5 courage complainants to come forward and preserve con-
6 fidentiality.

7 (c) POWERS OF THE OMBUDSMAN.—The Ombuds-
8 man—

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

12 (2) shall review and report any weakness in pol-
13 icy or procedures to the Commissioner, and make
14 recommendations to the Commissioner regarding
15 changes in such policies or procedures.

16 (d) APPEALABLE MATTERS.—Subject to such proce-
17 dures as the Commissioner may establish by regulation,
18 any national insurer, national insurance agency, national
19 insurance producer, or insurer-affiliated party adversely
20 affected by an Office decision or action may seek Ombuds-
21 man review of such decision or action, other than—

22 (1) the appointment of a receiver or conser-
23 vator;

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

4 (3) any formal enforcement-related action or
5 decision, including the issuance of a cease-and-desist
6 order, assessment of a civil money penalty, or com-
7 mencement of a formal investigation;

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

11 (5) any decision or recommended decision fol-
12 lowing a formal adjudication conducted pursuant to
13 subchapter II of chapter 5 of title 5, United States
14 Code; or

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

19 (e) DECISIONS OF THE OMBUDSMAN.—The Ombuds-
20 man shall investigate each matter for which review is
21 sought under subsection (d) and, after consideration of all
22 relevant information provided to the Ombudsman by the
23 person seeking such review and the Commissioner, issue
24 a written determination of the appeal. Such determination

1 shall become the final decision of the Office, unless re-
2 versed, modified, or stayed by the Commissioner.

3 (f) RETALIATION PROHIBITED.—An employee of the
4 Office of National Insurance may not take any adverse
5 action against a complainant for appealing any decision
6 or action to the Ombudsman.

7 **SEC. 108. INSURANCE SELF-REGULATORY ORGANIZATIONS.**

8 (a) AUTHORITY OF THE COMMISSIONER.—The Com-
9 missioner may provide for the registration of one or more
10 insurance self-regulatory organizations, and supervise and
11 regulate any such organization.

12 (b) AUTHORITY OF REGISTERED INSURANCE SELF-
13 REGULATORY ORGANIZATION.—Except as otherwise pro-
14 vided in this Act, the Commissioner may authorize an in-
15 surance self-regulatory organization registered by the
16 Commissioner to carry out the purposes of this Act, and
17 enforce compliance by its members with the provisions of
18 this Act, applicable regulations issued by the Commis-
19 sioner, and the rules of the organization.

20 **SEC. 109. RELATIONSHIP TO STATE LAW.**

21 (a) IN GENERAL.—Except as authorized by this Act
22 or otherwise authorized under Federal law, no national in-
23 surer, national insurance agency, or national insurance
24 producer shall be subject to any form of licensing, exam-
25 ination, reporting, regulation, or supervision by a State

1 relating to the insurance operations of such insurer, such
2 agency, or such producer.

3 (b) APPLICABLE STATE LAWS.—Notwithstanding
4 subsection (a), a national insurers, national insurance
5 agencies, and national insurance producers shall be sub-
6 ject to—

7 (1) State unclaimed property and escheat laws;

8 (2) tax laws of a State, in accordance with sec-
9 tions 321, 322, and 323;

10 (3) State law relating to participation in an as-
11 signed risk plan, mandatory joint underwriting asso-
12 ciation, or any other mandatory residual market
13 mechanism designed to make insurance available to
14 those unable to obtain insurance in the voluntary
15 market, except to the extent that such State law—

16 (A) relates to participation in any vol-
17 untary joint underwriting association or similar
18 arrangement;

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

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

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

6 (4) State insurance law that prescribes the
7 compulsory coverage requirements for workers' com-
8 pensation or motor vehicle insurance, or both, that
9 every insurer must provide if the insurer issues in-
10 surance policies in such State, except to the extent
11 that such State law requires a national insurer to
12 use any particular rate, rating element, price, or
13 form;

14 (5) State insurance law mandating the partici-
15 pation of insurers in an advisory or statistical orga-
16 nization, except to the extent that such State law re-
17 quires a national insurer to use any particular rate,
18 rating element, price, or form; and

19 (6) State law relating to participation in a
20 workers' compensation administration mechanism,
21 except to the extent that such State law is incon-
22 sistent with any provision of this Act.

23 (c) DEFINITIONS.—In this section:

24 (1) ADVISORY OR STATISTICAL ORGANIZA-
25 TION.—The term “advisory or statistical organiza-

1 tion” does not include the National Association of
2 Insurance Commissioners.

3 (2) COMPULSORY COVERAGE.—The term “com-
4 pulsory coverage” does not include any State statu-
5 tory requirement other than those prescribing the
6 minimum extent of insurance protection afforded by
7 a policy of insurance.

8 (3) MANDATORY RESIDUAL MARKET.—The
9 term “mandatory residual market” means a facility,
10 entity, or plan required by and established pursuant
11 to State law to provide coverage for persons that
12 cannot obtain insurance in the private market.

13 **Subtitle B—Supervision of Na-**
14 **tional Insurers and National In-**
15 **surance Agencies**

16 **SEC. 111. PRUDENTIAL SUPERVISION.**

17 (a) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that the Commissioner should—

19 (1) promote an open and continuous exchange
20 of information between national insurers, national
21 insurance agencies, and national insurance pro-
22 ducers and the Office; and

23 (2) encourage such insurers, agencies, and pro-
24 ducers to self-identify and self-correct actual or po-
25 tential violations of law, regulation, or any other su-

1 supervisory requirements that the Commissioner con-
2 sidered necessary before such actions harm policy-
3 holders or other consumers.

4 (b) REGULATIONS.—The Commissioner shall issue
5 regulations on prudential supervision to—

6 (1) require national insurers, national insurance
7 agencies, and national insurance producers to estab-
8 lish and implement internal risk control practices
9 and procedures that are designed to detect and pre-
10 vent violations of laws, regulations, and any other
11 supervisory requirements that the Commissioner
12 considers necessary;

13 (2) require national insurers, national insurance
14 agencies, and national insurance producers to self-
15 report violations of applicable laws, regulations, or
16 such other supervisory requirements and to correct
17 such violations;

18 (3) provide that if the Commissioner determines
19 a violation of a law, regulation, or other supervisory
20 requirement upon which an enforcement action may
21 be based is correctable, the Commissioner shall pro-
22 vide warning to a national insurer, national insur-
23 ance agency, or national insurance producer regard-
24 ing such violation before taking such action;

1 (4) identify the range of enforcement actions
2 the Commissioner may bring in response to a viola-
3 tion of law, regulation, or other supervisory require-
4 ment, and provide that, subject to subsection (c), the
5 Commissioner shall pursue a continuum of enforce-
6 ment actions that begins with the least severe sanc-
7 tion or penalty and gradually escalates to the most
8 severe sanction or penalty;

9 (5) identify the factors the Commissioner will
10 consider in determining whether to bring an enforce-
11 ment action and in determining the type of action to
12 be brought; and

13 (6) specify the Commissioner's practices and
14 procedures related to investigations, and provide
15 that the Commissioner shall—

16 (A) notify a national insurer, national in-
17 surance agency, or national insurance producer
18 within 10 days of completing an investigation;
19 and

20 (B) review the status of all open investiga-
21 tions on a semiannual basis and determine if
22 such matter should remain open or be closed.

1 **SEC. 112. EXAMINATIONS.**

2 (a) IN GENERAL.—The Commissioner may conduct
3 such examinations of a national insurer or national insur-
4 ance agency as the Commissioner considers necessary.

5 (b) FREQUENCY.—

6 (1) NATIONAL INSURERS.—The Commissioner
7 shall conduct a full-scope, on-site examination of
8 each national insurer not less than once during any
9 24-month period.

10 (2) NATIONAL INSURANCE AGENCIES.—The
11 Commissioner shall conduct an examination of a na-
12 tional insurance agency in response to a complaint
13 or evidence that such national insurance agency has
14 violated or is about to violate—

15 (A) a law, rule, or regulation;

16 (B) any condition imposed in writing by
17 the Commissioner in connection with issuing a
18 license for a Federally licensed insurance pro-
19 ducer; or

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

22 (c) ACCESS TO PEOPLE AND RECORDS.—

23 (1) IN GENERAL.—In the course of examining
24 a national insurer or national insurance agency, the
25 Commissioner, upon request, shall be given prompt
26 and reasonable access to officers, employees, agents,

1 books, records, and documents of such insurer or
2 agency.

3 (2) COURT ORDER.—If prompt and reasonable
4 access is not given as required under paragraph (1),
5 the Commissioner may apply to the United States
6 district court for the judicial district in which the
7 main office of the national insurer or the national
8 insurance agency is located for an order requiring
9 that such information be promptly provided.

10 (3) SUBPOENA POWER.—In connection with ex-
11 amination of a national insurer or national insur-
12 ance agency, the Commissioner may—

13 (A) administer oaths and affirmations;

14 (B) examine, take, and preserve testimony
15 under oath as to any matter in respect of the
16 affairs or ownership of any such national in-
17 surer or national insurance agency;

18 (C) issue subpoenas; and

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

22 (i) in which the main office of the na-
23 tional insurer or national insurance agency
24 is located; or

1 (ii) in which the witness resides or
2 carries on business.

3 **SEC. 113. REPORTS.**

4 Each national insurer and national insurance agency
5 shall submit to the Commissioner such reports, containing
6 such information and in such form, as the Commissioner
7 may prescribe by regulation.

8 **SEC. 114. ANNUAL ASSESSMENTS AND OTHER FEES.**

9 (a) IN GENERAL.—The Commissioner may impose on
10 national insurers, national insurance agencies, and na-
11 tional insurance producers an annual assessment and such
12 other fees, including examination fees, as the Commis-
13 sioner determines to be necessary and appropriate to fund
14 the expenses of the Office, and to repay and loan to the
15 Office provided under section 115.

16 (b) REGULATIONS.—The Commissioner shall, by reg-
17 ulation, establish a schedule for the annual assessment
18 and other fees authorized in this section.

19 (c) TREATMENT OF ASSESSMENTS AND FEES.—

20 (1) DEPOSITS.—The Commissioner may deposit
21 assessments and fees collected under this section
22 into any regular Government depository or any State
23 or national bank.

24 (2) GOVERNMENT FUNDS AND APPORTION-
25 MENT.—Notwithstanding any other provision of law,

1 assessments and fees imposed under this section
2 shall not be considered government or public funds
3 or appropriated money, and shall not be subject to
4 apportionment for purposes of chapter 15 of title 31,
5 United States Code, or under any other authority.

6 (d) WORKING CAPITAL FUND.—The Commissioner
7 may impose assessments and fees in excess of actual ex-
8 penses for any given year, to maintain an appropriate
9 working capital fund, provided that the Commissioner re-
10 mits to the payers of such assessments and fees any funds
11 collected in excess of what the Commissioner determines
12 to be necessary to maintain such working capital fund.

13 (e) USE OF FUNDS.—The Commissioner may use the
14 fees and assessments collected pursuant to this section to
15 pay all operating costs of the Office, including the salary
16 and administrative expenses of the Office.

17 **SEC. 115. APPROPRIATIONS DURING START-UP PERIOD.**

18 The Commissioner may borrow from the Secretary of
19 the Treasury such funds as the Commissioner determines
20 to be necessary and appropriate to organize and begin op-
21 erations of the Office. Any such loan shall be repaid, in
22 full (with interest at a rate set by the Secretary of the
23 Treasury), from assessments imposed under the terms of
24 section 114 not later than the date that is 30 years after
25 the date of the enactment of this Act, with individual pay-

1 ments on any loan to be made in such amounts and at
2 such times as the Commissioner determines to be appro-
3 priate.

4 **SEC. 116. DISCLOSURE OF INFORMATION.**

5 (a) REGULATIONS REQUIRED.—The Commissioner
6 shall issue regulations for the disclosure of reports, appli-
7 cations, filings, correspondence, records, and other infor-
8 mation prepared by, reported to, obtained by, or submitted
9 to the Commissioner.

10 (b) SUPERVISORY PRIVILEGE.—The regulations
11 issued pursuant to subsection (a) shall prohibit the disclo-
12 sure of confidential supervisory information, as such infor-
13 mation is defined by the Commissioner in such regulation.

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

22 **SEC. 117. ANTI-MONEY LAUNDERING COMPLIANCE.**

23 (a) REGULATION REQUIRED.—The Commissioner
24 shall, by regulation, require national insurers and national
25 insurance agencies to establish and maintain procedures

1 reasonably designed to assure and monitor compliance
2 with the recordkeeping and reporting requirements of sub-
3 chapter II of chapter 53 of title 31, United States Code,
4 and implementing regulations issued by the Department
5 of the Treasury, to the extent that those requirements
6 apply to a national insurer or national insurance agency.

7 (b) MINIMUM PROCEDURES.—The regulations issued
8 under subsection (a) shall require—

9 (1) the establishment of internal controls to
10 monitor compliance with applicable requirements;

11 (2) testing for compliance;

12 (3) training of personnel; and

13 (4) the designation of an individual or individ-
14 uals responsible for coordinating and monitoring
15 compliance.

