

111TH CONGRESS
2^D SESSION

H. R. 2554

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2010

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To reform the National Association of Registered Agents
and Brokers, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Association
3 of Registered Agents and Brokers Reform Act of 2010”.

4 **SEC. 2. REESTABLISHMENT OF THE NATIONAL ASSOCIA-**
5 **TION OF REGISTERED AGENTS AND BRO-**
6 **KERS.**

7 (a) IN GENERAL.—Subtitle C of title III of the
8 Gramm-Leach-Bliley Act (15 U.S.C. 6751 et seq.) is
9 amended to read as follows:

10 **“Subtitle C—National Association**
11 **of Registered Agents and Brokers**

12 **“SEC. 321. NATIONAL ASSOCIATION OF REGISTERED**
13 **AGENTS AND BROKERS.**

14 “(a) ESTABLISHMENT.—There is established the Na-
15 tional Association of Registered Agents and Brokers
16 (hereafter in this subtitle referred to as the ‘Association’).

17 “(b) STATUS.—The Association shall—

18 “(1) be a nonprofit corporation;

19 “(2) have succession until dissolved by an Act
20 of Congress;

21 “(3) not be an agent or instrumentality of the
22 United States Government; and

23 “(4) except as otherwise provided in this sub-
24 title, be subject to, and have all the powers conferred
25 upon a nonprofit corporation by the District of Co-

1 Columbia Nonprofit Corporation Act (D.C. Code, sec.
2 29–301.01 et seq.).

3 **“SEC. 322. PURPOSE.**

4 “The purpose of the Association shall be to provide
5 a mechanism through which licensing, continuing edu-
6 cation, and other nonresident insurance producer quali-
7 fication requirements and conditions can be adopted and
8 applied on a multi-state basis (without affecting the laws,
9 rules, and regulations pertaining to resident insurance
10 producers or appointments or producing a net loss of pro-
11 ducer licensing revenues to States), while preserving the
12 right of States to license, supervise, discipline, and estab-
13 lish licensing fees for insurance producers, and to pre-
14 scribe and enforce laws and regulations with regard to in-
15 surance-related consumer protection and unfair trade
16 practices.

17 **“SEC. 323. MEMBERSHIP.**

18 “(a) ELIGIBILITY.—

19 “(1) IN GENERAL.—Any insurance producer li-
20 censed in its home State shall, subject to paragraphs
21 (2) and (4), be eligible to become a member of the
22 Association.

23 “(2) INELIGIBILITY FOR SUSPENSION OR REV-
24 OCATION OF LICENSE.—Subject to paragraph (3),
25 an insurance producer is not eligible to become a

1 member of the Association if a State insurance regu-
2 lator has suspended or revoked such producer's li-
3 cense in that State during the 3-year period pre-
4 ceding the date on which such producer applies for
5 membership.

6 “(3) RESUMPTION OF ELIGIBILITY.—Paragraph
7 (2) shall cease to apply to any insurance producer
8 if—

9 “(A) the State insurance regulator reissues
10 or renews the license of such producer in the
11 State in which the license was suspended or re-
12 voked; or

13 “(B) the suspension or revocation is subse-
14 quently overturned.

15 “(4) CRIMINAL BACKGROUND RECORD CHECK
16 REQUIRED.—

17 “(A) IN GENERAL.—An insurance pro-
18 ducer shall not be eligible to become a member
19 of the Association unless the producer has un-
20 dergone a national criminal background record
21 check that complies with regulations prescribed
22 by the Attorney General under subparagraph
23 (L).

24 “(B) CRIMINAL BACKGROUND RECORD
25 CHECK REQUESTED BY HOME STATE.—An in-

1 insurance producer who is licensed in a State and
2 who has undergone a national criminal back-
3 ground record check in compliance with such
4 requirements as a condition for such licensure
5 shall be deemed to have undergone a national
6 criminal background record check for purposes
7 of subparagraph (A).

8 “(C) CRIMINAL BACKGROUND RECORD
9 CHECK REQUESTED BY ASSOCIATION.—

10 “(i) IN GENERAL.—The Association
11 shall, upon request by an insurance pro-
12 ducer licensed in a State, submit identi-
13 fication information obtained from such
14 producer, and a request for a national
15 criminal background record check of such
16 producer, to the Federal Bureau of Inves-
17 tigation.

18 “(ii) BYLAWS OR RULES.—The board
19 of directors of the Association shall pre-
20 scribe bylaws or rules for obtaining and
21 utilizing identification information and
22 criminal history record information, includ-
23 ing the establishment of reasonable fees re-
24 quired to perform a criminal background
25 record check and appropriate safeguards

1 for maintaining confidentiality and security
2 of the information.

3 “(D) FORM OF REQUEST.—A submission
4 under subparagraph (C)(i) shall include such
5 identification information as required by the At-
6 torney General concerning the person about
7 whom the record is requested and a statement
8 signed by the person authorizing the Associa-
9 tion to obtain the information.