16 **Subtitle C—Enforcement Powers of** 17 **Commissioner**

18 **SEC. 121. REVOCATION OR SUSPENSION OF CHARTER OR** 19 **LICENSE.**

20 (a) CHARTER REVOCATION.—The Commissioner may
21 order the revocation of the charter of a national insurer
22 or national insurance agency if the Commissioner deter-
23 mines that such insurer or agency—

1 (1) is engaged or has engaged in conduct that
2 is hazardous to the insurer or agency and an undue
3 risk of loss to the policyholders of such insurer;

4 (2) is in a financial or other condition that is
5 not consistent with the continuation of existing oper-
6 ations; or

7 (3) is violating or has violated any—

8 (A) applicable law or regulation;

9 (B) order or condition imposed in writing
10 by the Commissioner in connection with the ap-
11 proval of an application, filing, statement, no-
12 tice, or other request by the insurer or agency;

13 or

14 (C) written agreement entered into be-
15 tween the insurer or agency and the Commis-
16 sioner.

17 (b) LICENSE REVOCATION.—The Commissioner may
18 order the revocation of the license of a national insurance
19 producer if the Commissioner determines that such pro-
20 ducer—

21 (1) is violating or has violated any applicable
22 law, regulation, order, condition imposed in writing
23 by the Commissioner in connection with the approval
24 of an application, filing, statement, notice or other
25 request by the producer, or written agreement en-

1 tered into between the producer and the Commis-
2 sioner;

3 (2) provided incorrect, misleading, incomplete,
4 or materially untrue information in an application
5 for a license;

6 (3) used fraudulent, coercive, or dishonest prac-
7 tices; or

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

11 (c) SUSPENSION ORDER.—If the Commissioner, in
12 the course of a charter or license revocation proceeding
13 under this section, finds that a national insurer, national
14 insurance agency, or national insurance producer poses an
15 undue risk of loss to the policyholders of a national insurer
16 as a whole, the Commissioner may order the suspension
17 of the charter or license of such insurer, agency or pro-
18 ducer, as applicable.

19 (d) NOTICE.—If the Commissioner orders the revoca-
20 tion of a charter or a license under subsection (a) or (b),
21 the Commissioner shall provide the national insurer, na-
22 tional insurance agency, or national insurance producer
23 that is the subject of such revocation notice of such rev-
24 ocation. Such notice shall include—

1 (1) a statement of the reasons for such revoca-
2 tion, including any determination by the Commis-
3 sioner under subsection (a) or (b); and

4 (2) a date and place for a hearing before the
5 Commissioner with respect to such revocation.

6 (e) HEARING; TERMINATION.—If, on the basis of the
7 evidence presented at a hearing before the Commissioner
8 (or any person designated by the Commissioner for such
9 purpose), in which all issues shall be determined on the
10 record pursuant to section 554 of title 5, United States
11 Code, and the written findings of the Commissioner (or
12 such person) with respect to such evidence (which shall
13 be conclusive), the Commissioner finds an undue risk of
14 loss to the policyholders of a national insurer as a whole
15 or a violation specified in the notice given under subsection
16 (d) has been established, the Commissioner may issue an
17 order terminating the charter or license of the national
18 insurer, national insurance agency, or national insurance
19 producer effective as of a date subsequent to that finding.

20 (f) JUDICIAL REVIEW.—

21 (1) IN GENERAL.—Any hearing provided for in
22 this section (other than the hearing provided for in
23 subsection (e)) shall be held in the Federal judicial
24 district or in the territory in which the home office
25 of the national insurer, national insurance agency,

1 or national insurance producer is located unless the
2 party afforded the hearing consents to another place,
3 and shall be conducted in accordance with the provi-
4 sions of chapter 5 of title 5 of the United States
5 Code. After such hearing, and within 90 days after
6 the Commissioner has notified the parties that the
7 case has been submitted to it for final decision, it
8 shall render its decision (which shall include findings
9 of fact upon which its decision is predicated) and
10 shall issue and serve upon each party to the pro-
11 ceeding an order consistent with the provisions of
12 this section. Judicial review of any such order shall
13 be exclusively as provided in this subsection.

14 (2) APPEAL.—Any party to a proceeding under
15 paragraph (1) may obtain a review of any order
16 issued pursuant to paragraph (1) (other than an
17 order issued with the consent of the national insurer,
18 national insurance agency, or national insurance
19 producer concerned) by the filing in the court of ap-
20 peals of the United States for the circuit in which
21 the home office of the national insurer, national in-
22 surance agency, or national insurance producer is lo-
23 cated, or in the United States Court of Appeals for
24 the District of Columbia Circuit, within 30 days
25 after the date of service of such order, a written pe-

1 tition for the order to be modified, terminated, or set
2 aside. The party filing such a petition shall transmit
3 to the Commissioner a copy of the petition and the
4 Commissioner shall file in the court the record in the
5 proceeding, as provided in section 2112 of title 28
6 of the United States Code. Review of such pro-
7 ceedings shall be had as provided in chapter 7 of
8 title 5 of the United States Code. The judgment and
9 decree of the court shall be final, except that the
10 same shall be subject to review by the Supreme
11 Court upon certiorari, as provided in section 1254 of
12 title 28 of the United States Code.

13 **SEC. 122. OTHER ENFORCEMENT POWERS.**

14 (a) IN GENERAL.—The Commissioner may issue
15 cease and desist orders, prohibition, suspension, removal
16 orders, and impose civil money penalties upon a national
17 insurer, national insurance agency, national insurance
18 producer, and any insurer-affiliated party on the same
19 grounds and the same terms and conditions applicable to
20 the issuance of such orders by a Federal banking agency
21 under section 8 of the Federal Deposit Insurance Act, as
22 if a national insurer, national insurance agency, or na-
23 tional insurance producer was an insured depository insti-
24 tution, an insurer-affiliated party was an institution-affili-

1 ated party, the Commissioner was a Federal banking
2 agency, and a policyholder was a depositor.

3 (b) HOLDING COMPANIES AND OTHER SUBSIDI-
4 ARIES.—This section shall apply to a national insurance
5 holding company and to any subsidiary of a national in-
6 surance holding company in the same manner as such sec-
7 tion applies to a national insurer.

8 **SEC. 123. INSURANCE FRAUD.**

9 (a) INVESTIGATIONS.—Director of the Division of In-
10 surance Fraud may investigate suspected fraudulent in-
11 surance acts by national insurers, national insurance
12 agencies, national insurance producers, and other persons.

13 (b) PENALTY.—

14 (1) IN GENERAL.—Except as provided in para-
15 graphs (2) and (3), whoever commits a fraudulent
16 insurance act or whoever knowingly and intentionally
17 interferes with the investigations of a suspected
18 fraudulent insurance act shall be subject to a fine of
19 not more than \$500,000, imprisonment for not more
20 than 5 years or both.

21 (2) NATIONAL INSURERS, AGENCIES, INSUR-
22 ANCE PRODUCERS.—If the person committing an of-
23 fense referred to in paragraph (1) is a national in-
24 surer, national insurance agency, national insurance
25 producer, or insurer-affiliated party, such person

1 shall be subject to a fine of not more than
2 \$1,000,000 per violation per day, or imprisonment
3 for not more than 10 years, or both.

4 (3) LOW AMOUNTS.—If the person committing
5 an offense referred to in paragraph (1) is not a na-
6 tional insurer, national insurance agency, national
7 insurance producer, or insurer-affiliated party and
8 the offense is a fraudulent insurance act involving
9 an amount or value not exceeding \$5,000, such per-
10 son shall be subject to a fine of not more than
11 \$100,000, imprisonment for not more than one year,
12 or both.

13 (4) ADDITIONAL PENALTIES.—The penalties
14 under this subsection shall be in addition to any
15 other penalties imposed under this Act.

16 (5) RESTITUTION REQUIRED.—Any person con-
17 victed of an offense referred to in paragraph (1)
18 shall make monetary restitution for any financial
19 loss or damage sustained by any other person as a
20 result of such offense. Such restitution shall be the
21 exclusive monetary remedy available to the victim at
22 law or in equity after entry of judgment.

23 (c) IMMUNITY FROM LIABILITY.—

24 (1) IN GENERAL.—Except as provided under
25 paragraph (2), any person who shares, furnishes,

1 discloses, receives, collects, or uses information con-
2 cerning a suspected, anticipated, or completed fraud-
3 ulent insurance act shall not be liable to any person
4 under any provision of law of the United States or
5 of any State or political subdivision of any State, or
6 under any contract or other legally enforceable
7 agreement, for such act, if the information is pro-
8 vided to or received from—

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

11 (B) a Federal, State, or local enforcement
12 or regulatory official or an employee, agent, or
13 representative of such official;

14 (C) a self-regulatory organization or an
15 employee, agent, or representative of such orga-
16 nization;

17 (D) a person involved in the investigation
18 (including cooperation or participation in an in-
19 vestigation), prevention, and detection of fraud-
20 ulent insurance acts or an employee, agent, or
21 representative of such person; or

22 (E) the NAIC or an employee, agent, or
23 representative of the NAIC.

24 (2) MALICE.—

1 (A) IN GENERAL.—Paragraph (1) shall not
2 apply with respect to false statements made
3 with actual malice by a person to a person re-
4 ferred to in subparagraphs (A) through (E) of
5 paragraph (1).

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

14 (d) FRAUDULENT INSURANCE ACT DEFINED.—In
15 this section, the term “fraudulent insurance act” means
16 an act or omission committed by a person who, knowingly
17 and with intent to defraud, and for the purpose of depriv-
18 ing another of property or for pecuniary gain, commits,
19 participates in, or aids, abets, or conspires to commit or
20 solicits another person to commit, or permits its employees
21 or its agents to commit, one or more of the following:

22 (1) Presenting, causing to be presented, or pre-
23 paring with knowledge or belief that it will be pre-
24 sented to or by a national insurer, national insur-
25 ance agency, State insurer, State insurance agency,

1 or insurance producer acting with respect to a policy
2 of insurance written by a national insurer or State
3 insurer, false information as part of, in support of,
4 or concerning a fact material to one or more of the
5 following:

6 (A) An application for a new or renewal of
7 an insurance policy or reinsurance contract.

8 (B) The rating of a national insurer or
9 State insurer that writes an insurance policy or
10 enters into a reinsurance contract.

11 (C) A claim for payment or benefit pursu-
12 ant to an insurance policy or reinsurance con-
13 tract.

14 (D) Premiums paid on an insurance policy
15 or reinsurance contract.

16 (E) Payments made in accordance with the
17 terms of an insurance policy or reinsurance con-
18 tract.

19 (F) A document filed with the Commis-
20 sioner.

21 (G) The financial condition of a national
22 insurer or State insurer.

23 (H) The formation, acquisition, merger,
24 consolidation, or dissolution of a national in-
25 surer or national insurance agency.

1 (I) The issuance of evidence of insurance.

2 (J) The reinstatement of an insurance pol-
3 icy.

4 (2) Solicitation or acceptance of new or renewal
5 insurance risks on behalf of a national insurer, na-
6 tional insurance agency, State insurer, State insur-
7 ance agency, or insurance producer, or other persons
8 engaged in the business of insurance by a person
9 who knows or should know that the national insurer
10 or State insurer is insolvent at the time of the trans-
11 action.

12 (3) Removal, concealment, alteration, or de-
13 struction of the records of a national insurer, na-
14 tional insurance agency, State insurer, State insur-
15 ance agency, or insurance producer.

16 (4) Transaction of the business of insurance in
17 violation of laws requiring a charter or license under
18 this Act.

19 (5) Attempting to commit, aiding or abetting in
20 the commission of, or conspiracy to commit the acts
21 or omissions specified in this subsection.

22 **SEC. 124. FOREIGN INVESTIGATIONS.**

23 (a) REQUESTING ASSISTANCE FROM FOREIGN GOV-
24 ERNMENTS.—In conducting any investigation, examina-
25 tion, or enforcement action under this subtitle, the Com-

1 missioner may request the assistance of any foreign gov-
2 ernment.

3 (b) PROVIDING ASSISTANCE TO FOREIGN GOVERN-
4 MENTS.—The Commissioner may assist any foreign gov-
5 ernment that is conducting an investigation to determine
6 whether any person has violated, is violating, or is about
7 to violate any law or regulation relating to insurance mat-
8 ters or currency transactions administered or enforced by
9 such foreign government.

10 **SEC. 125. PROMPT CORRECTIVE ACTION.**

11 (a) RULEMAKING.—

12 (1) IN GENERAL.—Not later than the expira-
13 tion of the 6-month period beginning upon the date
14 of submission of the report under subsection (b)(3)
15 to the Commissioner, the Commissioner shall pro-
16 mulgate such regulations, applicable to national in-
17 surers, as the Commissioner determines appropriate
18 and consistent with the recommendation in that re-
19 port to ensure that prompt corrective action is taken
20 to resolve any hazardous financial condition of a na-
21 tional insurer.

22 (2) REQUIRED CONTENT.—Rules required by
23 this subsection shall include such capital measures
24 and categories, capital standards, supervisory cri-
25 teria, restrictions on permissible actions of such in-

1 surers, requirements for such insurers, procedures,
2 provisions regarding conservatorship and receiver-
3 ship of such insurers, and other provisions as the
4 Commissioner considers are appropriate and con-
5 sistent with any recommendations in the report and
6 the standards established pursuant to section 312 of
7 this Act.

8 (b) GAO STUDY AND REPORT.—

9 (1) IN GENERAL.—The Comptroller General of
10 the United States shall conduct a study to identify
11 an appropriate structure of procedures and require-
12 ments for taking prompt corrective actions with re-
13 spect to national insurers, to ensure that any haz-
14 ardous financial condition of such a national insurer
15 is resolved effectively and efficiently, with the fewest
16 possible losses.

17 (2) REQUIREMENTS.—In conducting the study
18 required by this subsection, the Comptroller General
19 shall analyze and evaluate various proposals, struc-
20 tures, methods, and systems for taking prompt cor-
21 rective actions with respect to various financial enti-
22 ties and institutions, including—

23 (A) the prompt corrective action require-
24 ments under section 38 of the Federal Deposit

1 Insurance Act (12 U.S.C. 1831o) with respect
2 to insured depository institutions; and

3 (B) the “Model Regulation to Define
4 Standards and Commissioner’s Authority for
5 Companies Deemed to be in Hazardous Finan-
6 cial Condition” of the NAIC.

7 (3) REPORT.—

8 (A) IN GENERAL.—Not later than the ex-
9 piration of the 6-month period beginning on the
10 date of enactment of this Act, the Comptroller
11 General shall submit a report to the Committee
12 on Banking, Housing, and Urban Affairs of the
13 Senate, the Committee on Financial Services of
14 the House of Representatives, and the Commis-
15 sioner, regarding the study required under this
16 subsection.

17 (B) CONTENTS.—The report required
18 under this paragraph shall describe the study
19 and the results of the evaluations conducted
20 under the study, and shall include a specific
21 recommendation to the Commissioner for estab-
22 lishment of an appropriate structure of proce-
23 dures and requirements for taking prompt cor-
24 rective actions with respect to national insurers,
25 to ensure that any hazardous financial condi-

1 tion of a national insurer is resolved effectively
2 and efficiently with the fewest possible losses.

3 **TITLE II—SYSTEMIC RISK REGU-**
4 **LATION, COORDINATING**
5 **COUNCIL FOR FINANCIAL**
6 **REGULATORS, INTER-**
7 **NATIONAL AGREEMENTS**

8 **SEC. 201. SYSTEMIC RISK REGULATION.**

9 (a) DELEGATION OF AUTHORITY.—Not later than 90
10 days after the date of enactment of this Act, the President
11 shall designate a systemic risk regulator for covered insti-
12 tutions. In making this designation the President shall
13 consult with the Chairman of the Senate Committee on
14 Banking, Housing and Urban Affairs, and the House
15 Committee on Financial Services, and shall designate a
16 Federal agency, other than the Office of National Insur-
17 ance, that has experience in financial regulation and su-
18 pervision as the systemic risk regulator for covered institu-
19 tions.

20 (b) POWERS OF SYSTEMIC RISK REGULATOR.—Not-
21 withstanding any other provision of law, the agency des-
22 ignated pursuant to subsection (a) may—

23 (1) request information on the activities and op-
24 erations of a covered institution, or any affiliate of
25 a covered institution, from such institution or such

1 affiliate, and from the Office or a State insurance
2 authority responsible for supervising such covered
3 institution, as applicable;

4 (2) participate with the Office or a State insur-
5 ance authority, as applicable, in an examination of
6 a covered institution and any affiliate of such cov-
7 ered institution;

8 (3) if such agency determines that the activities
9 of a covered institution, any affiliate of a covered in-
10 stitution, any category of covered institutions, or any
11 product or service offered by a covered institution is
12 having, or would have, serious adverse effects on
13 economic conditions or financial stability, rec-
14 ommend corrective action to the Commissioner or a
15 State insurance authority, including recommenda-
16 tions to—

17 (A) restrict or prohibit the covered institu-
18 tion, any affiliate of the covered institution, or
19 any category of covered institutions from en-
20 gaging in such activity or practice or offering
21 such product or service; or

22 (B) take any other action that the agency
23 deems appropriate to mitigate or avoid the ad-
24 verse effects of such activity, practice, product
25 or service;

1 (4) issue a rule or order to address the activi-
2 ties that are the subject of a recommendation made
3 pursuant to paragraph (3), if—

4 (A) the Commissioner or State insurance
5 authority fail to implement corrective actions
6 within a reasonable period of time, as deter-
7 mined by such agency; and

8 (B) the Coordinating Council for Financial
9 Regulators established in section 202 deter-
10 mines, by a two-thirds vote of its membership,
11 that such corrective action is necessary to miti-
12 gate or avoid an impending serious adverse ef-
13 fect on economic conditions or financial stability
14 in the United States; and

15 (5) in consultation with the Commissioner—

16 (A) determine if a covered institution is
17 systemically important; and

18 (B) if such covered institution is deter-
19 mined to be systemically important, determine
20 if such covered institution should be required to
21 be chartered under title III of this Act.

22 (c) ACCESS TO INFORMATION AND CONFIDEN-
23 TIALITY.—

24 (1) COURT ORDER.—If the agency designated
25 pursuant to subsection (a) is not given prompt and

1 reasonable access to officers, employees, agents,
2 books, records and documents of a covered institu-
3 tion, or any affiliate of a covered institution, such
4 agency may apply to the United States district court
5 for the judicial district in which the main office of
6 the covered institution is located for an order requir-
7 ing that such access be promptly provided.

8 (2) CONFIDENTIALITY.—Information provided
9 or obtained under the terms of paragraph (2) or (3)
10 of subsection (b) shall be treated as confidential su-
11 pervisory information and exempt from the require-
12 ments of section 552 of title 5, United States Code.

13 (d) JUDICIAL REVIEW.—Any covered institution or
14 affiliate of a covered institution that is the subject of an
15 order issued pursuant to this section may obtain review
16 of such order in the United States Court of Appeals within
17 any circuit where such institution or such affiliate has its
18 principal place of business, or in the Court of Appeals in
19 the District of Columbia, by filing in the court, within 30
20 days of after issuance of such order, a petition praying
21 that the order be set aside. Such covered institution or
22 affiliate shall transmit to the agency designated pursuant
23 to subsection (a) a copy of such petition and the agency
24 shall file in the court the record made before the agency,
25 as provided in section 2112 of title 28, United States

1 Code. Upon the filing of such petition, the court shall have
2 jurisdiction to affirm, set aside, or modify the order and
3 to require the agency to take such action with regard to
4 the matter under review as the court deems proper. The
5 findings of the agency as to the facts, if supported by sub-
6 stantial evidence, shall be conclusive.

7 (e) COSTS.—The agency designated pursuant to sub-
8 section (a) shall recover all direct and indirect costs associ-
9 ated with the exercise of its authority under this section
10 through the imposition of an assessment on each covered
11 institution that is equal to the product of—

12 (1) an assessment rate established by the agen-
13 cy, by regulation; and

14 (2) the amount of the covered institution's aver-
15 age total assets during the preceding year.

16 (f) REPORT TO CONGRESS AND GAO REVIEW.—

17 (1) REPORT TO CONGRESS.—The agency des-
18 ignated pursuant to subsection (a) shall provide a
19 written report to Congress of any action or deter-
20 mination made under paragraph (3), (4), or (5) of
21 subsection (b), and an explanation of the basis for
22 such determination.

23 (2) GAO REVIEW.—The Comptroller General of
24 the United States shall review and report to Con-
25 gress on any determination under paragraph (3),

1 (4), or (5) of subsection (b), including the basis for
2 the determination and the purpose for which any ac-
3 tion was taken.

4 (g) COVERED INSTITUTION DEFINED.—In this sec-
5 tion, the term “covered institution” means a national in-
6 surer and any insurance company organized and super-
7 vised under State law.

8 **SEC. 202. COORDINATING COUNCIL FOR FINANCIAL REGU-**
9 **LATORS.**

10 (a) ESTABLISHMENT AND PURPOSE.—There is es-
11 tablished the Coordinating National Council for Financial
12 Regulators (in this section referred to as the “Council”)
13 to serve as a forum for financial regulators to collectively
14 identify and consider issues related to the regulation and
15 supervision of financial services firms, including the sta-
16 bility and integrity of financial markets, investor and con-
17 sumer protection, the efficiency and effectiveness of regu-
18 lation and supervision, and other matters of mutual con-
19 cern.

20 (b) FUNCTIONS OF THE COUNCIL.—

21 (1) DUTIES.—The Council shall—

22 (A) monitor and measure the health and
23 competitiveness of the financial services indus-
24 try in the United States, including its compo-
25 nent segments;

1 (B) develop early warning systems to de-
2 tect potential points of weakness or strains in
3 financial markets;

4 (C) recommend coordinated actions for na-
5 tional and State financial regulators and finan-
6 cial services firms, especially in times of market
7 stress or financial crisis;

8 (D) develop model supervisory policies for
9 national and State financial regulators; and

10 (E) as necessary, make determinations re-
11 ferred to in section 201(b)(4)(B).

12 (2) LIMITATION.—Except as provided in para-
13 graph (1)(E), the Council shall not have any inde-
14 pendent supervisory or regulatory authority.

15 (c) COMPOSITION.—The Council shall be composed
16 of—

17 (1) the Secretary of the Treasury, who shall
18 serve as the chair of the Council;

19 (2) the Chairman of the Board of Governors of
20 the Federal Reserve System;

21 (3) the Chairman of the Securities and Ex-
22 change Commission;

23 (4) the Chairman of the Commodities Futures
24 Trading Commission;

25 (5) the Comptroller of the Currency;

1 (6) the Director of the Office of Thrift Super-
2 vision;

3 (7) the Chairman of the Federal Deposit Insur-
4 ance Corporation;

5 (8) the Commissioner of National Insurance;

6 (9) an individual appointed by the President, by
7 and with the advice and consent of the Senate, who
8 is knowledgeable in State regulation of depository in-
9 stitutions and other State licensed lenders;

10 (10) an individual appointed by the President,
11 by and with the advice and consent of the Senate,
12 who is knowledgeable in State regulation of the busi-
13 ness of insurance; and

14 (11) an individual appointed by the President,
15 by and with the advice and consent of the Senate,
16 who is knowledgeable in State regulation of securi-
17 ties activities.

18 (d) CONDITIONS APPLICABLE TO APPOINTED MEM-
19 BERS OF THE COUNCIL.—

20 (1) CONSULTATION.—In making the appoint-
21 ments under paragraphs (9), (10), and (11) of sub-
22 section (c), the President shall consult with the Con-
23 ference of State Bank Supervisors, the National As-
24 sociation of Insurance Commissioners, and the
25 North American Securities Administrators Associa-

1 tion, or any successor organizations formed to rep-
2 resent the interests of State banking, insurance, and
3 securities regulators.

4 (2) TERM AND VACANCY.—Members appointed
5 under paragraphs (9), (10), and (11) of subsection
6 (c) shall serve for a term of 5 years. A vacancy in
7 the Council of a member appointed under one of
8 such paragraphs shall be filled in the same manner
9 in which the original appointment was made. The
10 member appointed to fill the vacancy shall be ap-
11 pointed only for the remainder of the term of the
12 preceding member.

13 (3) TRAVEL EXPENSES.—Members appointed
14 under paragraphs (9), (10), and (11) of subsection
15 (c) shall receive travel expenses, including per diem
16 in lieu of subsistence, in accordance with applicable
17 provisions under subchapter I of chapter 57 of title
18 5, United States Code.

19 (4) PROHIBITION ON FINANCIAL INTERESTS.—
20 A member appointed under paragraph (9), (10), or
21 (11) of subsection (c) may not have a direct finan-
22 cial interest in any financial services firm.

23 (e) MEETINGS.—The Council shall meet at least
24 every 90 days upon the call of the Chair. Each member
25 of the Council (other than the members appointed under

1 paragraphs (9), (10), and (11) of subsection (c)) may des-
2 ignate a senior policymaking official to represent such
3 member at a meeting of the Council, as necessary and ap-
4 propriate.

5 (f) CONSULTATION.—The Council shall consult, as
6 appropriate, with major market participants, the various
7 exchanges, clearinghouses, self-regulatory bodies, trade as-
8 sociations and others, and may seek private sector solu-
9 tions to issues whenever possible.

10 (g) INFORMATION SHARING.—The members of the
11 Council shall, to the extent permitted by law, share infor-
12 mation as may be necessary to fulfill the functions of the
13 Council.

14 (h) ANNUAL REPORT.—The Council shall submit an
15 annual report to the President, Congress, and the gov-
16 ernors and legislatures of each State on its activities.

17 (i) ADMINISTRATIVE SUPPORT.—The Secretary of
18 the Treasury shall provide the Council with such adminis-
19 trative support services as may be necessary for the per-
20 formance of its functions.

21 (j) AUTHORIZATION.—There is authorized to be ap-
22 propriated such funds as may be necessary to carry out
23 this section.

1 **SEC. 203. INTERNATIONAL AGREEMENTS.**

2 (a) IN GENERAL.—The Commissioner may engage in
3 international efforts to secure bilateral and multilateral
4 agreements with foreign insurance regulators and regional
5 and global regulatory organizations in order to—

6 (1) promote the stability and integrity of insur-
7 ance markets;

8 (2) encourage open and fair competition in such
9 markets; and

10 (3) improve the quality and uniformity of insur-
11 ance supervision and regulation internationally and
12 provide the regulation of cross-border provisions of
13 insurance and reinsurance services.

14 (b) TECHNICAL ASSISTANCE.—The Commissioner
15 may provide technical assistance to, and cooperation with,
16 foreign insurance regulators and regional and global regu-
17 latory organizations, including the development and imple-
18 mentation of international regulatory standards for insur-
19 ance, and the development and implementation of bilateral
20 and multilateral mutual recognition agreements on the li-
21 censing of insurers and insurance producers.

22 (c) CONSULTATION.—In exercising the authority
23 granted under this section, the Commissioner shall consult
24 and cooperate with the Executive Office of the President
25 and the United States Trade Representative.

1 **TITLE III—NATIONAL INSUR-**
2 **ANCE COMPANIES AND NA-**
3 **TIONAL INSURANCE AGEN-**
4 **CIES**

5 **Subtitle A—Organization,**
6 **Chartering, and Powers**

7 **SEC. 301. ORGANIZATION AND CHARTERING.**

8 (a) CHARTERS.—

9 (1) IN GENERAL.—The Commissioner shall,
10 under such regulations as the Commissioner pre-
11 scribes, issue charters to and provide for the organi-
12 zation of—

13 (A) national insurers in stock, mutual, re-
14 ciprocal, or fraternal form; and

15 (B) national agencies as corporations,
16 partnerships, limited liability companies, or in
17 other forms recognized under State law.

18 (2) NATIONAL INSURERS.—A charter for a na-
19 tional insurer issued under paragraph (1) may limit
20 such national insurer to a specified line of insurance
21 and shall only be issued for property and casualty
22 insurance, life insurance, or the reinsurance of prop-
23 erty and casualty insurance and life insurance. A na-
24 tional insurer may only provide insurance for the

1 lines of insurance for which such insurer has been
2 issued a charter under such paragraph.

3 (3) NATIONAL AGENCIES.—A charter may be
4 issued under paragraph (1) to a national insurance
5 agency that sells, solicits, or negotiates property and
6 casualty insurance, life insurance, or the reinsurance
7 of property and casualty insurance and life insur-
8 ance. A national insurance agency may sell, solicit,
9 or negotiate lines of insurance other than those for
10 which such national insurance agency has been
11 issued a charter under paragraph (1) in accordance
12 with applicable State laws.

13 (b) CHARTERING CRITERIA.—In determining wheth-
14 er to issue a charter for a national insurer or national
15 insurance agency, the Commissioner shall consider the
16 character and competency of the parties seeking the char-
17 ter, and the financial resources and future prospects of
18 the proposed national insurer or proposed national insur-
19 ance agency.

20 (c) LICENSING OF NON-UNITED STATES INSUR-
21 ERS.—

22 (1) IN GENERAL.—A non-United States insurer
23 may transact insurance in the United States through
24 a United States branch by chartering the United
25 States branch to do business as a national insurer

1 under this Act, under such regulations as the Com-
2 missioner may prescribe.

3 (2) CHARTERING CRITERIA.—In carrying out
4 subsection (b) with respect to a non-United States
5 insurer, the Commissioner may take into account the
6 nature of the insurance or reinsurance business that
7 the non-United States insurer proposes to conduct
8 through a United States branch and may give ap-
9 propriate recognition to the capital and other assets
10 maintained by the non-United States insurer in a ju-
11 risdiction other than the United States.

12 (3) OTHER APPLICABLE LAWS.—Nothing in
13 this section shall be construed to prohibit a non-
14 United States insurer from doing business as an in-
15 surer without a charter under this Act on any basis
16 permitted under applicable State laws or an inter-
17 national agreement.

18 (4) NONDISCRIMINATION.—

19 (A) IN GENERAL.—Except as provided in
20 this section, the Commissioner may not impose
21 any condition for the issuance of a charter
22 under this section to a national insurer solely
23 because the national insurer is—

24 (i) a subsidiary of a non-United
25 States person;

1 (ii) partially owned by a non-United
2 States person; or

3 (iii) a United States branch of a non-
4 United States insurer.

5 (B) EXCEPTION.—Notwithstanding sub-
6 paragraph (A), the Commissioner may impose
7 conditions for the issuance of a charter under
8 this section that are different from those im-
9 posed on other national insurers if—

10 (i) the conditions attached are con-
11 tained in the charter under which the na-
12 tional insurer chooses to operate; and

13 (ii) the Commissioner makes a written
14 finding that the conditions are related to
15 the protection of policyholders and are the
16 minimum conditions necessary to achieve
17 the purposes of this Act.

18 (d) NO DELEGATION PERMITTED.—The Commis-
19 sioner may not delegate the authorities of the Commis-
20 sioner under this section to any insurance self-regulatory
21 organization.

22 **SEC. 302. CORPORATE GOVERNANCE.**

23 (a) MAIN OFFICE.—A national insurer or national in-
24 surance agency may designate any office at which it con-
25 ducts insurance operations as its main office, and for pur-

1 poses of jurisdiction, a national insurer or national insur-
2 ance agency shall be deemed a citizen of the State in which
3 its main office is located and of the State in which it has
4 its principal place of business.

5 (b) APPLICABLE LAW.—A national insurer or na-
6 tional insurance agency may elect to follow the corporate
7 governance procedures of the law of the State in which
8 the main office of the such insurer or agency is located,
9 the law of the State in which a company that controls the
10 insurer or agency is incorporated, title 8 of the Delaware
11 Code (Delaware General Corporation Law), or the Model
12 Business Corporation Act of the American Bar Associa-
13 tion. A national insurer or national insurance agency shall
14 designate in its bylaws the body of law selected.

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

17 (1) IN GENERAL.—Each national insurer and
18 national insurance agency shall establish an audit
19 committee of the board of directors of such insurer
20 or such agency, which shall be composed entirely of
21 outside directors who are independent of manage-
22 ment of such insurer or such agency.

23 (2) SATISFACTION.—The requirement described
24 in paragraph (1) shall be satisfied if a company that
25 controls a national insurer or national insurance

1 agency has established an audit committee of its
2 board of directors entirely composed of outside direc-
3 tors who are independent of management of such
4 controlling person, and such committee reviews the
5 financial statements of the national insurer or na-
6 tional insurance agency.

7 (d) PARTICIPATING POLICY PROCEDURES.—

8 (1) IN GENERAL.—A national insurer in mutual
9 form shall elect to either adhere to participating pol-
10 icy procedures of the relevant law of the State in
11 which its main office is located, or adhere to the
12 participating policy procedures established by the
13 Commissioner under paragraph (2).

14 (2) REGULATIONS.—The Commissioner shall,
15 by regulation, establish participating policy proce-
16 dures, as the Commissioner determines to be appro-
17 priate to carry out paragraph (1).

18 (e) CONSUMER LIAISON.—

19 (1) IN GENERAL.—Each national insurer and
20 national insurance agency shall appoint a liaison to
21 serve consumers and address complaints or disputes.

22 (2) PROCEDURES.—Each national insurer and
23 national insurance agency shall establish policies and
24 procedures designed to reasonably ensure fair and

1 expeditious handling of consumer complaints and
2 disputes.

3 (3) REGULATIONS.—The Commissioner shall
4 issue regulations governing the standards for the li-
5 aison referred to in paragraph (1).

6 **SEC. 303. CHARTER CONVERSIONS.**

7 (a) CONVERSION FROM STATE TO NATIONAL CHAR-
8 TER.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, the Commissioner may, pursuant to
11 regulations issued by the Commissioner, allow a
12 State insurer to convert to a national insurer and a
13 State insurance agency to convert to a national in-
14 surance agency.

15 (2) EFFECT OF CONVERSION.—A State insurer
16 or State insurance agency that converts under this
17 section shall, by operation of law and without fur-
18 ther action, hold and be subject to all rights, privi-
19 leges, liabilities, property interests, and other inter-
20 ests and obligations that the State insurer or State
21 insurance agency held, or was subject to, imme-
22 diately before the conversion.

23 (3) SPECIAL AUTHORITY.—The Commissioner
24 may, subject to such conditions as the Commissioner
25 may prescribe by regulation, permit a national in-

1 surer or national insurance agency resulting from
2 the conversion of a State insurer or State insurance
3 agency, as applicable, to retain, hold, or exercise as-
4 sets, liabilities, powers, and authorities that do not
5 conform to the legal requirements otherwise applica-
6 ble to national insurers or national insurance agen-
7 cies to the extent the Commissioner determines is
8 appropriate.

9 (b) CONVERSION FROM NATIONAL TO STATE CHAR-
10 TER.—

11 (1) IN GENERAL.—A national insurer may con-
12 vert to a State insurer and a national insurance
13 agency may convert to a State insurance agency in
14 accordance with applicable State law if—

15 (A) such national insurer or such national
16 insurance agency notifies the Commissioner of
17 the intention to convert in accordance with such
18 procedures as the Commissioner may prescribe
19 by regulation; and

20 (B) after conducting a review of such na-
21 tional insurer or such national insurance agen-
22 cy, the Commissioner approves the conversion.

23 (2) SAVINGS PROVISION.—Nothing in this sec-
24 tion or in the conversion of a national insurer to a
25 State insurer or a national insurance agency to a

1 State insurance Agency shall operate to abrogate
2 any rights, privileges, liabilities, property interests,
3 or other interests or obligations that a national in-
4 surer or national insurance agency held or was sub-
5 ject to immediately before the conversion.

6 (c) NO DELEGATION PERMITTED.—The Commis-
7 sioner may not delegate any authority under this section
8 to any insurance self-regulatory organization.

9 **SEC. 304. POWERS.**

10 (a) IN GENERAL.—

11 (1) NATIONAL INSURER.—A national insurer
12 may, pursuant to such regulations as the Commis-
13 sioner prescribes—

14 (A) engage in the sale, solicitation, nego-
15 tiation, and underwriting of property and cas-
16 ualty insurance (other than title insurance), life
17 insurance, and reinsurance;

18 (B) establish and maintain one or more
19 separate accounts and allocate amounts to such
20 accounts, and establish and maintain one or
21 more protected cells in connection with an in-
22 surance securitization and attribute to such
23 cells insurance and reinsurance obligations with
24 respect to its general account, obligations relat-

1 ing to the insurance securitization, and assets
2 to fund such obligations;

3 (C) hold and accumulate funds pursuant to
4 funding agreements;

5 (D) provide investment advice and invest-
6 ment management services; and

7 (E) engage in all other insurance oper-
8 ations and exercise all such incidental powers as
9 shall be necessary to carry on insurance oper-
10 ations.

11 (2) NATIONAL INSURANCE AGENCY.—A na-
12 tional insurance agency may, pursuant to such regu-
13 lations and the Commissioner prescribes—

14 (A) engage in the sale, solicitation, and ne-
15 gotiation of policies of insurance issued by any
16 national insurer or State insurer, and the sale,
17 solicitation and negotiation of surplus lines of
18 insurance and nonadmitted insurance for a non-
19 admitted insurer; and

20 (B) exercise all such incidental powers as
21 shall be necessary to carry out such activities,
22 including claims adjustment and settlement,
23 risk management, employee benefits advice, re-
24 tirement planning, and any other insurance-re-
25 lated consulting activities.

1 (b) OTHER POWERS.—A national insurer or national
2 insurance agency may, subject to such regulations as the
3 Commissioner prescribes—

4 (1) adopt and use a corporate seal, or a fac-
5 simile of it;

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

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

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

14 (5) make contracts and guarantees, incur liabil-
15 ities, borrow money, issue notes, bonds, and other
16 obligations (which may be convertible into or include
17 the option to purchase other securities of the na-
18 tional insurer or national insurance agency), and se-
19 cure any of its obligations by mortgage or pledge of
20 any of its property, franchises, or income;

21 (6) purchase, receive, subscribe for, or other-
22 wise acquire, own, hold, vote, improve, employ, use,
23 and otherwise deal in and with real and personal
24 property or other assets, or any interest therein, and
25 sell, convey, mortgage, lease, exchange, transfer, or

1 otherwise dispose of, or mortgage or pledge, all or
2 any of its property and assets, or any interest there-
3 in;

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

7 (8) participate with others in any corporation,
8 partnership, limited partnership, joint venture, or
9 other association, or in any transaction, under-
10 taking, or arrangement, which the national insurer
11 or national insurance agency would have power to
12 conduct by itself, whether or not such participation
13 involves sharing or delegating control with or to oth-
14 ers;

15 (9) elect or appoint directors, officers, employ-
16 ees, and agents of the national insurer or national
17 insurance agency, define their duties, fix their com-
18 pensation, and lend them money and credit;

19 (10) make donations and otherwise devote its
20 resources for the public welfare or for charitable, sci-
21 entific, educational, humanitarian, philanthropic, or
22 religious purposes; and

23 (11) engage in any other lawful activity that is
24 necessary or convenient to further its activities and
25 affairs.

1 (c) SUBSIDIARIES.—No national insurer or national
2 insurance agency may establish or acquire a subsidiary
3 without prior notice to the Commissioner, and shall con-
4 duct the activities in accordance with regulations and or-
5 ders of the Commissioner.

6 (d) OTHER CORPORATE TRANSACTIONS.—No na-
7 tional insurer or national insurance agency shall engage
8 in mutual to stock conversions, stock to mutual conver-
9 sions, mergers, acquisitions, asset transfers, and other
10 similar corporate transactions without the prior approval
11 of the Commissioner, and subject to regulations and or-
12 ders of the Commissioner.

13 (e) PROHIBITED ACTIVITIES.—No national insurer or
14 national insurance agency may engage in any activity that
15 the Commissioner determines, by regulation or order,
16 poses a serious risk to the solvency of a national insurer
17 or national insurance agency, jeopardizes the interests of
18 policyholders of a national insurer or national insurance
19 agency, or otherwise is incompatible with the public inter-
20 est.

21 (f) BULK TRANSFERS.—

22 (1) BULK TRANSFERS AUTHORIZED.—A na-
23 tional insurer may only effect the following bulk
24 transfers:

1 (A) A State insurer as the transferring in-
2 surer and a permitted national insurer as the
3 assuming insurer.

4 (B) A permitted national insurer as the
5 transferring insurer and a State insurer as the
6 assuming insurer.

7 (C) A national insurer as the transferring
8 insurer and a national insurer as the assuming
9 insurer.

10 (D) A State insurer as the transferring in-
11 surer and a national insurer that is not a per-
12 mitted national insurer as the assuming in-
13 surer.

14 (E) A national insurer that is not a per-
15 mitted national insurer as the transferring in-
16 surer and a State insurer as the assuming in-
17 surer.

18 (2) COMMISSIONER APPROVAL.—

19 (A) IN GENERAL.—A national insurer shall
20 not effect a bulk transfer as authorized under
21 subparagraph (A), (B), (C), or (E) of para-
22 graph (1) without the prior approval of the
23 Commissioner, in accordance with such regula-
24 tions as the Commissioner shall prescribe.

1 (B) STANDARD OF APPROVAL.—The Com-
2 missioner shall approve a bulk transfer under
3 subparagraph (B), after notice and a hearing,
4 unless the Commissioner determines that the
5 bulk transfer is likely to be hazardous to policy-
6 holders of transferred insurance policies, policy-
7 holders of the transferring insurer, or policy-
8 holders of the assuming insurer.

9 (3) POLICYHOLDER CONSENT.—

10 (A) STATE INSURER AND PERMITTED NA-
11 TIONAL INSURER.—Notwithstanding any other
12 provision of law, a national insurer is not re-
13 quired to obtain the consent of policyholders to
14 effect a bulk transfer authorized under sub-
15 paragraph (A) or (B) of paragraph (1).

16 (B) BETWEEN NATIONAL INSURERS OR
17 STATE INSURER AND OTHER NATIONAL IN-
18 SURER.—Notwithstanding any other provision
19 of law, the Commissioner shall determine
20 whether a national insurer wishing to effect a
21 bulk transfer authorized under subparagraph
22 (C) or (E) of paragraph (1) is required to ob-
23 tain the consent of policyholders to effect such
24 transfer and the form in which such consent
25 must be obtained.

1 (4) RELEASE FROM LIABILITY.—Upon the com-
2 pletion of a bulk transfer under this section, the
3 transferring insurer shall be released from its obliga-
4 tions under the transferred insurance policies.

5 (5) STATE LAW.—

6 (A) PROHIBITION.—Except as provided in
7 subparagraph (B), a State may not—

8 (i) require a national insurer or a
9 State insurer to—

10 (I) obtain policyholder consent to
11 a bulk transfer; or

12 (II) submit the bulk transfer to
13 State review or action (including ap-
14 proval and nondisapproval); or

15 (ii) prevent or significantly interfere
16 with a bulk transfer effected pursuant to
17 this section.

18 (B) CONSTRUCTION.—Subparagraph (A)
19 shall not be construed to prohibit any State
20 from—

21 (i) collecting, reviewing, and taking
22 action (including approval or disapproval)
23 on applications and other documents or re-
24 ports concerning a proposed bulk transfer
25 authorized under—

1 (I) subparagraph (B), (D), or
2 (E) of paragraph (1) to which a State
3 insurer (other than a permitted na-
4 tional insurer) domiciled in that State
5 is a party; or

6 (II) subparagraph (D) or (E) of
7 paragraph (1) to which a State in-
8 surer (other than a permitted national
9 insurer) doing business in that State,
10 other than a State insurer domiciled
11 in that State, is a party, if the review
12 or action meets the standards set
13 forth in subparagraph (C); or

14 (ii) requiring policyholder consent of a
15 proposed bulk transfer permitted under
16 paragraph (4) or (5) of subsection (b).

17 (C) STANDARDS.—A review or action
18 meets the standards under this paragraph, if
19 it—

20 (i) is based on standards that are not
21 more onerous than those imposed by the
22 Commissioner;

23 (ii) occurs within a reasonable time
24 frame that advances the purposes of this
25 section;

1 (iii) is made in close consultation and
2 cooperation with the Commissioner;

3 (iv) is without bias or discrimination
4 toward either the transferring insurer or
5 the assuming insurer;

6 (v) serves a legitimate State interest;

7 and

8 (vi) does not frustrate the proposed
9 bulk transfer.

10 (D) NOTICE OF FAILURE.—If the Commis-
11 sioner finds that any State review or action
12 under subparagraph (B)(i) fails to meet any of
13 the standards set forth in subparagraph (C),
14 the Commissioner may provide the applicable
15 State with notice of such failure and the rea-
16 sons for such failure.

17 (6) DIFFERENTIAL TREATMENT PROHIBITED.—

18 A State may not treat a national insurer or a State
19 insurer entering into a bulk transfer agreement with
20 a national insurer or a State insurer, or any affiliate
21 or subsidiary of such insurer, differently than any
22 other insurer operating in that State.

23 (7) NO DELEGATION PERMITTED.—The Com-
24 missioner may not delegate to any insurance self-
25 regulatory organization any authority conferred

1 under this subsection with respect to any bulk trans-
2 fer involving a national insurer.

3 (8) DEFINITIONS.—In this subsection:

4 (A) ASSUMING INSURER.—The term “as-
5 suming insurer” means the insurer that pur-
6 chases or otherwise acquires existing insurance
7 policies from another insurer by bulk transfer.

8 (B) BLOCK OF BUSINESS.—The term
9 “block of business” means all those insurance
10 policies of an insurer under a particular policy
11 form.

12 (C) BULK TRANSFER.—The term “bulk
13 transfer”—

14 (i) means the transfer by an insurer
15 to another insurer of existing insurance
16 policies constituting all or substantially all
17 of one or more of its lines of business or
18 blocks of business; and

19 (ii) does not include—

20 (I) any sale in which the trans-
21 ferring insurer retains direct or indi-
22 rect control of the assets supporting
23 the transferred insurance policies;

24 (II) any transaction effected by
25 an agreement under which the trans-

1 ferring insurer continues to remain di-
2 rectly liable to the policyholders under
3 the insurance policies;

4 (III) the substitution of one in-
5 surer for another upon the expiration
6 of insurance coverage pursuant to
7 statutory or contractual requirements
8 and the issuance of a new policy of in-
9 surance by that insurer;

10 (IV) the transfer of policies of in-
11 surance pursuant to merger or con-
12 solidation of two or more insurers to
13 the extent that those transactions are
14 regulated by statute;

15 (V) any transaction effected by
16 an insurer subject to a judicial order
17 of receivership, liquidation, or reha-
18 bilitation; or

19 (VI) any transfer of liabilities
20 from one insurer to another under a
21 single group insurance policy upon the
22 request of the group policyholder.

23 (D) PERMITTED NATIONAL INSURER.—

24 The term “permitted national insurer”
25 means—

1 (i) a State insurer that has recently
2 converted to a national insurer under sec-
3 tion 303, as determined by the Commis-
4 sioner; or

5 (ii) a national insurer that has been
6 issued a charter under section 301 for a
7 new line of insurance, as determined by
8 the Commissioner.

9 (E) TRANSFERRED INSURANCE POLI-
10 CIES.—The term “transferred insurance poli-
11 cies” means the insurance policies that are sub-
12 ject to the bulk transfer.

13 (F) TRANSFERRING INSURER.—The term
14 “transferring insurer” means the insurer in
15 privity of contract with the policyholders under
16 the existing insurance policies that are subject
17 to the bulk transfer.

18 (g) EFFECT OF STATE LAW.—No State may prevent
19 or restrict a national insurer or national insurance agency
20 from exercising any power conferred by this section or by
21 any regulation authorized by this section.

22 **SEC. 305. CHARTERING COMMENCEMENT DATE.**

23 The Commissioner may not charter a national insurer
24 or national insurance agency until the Commissioner noti-
25 fies Congress that the Office is operational and that all

1 regulations necessary to govern the organization, forma-
2 tion, operations, and supervision of such insurers and
3 agencies have been issued in final or interim final form.
4 The Commissioner shall provide a notification to Congress
5 not later than 2 years after the date of the enactment of
6 this Act.

7 **Subtitle B—Financial, Policy and** 8 **Market Conduct Standards**

9 **SEC. 311. FINANCIAL STANDARDS.**

10 The Commissioner shall establish, by regulation,
11 standards for national insurers and national insurance
12 agencies on—

- 13 (1) accounting and disclosure;
- 14 (2) auditing;
- 15 (3) risk management;
- 16 (4) internal controls;
- 17 (5) investments;
- 18 (6) capital and liquidity;
- 19 (7) actuarial opinions;
- 20 (8) reinsurance; and
- 21 (9) such other matters as the Commissioner
22 deems necessary to ensure the financial stability and
23 integrity of national insurers and national insurance
24 agencies.

1 **SEC. 312. POLICY STANDARDS.**

2 (a) **POLICY STANDARDS.**—The Commissioner shall
3 establish, by regulation, general policy requirements and
4 requirements for different categories of policies issued by
5 national insurers.

6 (b) **FILING REQUIREMENT.**—No national insurer
7 may issue a policy until the form of the policy has been
8 filed with the Commissioner. The form shall be accom-
9 panied by written certification by an officer of the national
10 insurer that the policy complies with requirements estab-
11 lished under subsection (a).

12 (c) **LAW APPLICABLE.**—

13 (1) **LAW SPECIFIED BY PARTIES.**—The provi-
14 sions of any insurance policy or other product of a
15 national life insurer shall be interpreted in accord-
16 ance with the law of the jurisdiction specified by the
17 parties to the insurance policy or other product if
18 the parties have specified the law of—

19 (A) the jurisdiction in which the main of-
20 fice of the national life insurer is located;

21 (B) the jurisdiction in which the principal
22 place of business of the national life insurer is
23 located; or

24 (C) the jurisdiction in which the insurance
25 policy or other product is delivered.

1 (2) DEFAULT LAW.—If the parties to an insur-
2 ance policy or other product of a national life in-
3 surer have not specified the jurisdiction whose law
4 shall govern the provisions of the insurance policy or
5 other product, such provisions shall be interpreted in
6 accordance with the law of the jurisdiction in which
7 the insurance policy or other product is delivered.

8 (3) RULEMAKING.—The Commissioner shall es-
9 tablish, by regulation, choice of law rules under this
10 subsection.

11 (d) INTERPRETIVE RULINGS.—

12 (1) PROCEDURES.—The Commissioner shall es-
13 tablish procedures by which national insurers may
14 obtain interpretive rulings from the Office regarding
15 the interpretation and application of the require-
16 ments established under this section.

17 (2) PUBLIC AVAILABILITY.—Except as provided
18 under paragraph (3), requests by national insurers
19 for interpretive rulings from the Office and the com-
20 plete text of such interpretive rulings shall not be
21 made available to the public.

22 (3) PUBLICATION OF SUMMARIES.—Notwith-
23 standing paragraph (2), the Commissioner shall pub-
24 lish a summary of each interpretive opinion, exclud-
25 ing the name of the national insurer and any other

1 identifying information, either promptly after the
2 issuance of such opinion or, upon the request of the
3 national insurer, after such delay as the Commis-
4 sioner determines appropriate.

5 (e) RATES, RATING ELEMENTS, AND PRICE.—The
6 Commissioner may not require a national insurer to use
7 any particular rate, rating element, or price.

8 **SEC. 313. MARKET CONDUCT STANDARDS.**

9 (a) STANDARDS.—The Commissioner shall establish,
10 by regulation, market conduct standards for national in-
11 surers, national insurance agencies, and national insur-
12 ance producers that implement the model laws of the
13 NAIC entitled “Unfair Trade Practices Act” and “Unfair
14 Claims Settlement Practices Act”.

15 (b) DISCLOSURE.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 the Commissioner shall require each policy issued by
18 a national insurer to include the following disclosure
19 on the cover page:

20 “This policy has been issued by a national in-
21 surer, which is supervised by the Office of National
22 Insurance. If you have any questions or complaints
23 about this policy, you may contact the Division of
24 Consumer Affairs, Office of National Insurance,
25 _____.”.

1 (2) ADDRESS.—The disclosure required under
2 paragraph (1) shall, in place of the blank at the end,
3 include the appropriate address, toll-free number,
4 and Internet address of the Division of Consumer
5 Affairs for the office of the Division located in the
6 State in which the policyholder resides.

7 **SEC. 314. GENERAL PRINCIPLES.**

8 (a) GENERAL PRINCIPLES.—The financial, policy,
9 and market conduct standards issued by the Commis-
10 sioner pursuant to this subtitle shall—

11 (1) promote the stability and integrity of na-
12 tional insurers and national insurance agencies;

13 (2) protect policyholders and other consumers
14 and investors; and

15 (3) encourage innovation and competition by
16 national insurers and national insurance agencies.

17 (b) NAIC STANDARDS.—In establishing the finan-
18 cial, policy, and market conduct standards required by this
19 subtitle, the Commissioner shall take into consideration
20 standards, models, practices, and instructions established
21 by the NAIC.

22 **Subtitle C—State Taxation**

23 **SEC. 321. STATE TAXATION OF NATIONAL INSURERS.**

24 (a) STATE TAXATION RULE.—Except as provided in
25 subsection (b) and section 605(b), a national insurer doing

1 business in any State shall be subject to all applicable
2 State and local taxes, assessments, and charges, including
3 insurance retaliatory taxes or other similar taxes, and
4 shall be entitled to all applicable tax credits, deductions,
5 and offsets provided under State law, as well as all policy-
6 holder surcharge provisions under State law, to the same
7 extent and in the same manner as an insurer licensed to
8 do business in such State and chartered in the State where
9 the national insurer is considered domiciled under sub-
10 section (c) or (d), except that, such national insurer shall
11 not be subject to—

12 (1) any additional taxes, assessments, and
13 charges imposed by such State (or local government)
14 by reason of the failure of the national insurer to be
15 licensed or otherwise authorized to conduct business
16 or write or sell insurance policies, by such State; or

17 (2) special assessments and charges that fund
18 services that the State does not provide with respect
19 to the national insurer.

20 (b) EXCEPTION.—No State shall have the power to
21 impose an insurance retaliatory tax on any national in-
22 surer, unless—

23 (1) for any tax purpose for which the State of
24 domicile is relevant, every national insurer is treated

1 by such State as domiciled in the State designated
2 by each national insurer under subsection (c); and

3 (2) the insurance retaliatory tax is imposed by
4 such State on every national insurer to the same ex-
5 tent and in the same manner as it is imposed on
6 every insurer chartered in the State where the na-
7 tional insurer is considered domiciled under sub-
8 section (c).

9 (c) DESIGNATION OF DOMICILE.—

10 (1) IN GENERAL.—A national insurer may des-
11 ignate as its State of domicile, by filing such des-
12 ignation in writing with the Commissioner—

13 (A) the State in which the national insur-
14 er's principal place of business in the United
15 States is located; or

16 (B) in the case of an insurer that has con-
17 verted from a State insurer to a national in-
18 surer under this Act, the State in which such
19 insurer was domiciled immediately before such
20 conversion.

21 (2) NO DESIGNATION BY NATIONAL INSURER.—

22 If a national insurer does not make a designation of
23 a State of domicile under this subsection, the na-
24 tional insurer shall be deemed to have designated as

1 its State of domicile the State in which its principal
2 place of business in the United States is located.

3 (3) CHANGE IN DOMICILE.—A national insurer
4 may change its State of domicile, with the approval
5 of the Commissioner, to any other State in accord-
6 ance with paragraph (1).

7 (d) STATUS OF NATIONAL INSURER.—For purposes
8 of State taxation, except as provided in this section, a na-
9 tional insurer shall not be exempt from any State tax or
10 subject to a lesser burden of any State tax, solely by rea-
11 son of its status as a national insurer under this Act.

12 **SEC. 322. STATE TAXATION OF NATIONAL INSURANCE**
13 **AGENCIES.**

14 (a) STATE TAXATION RULE.—A national insurance
15 agency shall be subject to all taxes imposed under any ap-
16 plicable provision of State law, to the same extent and in
17 the same manner as an agency chartered in the State in
18 which the national insurance agency is considered domi-
19 ciled pursuant to subsection (b).

20 (b) STATE OF DOMICILE.—For purposes of this sec-
21 tion, the State of domicile of a national insurance agency
22 shall be deemed to be the State in which the principal
23 place of business of the national insurance agency in the
24 United States is located.

1 (c) STATUS OF NATIONAL INSURANCE AGENCY.—
2 For purposes of State taxation, except as provided in this
3 section, a national insurance agency shall not be exempt
4 from any State tax or subject to a lesser burden of any
5 State tax, solely by reason of its status as a national insur-
6 ance agency under this Act.

7 **SEC. 323. STATE TAXATION OF NONADMITTED AND SUR-**
8 **PLUS LINES OF INSURANCE.**

9 No State, other than the State in which an insured
10 maintains its principal place of business or, in the case
11 of an individual, maintains a principal residence, may re-
12 quire a tax, fee, assessment, or other charge imposed on
13 an insured, either directly or through a producer, that is
14 based upon any payment made as consideration for non-
15 admitted insurance or surplus lines insurance, and any
16 other compensation given in consideration for a contract
17 of insurance.

18 **TITLE IV—NATIONAL**
19 **INSURANCE PRODUCERS**

20 **SEC. 401. LICENSING OF NATIONAL INSURANCE PRO-**
21 **DUCERS.**

22 (a) AUTHORITY.—The Commissioner may license an
23 individual person as a national insurance producer.

1 (b) REQUIREMENTS FOR SALE OF NATIONAL INSUR-
2 ANCE.—An individual may sell, solicit, or negotiate insur-
3 ance for a national insurer only if—

4 (1) such individual—

5 (A) is licensed by the Commissioner under
6 subsection (a); and

7 (B) is—

8 (i) an agent or employee of a national
9 insurer or a national insurance agency; or

10 (ii) self-employed and not affiliated
11 with another national insurance producer,
12 as determined by the Commissioner; or

13 (2) such individual is licensed as an insurance
14 producer under the laws of a State and sells, solicits,
15 or negotiates such insurance to persons in such
16 State.

17 (c) SCOPE OF LICENSE.—

18 (1) IN GENERAL.—A national insurance pro-
19 ducer may—

20 (A) sell, solicit, or negotiate insurance in
21 any State for a national insurer or a State in-
22 surer;

23 (B) sell, solicit, or negotiate surplus lines
24 of insurance and nonadmitted insurance for a
25 non-admitted insurer; and

1 (C) exercise all such incidental powers as
2 shall be necessary to carry out the activities re-
3 ferred to in subparagraphs (A) and (B), includ-
4 ing claims adjustments and settlement, risk
5 management, employee benefits advice, retire-
6 ment planning, and any other insurance-related
7 consulting activities.

8 (2) LIMITATIONS.—The Commissioner may
9 limit a license to one or more specified lines or types
10 of insurance.

11 (d) QUALIFICATIONS.—The Commissioner shall, by
12 regulation, specify educational and examination require-
13 ments for obtaining a national insurance producer license,
14 and may impose different requirements for different lines
15 or types of insurance.

16 **SEC. 402. SUPERVISION AND EXAMINATION.**

17 (a) EXAMINATIONS.—

18 (1) IN GENERAL.—The Commissioner may ex-
19 amine a national insurance producer to assess the
20 producer's compliance with this Act and the regula-
21 tions issued pursuant to this Act.

22 (2) MANDATORY EXAMINATIONS.—The Com-
23 missioner shall provide for the examination of a na-
24 tional insurance producer in response to a complaint

1 or any evidence that such producer has violated or
2 is about to violate—

3 (A) a law, rule, or regulation;

4 (B) any condition imposed in writing by
5 the Commissioner in connection with issuing a
6 national insurance producer license; or

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

9 (b) REPORTS.—The Commissioner may require a na-
10 tional insurance producer to make such reports, con-
11 taining such information and in such form, as the Com-
12 missioner may prescribe by regulation.

13 (c) POWERS.—The powers authorized the Commis-
14 sioner in section 121 shall apply to reports by and exami-
15 nations of national insurance producers.

16 (d) LIMITATION ON LIABILITY.—

17 (1) IN GENERAL.—Subject to paragraph (2), no
18 civil liability shall be imposed on and no cause of ac-
19 tion shall arise from a national insurer or national
20 insurance agency, an insurer-affiliated party, or a
21 national insurance producer submitting a statement
22 or information required under this Act, or any regu-
23 lation thereunder, or requested in writing by the
24 Commissioner relating to the conduct of a national
25 insurance producer.

1 (2) EXCEPTION.—Paragraph (1) shall not
2 apply with respect to false statements made with ac-
3 tual malice.

4 **SEC. 403. PRODUCER DATABASE.**

5 (a) IN GENERAL.—The Commissioner shall develop
6 and implement an electronic database consisting of infor-
7 mation relating to national insurance producers and an
8 electronic communication network that links the Commis-
9 sioner with State insurance regulators and national insur-
10 ers, national insurance agencies, and State insurers for
11 an electronic exchange of such information.

12 (b) MAINTENANCE.—The Commissioner may dele-
13 gate authority over the maintenance of each database de-
14 scribed in subsection (a) to an insurance self-regulatory
15 organization.

16 **SEC. 404. DUTY TO SUPERVISE.**

17 (a) NATIONAL INSURERS.—Unless a national insur-
18 ance producer is subject to the supervision of a national
19 insurance agency under subsection (b), a national insurer
20 shall supervise the sales and marketing practices of a na-
21 tional insurance producer with respect to the sale, sollicita-
22 tion, or negotiation of insurance policies of such national
23 insurer, if—

24 (1) such producer is an—

25 (A) employee of the national insurer; or

1 (B) agent of the national insurer; and

2 (2) the principal business activity of such pro-
3 ducer is devoted to the sale, solicitation, or negotia-
4 tion of insurance policies for such insurer, the super-
5 vision of the agents for such insurer, or both.

6 (b) NATIONAL INSURANCE AGENCIES.—A national
7 insurance agency shall supervise the sales and marketing
8 practices of a national insurance producer with respect to
9 the sale, solicitation, or negotiation of insurance policies,
10 if such producer—

11 (1) is an employee of such agency and the sale,
12 solicitation, and negotiation of insurance is within
13 the scope of employment of the producer; or

14 (2) is an agent of such agency and the sale, so-
15 licitation, and negotiation of insurance is pursuant
16 to the terms of an agreement between the agent and
17 such agency.

18 (c) STANDARDS FOR SUPERVISION.—The Commis-
19 sioner shall, by regulation, establish standards for the du-
20 ties under subsections (a) and (b). Such standards shall
21 not conflict with the rules adopted by any self-regulatory
22 organization approved by the Securities and Exchange
23 Commission pursuant to its authority under section
24 19(b)(1) of the Securities Exchange Act of 1934 (15

1 U.S.C. 78s(b)(1)) for broker-dealer supervision of reg-
2 istered representatives.

3 (d) EXEMPTION.—The Commissioner may, by regula-
4 tion, exempt any class of persons from the duties under
5 subsections (a) and (b), if the Commissioner determines
6 that, given the nature of the business relationship with
7 the national insurance producer, it would be unreasonable
8 or inappropriate to require the class member to supervise
9 such producer.

10 (e) NO DUTY.—A national insurer or national insur-
11 ance agency is not required to supervise the sales and mar-
12 keting practices of persons other than those referred to
13 in subsections (a) or (b).

14 (f) OVERSIGHT OF INDEPENDENT NATIONAL INSUR-
15 ANCE PRODUCERS.—

16 (1) IN GENERAL.—The Commissioner shall
17 oversee the sales and marketing practices of a na-
18 tional insurance producer with respect to the sale,
19 solicitation, or negotiation of insurance policies if
20 such producer is not a person subject to supervision
21 under subsection (a) or (b).

22 (2) STANDARDS AND PROCEDURES.—The Com-
23 missioner shall, by regulation, establish standards
24 and procedures for the oversight of the sales and

1 marketing practices of national insurance producers
2 described in paragraph (1).

3 **SEC. 405. RELATIONSHIP TO STATE LAW.**

4 (a) NO STATE RESTRICTIONS.—No State may pre-
5 vent or restrict a national insurer or national insurance
6 agency from engaging in the acts described in subsection
7 (b) or from engaging the services of a person who engages
8 in such acts for the national insurer or national insurance
9 agency, nor shall any State require that a person be li-
10 censed by reason of engaging in such acts for a national
11 insurer or national insurance agency.

12 (b) ACTS PROTECTED FROM STATE RESTRIC-
13 TIONS.—The acts referred to in subsection (a) are the fol-
14 lowing:

15 (1) Investigating, evaluating, ascertaining, or
16 determining the amount of or negotiating, settling,
17 or adjusting or otherwise participating in the dis-
18 posal of claims, losses, or damages arising under in-
19 surance policies written by a national insurer.

20 (2) Soliciting, negotiating, or placing reinsur-
21 ance cessions or retrocessions on behalf of a ceding
22 national insurer without the authority or power to
23 bind reinsurance on behalf of such national insurer.

24 (3) Binding or managing all or part of the as-
25 sumed reinsurance business of a national insurer

1 that is a reinsurer (including the management of a
2 separate division, department, or underwriting of-
3 fice) and acting as an agent for such reinsurer.

4 (4) Directly or indirectly underwriting, col-
5 lecting charges or premiums, or adjusting or settling
6 claim, in connection with policies of insurance writ-
7 ten by a national insurer.

8 (c) ACTIVITIES OF NATIONAL INSURANCE PRO-
9 DUCERS.—No State may—

10 (1) prevent or restrict a national insurance pro-
11 ducer from engaging in any activity authorized by
12 this title; or

13 (2) require such producer to be licensed by rea-
14 son of engaging in such activity on behalf of a na-
15 tional insurer, national insurance agency, State in-
16 surer, or a United States branch of a non-United
17 States insurer.

18 (d) ACTIVITIES OF STATE INSURANCE PRO-
19 DUCERS.—No State may prevent or restrict an insurance
20 producer licensed by such State from selling, soliciting, or
21 negotiating insurance in such State on behalf of a national
22 insurer or being employed by a national insurance agency.

23 (e) INTERNATIONAL AGREEMENTS.—To the extent
24 that a non-United States insurer is eligible to conduct a

1 cross-border business pursuant to an international agree-
2 ment, no State may—

3 (1) prevent or restrict such non-United States
4 insurer from engaging in the activities authorized
5 under such agreement; or

6 (2) prevent or restrict a national insurance
7 agency or national insurance producer from engag-
8 ing in any activity authorized by this Act on behalf
9 of such non-United States insurer or require the
10 agency or producer to be licensed by reason of en-
11 gaging in such activity for such non-United States
12 insurer.

13 **SEC. 406. LICENSING COMMENCEMENT DATE.**

14 The Commissioner shall not license a national insur-
15 ance producer until the Commissioner notifies Congress
16 that the Office is operational and that all regulations nec-
17 essary to govern the licensing, operations, and supervision
18 of such producer have been issued in final or interim final
19 form. The Commissioner shall provide a notification to
20 Congress not later than 2 years after the date of the en-
21 actment of this Act.

1 **TITLE V—CHANGE IN CONTROL**
2 **AND INSURANCE HOLDING**
3 **COMPANIES**

4 **SEC. 501. CHANGE IN CONTROL.**

5 (a) IN GENERAL.—

6 (1) LIMITATION.—A person shall not, directly
7 or indirectly or through or in concert with one or
8 more other persons, acquire control of a national in-
9 surer until—

10 (A) such person has submitted a written
11 notice as described in subsection (f) to the
12 Commissioner of the intention of such person to
13 acquire control of such national insurer; and

14 (B) the expiration of the disapproval pe-
15 riod and all extensions of such period referred
16 to in paragraph (2).

17 (2) DISAPPROVAL PERIOD.—

18 (A) IN GENERAL.—The Commissioner may
19 disapprove the acquisition of effective control of
20 a national insurer by issuing notice to the per-
21 son wishing to acquire such effective control
22 within 60 days of receiving a notice referred to
23 in paragraph (1)(A).

24 (B) EXTENSION AUTHORIZED.—The pe-
25 riod for disapproval under subparagraph (A)

1 may be extended not more than twice for a pe-
2 riod of not more than 45 days each time, if—

3 (i) the Commissioner determines that
4 an acquiring person has not furnished all
5 the information required under this sec-
6 tion;

7 (ii) in the judgment of the Commis-
8 sioner, any material information submitted
9 is substantially inaccurate;

10 (iii) the Commissioner has been un-
11 able to complete the investigation of an ac-
12 quiring person required under this section
13 because of any delay caused by, or the in-
14 adequate cooperation of, such acquiring
15 person; or

16 (iv) the Commissioner determines that
17 additional time is needed—

18 (I) to investigate and determine
19 that no acquiring person has a record
20 of failing to comply with the require-
21 ments of subchapter II of chapter 53
22 of title 31, United States Code; or

23 (II) to analyze the safety and
24 soundness of any plans or proposals
25 described in subsection (f)(6) or the

1 future prospects of the national in-
2 surer.

3 (b) INVESTIGATION OF PRINCIPALS.—

4 (1) IN GENERAL.—Upon receiving a notice
5 under subsection (a)(1), the Commissioner shall—

6 (A) conduct an investigation of the com-
7 petence, experience, integrity, and financial
8 ability of each person named in a notice of a
9 proposed acquisition as a person by whom or
10 for whom such acquisition is to be made; and

11 (B) make an independent determination of
12 the accuracy and completeness of any informa-
13 tion described in subsection (f) with respect to
14 such person.

15 (2) REPORT.—The Commissioner shall prepare
16 a written report of any investigation under para-
17 graph (1) that includes a summary of the results of
18 such investigation and shall make such report pub-
19 licly available in accordance with regulations issued
20 by the Commissioner for the publication of reports
21 under this paragraph.

22 (c) PUBLIC COMMENT.—Upon receiving notice of a
23 proposed acquisition, the Commissioner shall, unless the
24 Commissioner determines that an emergency exists, within
25 a reasonable period of time—

1 (1) publish the name of the national insurer to
2 be acquired and the name of each person identified
3 in such notice as a person by whom or for whom
4 such acquisition is to be made; and

5 (2) solicit public comment on such proposed ac-
6 quisition, particularly from persons in the geo-
7 graphic area where the national insurer is located,
8 before final consideration of such notice by the Com-
9 missioner.

10 (d) GROUND FOR DISAPPROVAL.—The Commis-
11 sioner may disapprove a proposed acquisition, if—

12 (1) either the financial condition of any acquir-
13 ing person or the future prospects of the institution
14 is such as might jeopardize the financial stability of
15 the national insurer or prejudice the interests of the
16 customers of such insurer;

17 (2) the competence, experience, or integrity of
18 any acquiring person or of any of the proposed man-
19 agement personnel indicates that it would not be in
20 the interest of the customers of the national insurer,
21 or in the interest of the public to permit such person
22 to control the national insurer; or

23 (3) any acquiring person neglects, fails, or re-
24 fuses to furnish the Commissioner with all the infor-
25 mation required by the Commissioner.

1 (e) NOTICE OF DISAPPROVAL, HEARING.—

2 (1) NOTICE OF DISAPPROVAL.—Not later than
3 3 days after a decision to disapprove a proposed ac-
4 quisition under this section, the Commissioner shall
5 notify the acquiring person in writing of the dis-
6 approval. Such notice shall provide a statement of
7 the basis for the disapproval.

8 (2) HEARING.—

9 (A) IN GENERAL.—Not later than 10 days
10 after the receipt of a notice of disapproval
11 under paragraph (1), a person may request a
12 hearing before a United States district court
13 with jurisdiction on the proposed acquisition.

14 (B) STANDARD OF REVIEW.—A judge re-
15 viewing a notice of disapproval under paragraph
16 (1) shall determine whether the decision of the
17 Commissioner is reasonable.

18 (3) JUDICIAL REVIEW.—A person whose pro-
19 posed acquisition is disapproved after a hearing
20 under paragraph (2) may obtain review by the
21 United States court of appeals for the circuit in
22 which the main office of the national insurer is to
23 be acquired is located, or the United States Court of
24 Appeals for the District of Columbia Circuit, by fil-
25 ing a notice of appeal in such court within 10 days

1 from the date of such order, and simultaneously
2 sending a copy of such notice by registered or cer-
3 tified mail to the Commissioner. The Commissioner
4 shall promptly certify and file in such court the
5 record upon which the disapproval was based. The
6 findings of the Commissioner shall be set aside if
7 found to be arbitrary or capricious or if found to
8 violate procedures established by this section.

9 (f) INFORMATION.—A notice described in this sub-
10 section is a notice that includes such relevant information
11 in such form as the Commissioner may require by regula-
12 tion or by specific request in connection with a particular
13 notice.

14 **SEC. 502. REPORTS BY AND EXAMINATIONS OF INSURANCE**
15 **HOLDING COMPANIES.**

16 (a) REPORTS.—Each national insurance holding com-
17 pany and each subsidiary of such company, other than a
18 national insurer, shall file with the Commissioner such re-
19 ports as may be required by the Commissioner. Such re-
20 ports shall be made under oath, and shall be in such form
21 and for such periods as the Commissioner may prescribe.
22 Each report shall contain such information concerning the
23 operations of such national insurance holding company
24 and its subsidiaries as the Commissioner may require.

1 (b) EXAMINATIONS.—Each national insurance hold-
2 ing company and each subsidiary thereof shall be subject
3 to such examinations as the Commissioner may prescribe.
4 The cost of such examinations shall be assessed against
5 and paid by such national insurance holding company.

6 (c) APPLICABILITY TO NON-UNITED STATES INSUR-
7 ANCE HOLDING COMPANIES AND SUBSIDIARIES.—Each
8 non-United States insurance holding company and each
9 non-United States subsidiary thereof shall be subject to
10 the report and examination authority of this section only
11 to the extent authorized by an applicable international
12 agreement.

13 (d) REPORTS AND EXAMINATIONS FILED WITH
14 OTHER AGENCIES.—The Commissioner shall, to the full-
15 est extent deemed feasible, use for the purposes of this
16 section reports filed with and examinations made by other
17 Federal agencies.

18 (e) POWERS.—The powers authorized for the Com-
19 missioner in section 121 shall apply to reports by and ex-
20 aminations of insurance holding companies and their sub-
21 sidiaries.

22 **SEC. 503. ACTIVITIES OF INSURANCE HOLDING COMPANIES**
23 **AND SUBSIDIARIES.**

24 (a) IN GENERAL.—No national insurance holding
25 company and no subsidiary of a national insurance holding

1 company shall engage in any activity that the Commis-
2 sioner determines poses a significant risk to the solvency
3 of a national insurer, jeopardizes the interests of the pol-
4 icyholders of such insurer, or is incompatible with the pub-
5 lic interest.

6 (b) DETERMINATION AND NOTICE FOR CORRECTIVE
7 ACTION.—If the Commissioner determines that a national
8 insurance holding company or subsidiary of a national in-
9 surance holding company is engaged, or has engaged, or
10 the Commissioner has reasonable cause to believe is about
11 to engage in an activity in violation of the terms of sub-
12 section (a), the Commissioner shall provide a written no-
13 tice to such company or subsidiary, which shall specify the
14 action or actions the company or subsidiary must take to
15 correct the violation and a time period for taking such cor-
16 rective action or actions. The issuance of a notice under
17 this section does not prevent the Commissioner from tak-
18 ing any other enforcement action against the company or
19 subsidiary.

20 (c) HEARING.—

21 (1) IN GENERAL.—Not later than 10 days after
22 the date of receipt of a notice issued pursuant to
23 subsection (b), a national insurance holding com-
24 pany or subsidiary of such company may request a
25 hearing before a United States district court with

1 jurisdiction on the corrective action or actions speci-
2 fied in the notice and the time period for taking
3 such action or actions.

4 (2) STANDARD OF REVIEW.—A judge reviewing
5 a notice issued pursuant to subsection (b) shall de-
6 termine whether the decision of the Commissioner is
7 reasonable.

8 (d) JUDICIAL REVIEW.—A national insurance hold-
9 ing company or subsidiary of a national insurance holding
10 company that remains subject to a notice for corrective
11 action following a hearing under subsection (c) may obtain
12 review of the notice by the United States court of appeals
13 for the circuit in which the main office of the national
14 insurer to be acquired is located, or the United States
15 Court of Appeals for the District of Columbia Circuit, by
16 filing an appeal in such court not later than 10 days after
17 the date on which the Commissioner has affirmed or modi-
18 fied the notice, and simultaneously sending a copy of such
19 appeal by registered or certified mail to the Commissioner.
20 The Commissioner shall promptly certify and file in such
21 court the record upon which the notice was based. The
22 determination of the Commissioner shall be set aside if
23 found to be arbitrary or capricious.

24 (e) APPLICABILITY TO NON-UNITED STATES INSUR-
25 ANCE HOLDING COMPANIES AND SUBSIDIARIES.—Each

1 non-United States insurance holding company and each
2 non-United States subsidiary thereof shall be subject to
3 the report and examination authority of this section only
4 to the extent authorized by an applicable international
5 agreement.

6 **SEC. 504. CAPITAL, LIQUIDITY, DIVIDEND, OPERATIONAL,**
7 **AND OTHER STANDARDS.**

8 The Commissioner shall establish, by rule or order,
9 capital, liquidity, dividend, operational, and any other
10 standards for a national insurance holding company that
11 the Commissioner deems appropriate to ensure the sol-
12 vency and sound operation of each national insurance
13 holding company.

14 **SEC. 505. AFFILIATE TRANSACTIONS.**

15 (a) IN GENERAL.—Transactions between a national
16 insurer and any affiliate shall be subject to the following
17 standards:

18 (1) The terms shall be fair, reasonable, and at
19 least as favorable to the national insurer as those
20 that would be offered to, or would apply to, a non-
21 affiliate.

22 (2) Charges or fees for services performed shall
23 be reasonable and at least as favorable to the na-
24 tional insurer as those that would be offered to, or
25 would apply to, a nonaffiliate.

1 (3) Expenses incurred and payment received
2 shall be allocated to the national insurer in con-
3 formity with customary insurance accounting prac-
4 tices consistently applied.

5 (4) The books, accounts, and records of each
6 party to all such transactions shall be so maintained
7 as to clearly and accurately disclose the nature and
8 details of the transactions including such accounting
9 information as is necessary to support the reason-
10 ableness of the charges or fees to the respective par-
11 ties.

12 (5) The national insurer's surplus following any
13 dividends or distributions to shareholders shall be
14 reasonable in relation to the outstanding liabilities of
15 the national insurer and adequate to meet its finan-
16 cial needs.

17 (b) APPROVAL OF CERTAIN TRANSACTIONS.—The
18 Commissioner may, by regulation, specify certain trans-
19 actions involving a national insurer and any affiliate that
20 are not permissible for a national insurer, unless the na-
21 tional insurer has notified the Commissioner in writing of
22 its intention to enter into the transaction and the Commis-
23 sioner has either approved or failed to approve the trans-
24 action within a specified time period.

1 **SEC. 506. RELATIONSHIP TO OTHER LAWS.**

2 (a) PERMITTED AFFILIATION.—A national insurer
3 may be affiliated with an insurer or agency that is not
4 chartered or licensed under this Act.

5 (b) REINSURANCE POOLING AGREEMENTS.—The
6 Commissioner shall have exclusive jurisdiction over rein-
7 surance pooling agreements to which one or more national
8 insurers and affiliated State insurers are parties under
9 which policies of insurance sold, solicited, negotiated, and
10 underwritten by, and reinsurance assumed by, affiliated
11 national insurers and State insurers are pooled.

12 (c) CONFLICT WITH OTHER FEDERAL LAWS.—This
13 title shall not be construed to conflict with or supersede
14 the provisions of any other Federal law or regulation gov-
15 erning the regulation of holding companies, including fi-
16 nancial holding companies, as defined in section 2 of the
17 Bank Holding Company Act of 1956 (12 U.S.C. 1841),
18 and savings and loan holding companies, as defined in sec-
19 tion 10 of the Home Owners' Loan Act (12 U.S.C.
20 1467a).

21 **SEC. 507. NO DELEGATION PERMITTED.**

22 The Commissioner may not delegate to any insurance
23 self-regulatory organization any authority conferred under
24 this title with respect to regulation of a national insurer
25 that is an affiliate of a national insurance holding com-
26 pany.

1 **TITLE VI—CONSERVATORSHIP,**
2 **RECEIVERSHIP, THE PAY-**
3 **MENT OF BENEFITS AND**
4 **CLAIMS TO POLICYHOLDERS,**
5 **AND ASSESSMENTS ON NA-**
6 **TIONAL INSURERS**

7 **SEC. 601. APPOINTMENT OF CONSERVATOR OR RECEIVER.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, if any of the grounds under subsection (b)
10 exist, the Commissioner may appoint a person as a conser-
11 vator or receiver for a national insurer.

12 (b) GROUNDS FOR APPOINTMENT.—The grounds for
13 establishing a conservatorship or receivership are as fol-
14 lows:

15 (1) INSOLVENCY.—The national insurer is in-
16 solvent.

17 (2) SUBSTANTIAL DISSIPATION.—The national
18 insurer has substantial dissipation of assets or earn-
19 ings due to—

20 (A) a violation of any provision of Federal
21 or State law; or

22 (B) a hazardous practice.

23 (3) HAZARDOUS CONDITION.—The national in-
24 surer is in such condition that the further trans-

1 action of business would be hazardous, financially or
2 otherwise, to policyholders, creditors, or the public.

3 (4) CEASE-AND-DESIST ORDER.—The national
4 insurer has willfully violated a cease-and-desist
5 order.

6 (5) CONCEALMENT.—The national insurer has
7 concealed the books, papers, records, or assets of the
8 insurer, or has refused to submit the books, papers,
9 records, or affairs of the insurer, for inspection to
10 any examiner or to any lawful agent of the Commis-
11 sioner.

12 (6) INABILITY TO MEET OBLIGATIONS.—The
13 national insurer is likely to be unable to pay its obli-
14 gations or meet the demands of its creditors in the
15 normal course of business.

16 (7) VIOLATION OF LAW.—The national insurer
17 has willfully and continuously violated any law or
18 regulation, or committed any hazardous practice or
19 condition, that is likely to—

20 (A) cause insolvency or substantial dissipa-
21 tion of assets or earnings; or

22 (B) weaken the condition of the national
23 insurer.

1 (8) CONSENT.—The national insurer, by resolu-
2 tion of its board of directors or its shareholders or
3 members, consents to the appointment.

4 (9) MONEY LAUNDERING.—The Attorney Gen-
5 eral notifies the Commissioner in writing that the
6 national insurer has been found guilty of a criminal
7 offense under section 1956 or 1957 of title 18,
8 United States Code, or section 5322 or 5324 of title
9 31, United States Code.

10 **SEC. 602. ESTABLISHMENT OF THE NATIONAL INSURANCE**
11 **GUARANTY CORPORATION.**

12 (a) ESTABLISHMENT.—There is established the Na-
13 tional Insurance Guaranty Corporation.

14 (b) DIRECTOR.—The head of the National Insurance
15 Guaranty Corporation shall be the Director of the Na-
16 tional Insurance Guaranty Corporation, who shall be ap-
17 pointed by the Commissioner.

18 (c) NONPROFIT AND SUCCESSION.—The Corporation
19 shall be a nonprofit corporation and shall have succession
20 until dissolved by an Act of Congress.

21 (d) APPLICATION OF DISTRICT OF COLUMBIA NON-
22 PROFIT CORPORATION ACT.—The Corporation shall, ex-
23 cept as otherwise provided in this title, be subject to, and
24 have all the powers conferred upon a nonprofit corporation

1 by the District of Columbia Nonprofit Corporation Act
2 (D.C. Code, 29–301.01 et seq., or any successor thereto).

3 **SEC. 603. PAYMENT OF CLAIMS TO POLICYHOLDERS OF NA-**
4 **TIONAL INSURERS.**

5 (a) LIFE INSURANCE POLICIES.—If a national in-
6 surer is placed into receivership for purposes of liquida-
7 tion, the Director of the Corporation shall pay the claims
8 on life insurance policies issued by such insurer in a man-
9 ner that is consistent with the terms and limits of the
10 “Life and Health Insurance Guaranty Association Model
11 Act” of the NAIC.

12 (b) PROPERTY AND CASUALTY POLICIES.—If a na-
13 tional insurer is placed into receivership for purposes of
14 liquidation, the Director of the Corporation shall pay the
15 claims of property and casualty insurance policies issued
16 by such insurer in a manner that is consistent with the
17 terms and limits of the “Post-Assessment Property and
18 Liability Insurance Guaranty Association Model Act” of
19 the NAIC.

20 **SEC. 604. ASSESSMENTS OF NATIONAL INSURERS.**

21 (a) ASSESSMENTS AUTHORIZED.—For the purpose of
22 paying the claims of policyholders and other claims
23 against a national insurer that is placed into receivership,
24 the Director of the Corporation shall impose an assess-

1 ment against all other national insurers in accordance
2 with this section.

3 (b) NOTICE AND IMPOSITION OF ASSESSMENTS.—

4 (1) ASSESSMENTS ONLY TO INSURERS IN SAME
5 LINE OF BUSINESS.—

6 (A) IN GENERAL.—The Director of the
7 Corporation shall only impose an assessment
8 against a national insurer if such national in-
9 surer is in the business of providing the same
10 type of insurance as the national insurer that is
11 placed into receivership.

12 (B) LINES OF INSURANCE.—In deter-
13 mining whether a national insurer is in the
14 business of providing the same type of insur-
15 ance as the national insurer that is placed into
16 receivership under subparagraph (A), the Direc-
17 tor may consider subsets of property and cas-
18 ualty insurance or life insurance as different
19 types of insurance.

20 (2) WRITTEN NOTICE REQUIRED.—The Direc-
21 tor of the Corporation shall provide each national in-
22 surer a written notice of an assessment, and assess-
23 ments shall be payable not later than 30 days after
24 the date of receipt of such notice.

1 (3) LATE PAYMENT.—A national insurer that
2 fails to pay an assessment when due shall be subject
3 to an interest charge on the assessment, as set by
4 the Director of the Corporation.

5 (4) ASSESSMENTS NOT IMPOSED UNTIL NEED-
6 ED.—The Director of the Corporation shall not im-
7 pose an assessment upon a national insurer until
8 such funds are needed.

9 (5) AMOUNT OF ASSESSMENT.—Each national
10 insurer shall be assessed its share of all claims in-
11 curred by the receivership, including administrative
12 costs of the Director of the Corporation, in an
13 amount equal to the product of—

14 (A) an assessment rate established by the
15 Director of the Corporation by regulation; and

16 (B) the proportion that the net direct writ-
17 ten premiums of the insurer for the calendar
18 year preceding the assessment bears to the net
19 direct written premiums of all national insurers
20 determined by the Commissioner to be in the
21 business of providing the same type of insur-
22 ance as the national insurer that is placed into
23 receivership under paragraph (1)(A) for the cal-
24 endar year preceding the assessment.

1 (c) ABATED OR DEFERRED ASSESSMENTS.—The Di-
2 rector of the Corporation may abate or defer, in whole or
3 in part, an assessment imposed on a national insurer if
4 payment of the assessment would endanger the ability of
5 the insurer to fulfill its contractual obligations. In the
6 event an assessment against a national insurer is abated
7 or deferred, in whole or in part, the amount by which the
8 assessment is abated or deferred may be assessed against
9 all other national insurers, in a manner consistent with
10 the basis for assessments set forth in this section. Once
11 the conditions that caused action under this subsection
12 have been removed or rectified, the insurer shall pay all
13 assessments that were deferred pursuant to a repayment
14 plan approved by the Director of the Corporation.

15 **SEC. 605. PARTICIPATION IN STATE GUARANTY ASSOCIA-**
16 **TIONS.**

17 (a) IN GENERAL.—A national insurer shall partici-
18 pate in the State guaranty association for a line of insur-
19 ance in each State in which such insurer is doing business
20 in such line of insurance, provided that no State may
21 charge an assessment rate or otherwise treat a national
22 insurer in a manner differently than such State treats a
23 State insurer doing business in such State.

24 (b) TAXATION.—No State shall impose a premium
25 tax, franchise tax, income tax, retaliatory tax, or other pri-

1 mary tax applicable to insurance companies on any na-
2 tional insurer, unless such State allows the national in-
3 surer to recoup assessments allocable to such State in the
4 same manner and to the same extent that a State insurer
5 is allowed to recoup such assessments.

6 **SEC. 606. REPORT TO CONGRESS.**

7 Not later than two years after the date of the enact-
8 ment of this Act, the Director of the Corporation shall
9 submit to Congress a recommendation on—

10 (1) whether national insurers should continue
11 to be members of State guaranty associations;

12 (2) whether State insurance commissioners
13 should be given the opportunity to require State in-
14 surers to be covered by the National Insurance
15 Guaranty Corporation instead of State guaranty as-
16 sociations; and

17 (3) whether policyholders of national insurers
18 would be better protected if assessments under sec-
19 tion 604 were imposed before such funds are nec-
20 essary to make payments on claims against a na-
21 tional insurer that is placed into receivership.

1 **TITLE VII—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 701. APPLICABLE LAW.**

4 (a) **INAPPLICABILITY OF STATE LAW.**—Except to the
5 extent expressly provided in this Act, national insurers,
6 national insurance agencies, and national insurance pro-
7 ducers shall not be subject under State law to any form
8 of licensing, examination, reporting, regulation, or other
9 supervision relating to the sale, solicitation, or negotiation
10 of insurance, to the underwriting of insurance, or to any
11 other insurance operations.

12 (b) **NO DISCRIMINATION.**—No State may discrimi-
13 nate against—

14 (1) any State insurer because such insurer or
15 any affiliate has applied to become, or has declared
16 its intention to become, a national insurer chartered
17 under this Act;

18 (2) any State-licensed insurance producer be-
19 cause such insurance producer or an affiliate has ap-
20 plied to become, or has declared its intention to be-
21 come, a national insurance agency chartered under
22 this Act or a national insurance producer licensed
23 under this Act;

1 (3) any affiliate of a national insurer, national
2 insurance agency, or a national insurance producer
3 because the affiliate is so affiliated;

4 (4) any policyholder, insured, claimant, State-li-
5 censed insurance producer, or any person engaged in
6 the acts described in section 405(b) because of any
7 dealing with a national insurer, national insurance
8 agency, a national insurance producer, or an affiliate
9 of a national insurer, national insurance agency, or
10 a national insurance producer; or

11 (5) any State-licensed insurance producer (in-
12 cluding with respect to such producer's sales, solici-
13 tation, or negotiation of any insurance policy written
14 or sold by a State insurer) because it sells, solicits,
15 or negotiates an insurance policy written or sold by
16 a national insurer.

17 **SEC. 702. APPLICATION OF THE FEDERAL ANTITRUST**
18 **LAWS.**

19 (a) IN GENERAL.—Subject to subsection (b), the
20 Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15
21 U.S.C. 12 et seq.), the Federal Trade Commission Act (15
22 U.S.C. 41 et seq.), and the Act of June 19, 1936 (49 Stat.
23 1526) (commonly known as the Robinson-Patman Anti-
24 discrimination Act), shall be applicable to national insur-
25 ers, national insurance agencies, and national insurance

1 producers to the same extent as other businesses are sub-
2 ject to such laws, except as follows:

3 (1) Such laws shall not apply to the develop-
4 ment, dissemination, or use of standard insurance
5 policy forms (including standard endorsements,
6 addendums, and policy language), or to activities in-
7 cidental thereto, by national insurers, national insur-
8 ance agencies, and national insurance producers.

9 (2) Section 3 of the Act of March 9, 1945 (59
10 Stat. 33; 15 U.S.C. 1013), shall apply to national
11 insurers, national insurance agencies, and national
12 insurance producers to the extent that such insurers
13 and producers are subject to State law.

14 (b) EXCEPTION.—Notwithstanding any other provi-
15 sion of law, section 5 of the Federal Trade Commission
16 Act (15 U.S.C. 45) shall not apply with respect to a na-
17 tional insurer, national insurance agency, or national in-
18 surance producer.

○