10 “(E) PROVISION OF INFORMATION BY AT-
11 TORNEY GENERAL.—Upon receiving a submis-
12 sion under subparagraph (C)(ii) from the Asso-
13 ciation, the Attorney General shall search all
14 records of the Criminal Justice Information
15 Services Division of the Federal Bureau of In-
16 vestigation that the Attorney General deems ap-
17 propriate for criminal history records cor-
18 responding to the identification information
19 provided under subparagraph (D) and provide
20 all information contained in such records that
21 pertains to the request to the Association.

22 “(F) LIMITATION ON PERMISSIBLE USES
23 OF INFORMATION.—The Association may use
24 information provided under subparagraph (E)
25 only—

1 “(i) for purposes of determining com-
2 pliance with membership criteria estab-
3 lished by the Association;

4 “(ii) to disclose to State insurance
5 regulators, or Federal or State law en-
6 forcement agencies, in conformance with
7 applicable law.

8 “(G) APPLICANT ACCESS TO CRIMINAL
9 HISTORY RECORDS.—Notwithstanding subpara-
10 graph (F), a producer shall have the right to
11 obtain from the Association a copy of any
12 criminal history record information concerning
13 the producer that is provided to the Association
14 under subparagraph (E).

15 “(H) PENALTY FOR IMPROPER USE OR
16 DISCLOSURE.—Whoever knowingly uses any in-
17 formation provided under subparagraph (E) for
18 a purpose not authorized in subparagraph (F),
19 or discloses any such information to anyone not
20 authorized to receive it, shall be fined under
21 title 18, United States Code, imprisoned for not
22 more than 2 years, or both.

23 “(I) RELIANCE ON INFORMATION.—Nei-
24 ther the Association nor any of its directors, of-
25 ficers, or employees shall be liable in any action

1 for using information provided under subpara-
2 graph (E) as permitted under subparagraph
3 (F) in good faith and in reasonable reliance on
4 its accuracy.

5 “(J) FEES.—The Attorney General may
6 charge a reasonable fee to defray the expense of
7 conducting the search and providing the infor-
8 mation under subparagraph (E), and any such
9 fee shall be collected and remitted by the Asso-
10 ciation.

11 “(K) RULE OF CONSTRUCTION.—Nothing
12 in this paragraph shall be construed as—

13 “(i) requiring a State insurance regu-
14 lator to perform criminal background
15 checks under this section; or

16 “(ii) limiting any other authority that
17 allows access to criminal background
18 records.

19 “(L) REGULATIONS.—The Attorney Gen-
20 eral shall prescribe regulations to carry out this
21 paragraph, which shall include—

22 “(i) appropriate protections for ensur-
23 ing the confidentiality of information pro-
24 vided under subparagraph (E); and

1 “(ii) procedures providing a reason-
2 able opportunity for a producer to contest
3 the accuracy of information regarding the
4 producer provided under subparagraph
5 (E).

6 “(M) INELIGIBILITY FOR MEMBERSHIP.—

7 “(i) IN GENERAL.—The Association
8 may, under reasonably consistently applied
9 standards, deny membership to an insur-
10 ance producer on the basis of criminal his-
11 tory information provided under subpara-
12 graph (E).

13 “(ii) RIGHTS OF APPLICANTS DENIED
14 MEMBERSHIP.—The Association shall no-
15 tify any producer who is denied member-
16 ship on the basis of criminal history record
17 information provided under subparagraph
18 (E) of the right of the producer to—

19 “(I) obtain a copy of all criminal
20 history record information provided to
21 the Association under subparagraph
22 (E) with respect to the producer; and

23 “(II) challenge the accuracy and
24 completeness of the information.

1 “(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
2 TERIA.—The Association may establish membership cri-
3 teria that—

4 “(1) bear a reasonable relationship to the pur-
5 poses for which the Association was established; and

6 “(2) do not unfairly limit the access of smaller
7 agencies to the Association membership, including
8 imposing discriminatory membership fees on smaller
9 insurance producers.

10 “(c) ESTABLISHMENT OF CLASSES AND CATEGORIES
11 OF MEMBERSHIP.—

12 “(1) CLASSES OF MEMBERSHIP.—The Associa-
13 tion may establish separate classes of membership,
14 with separate criteria, if the Association reasonably
15 determines that performance of different duties re-
16 quires different levels of education, training, experi-
17 ence, or other qualifications.

18 “(2) CATEGORIES.—

19 “(A) SEPARATE CATEGORIES FOR PRO-
20 DUCERS PERMITTED.—The Association may es-
21 tablish separate categories of membership for
22 producers and for other persons within each
23 class, based on the types of licensing categories
24 that exist under State laws.

1 “(B) SEPARATE TREATMENT FOR DEPOSI-
2 TORY INSTITUTIONS PROHIBITED.—No special
3 categories of membership, and no distinct mem-
4 bership criteria, shall be established for mem-
5 bers which are depository institutions or for
6 employees, agents, or affiliates of depository in-
7 stitutions.

8 “(d) MEMBERSHIP CRITERIA.—

9 “(1) IN GENERAL.—The Association may estab-
10 lish criteria for membership which shall include
11 standards for personal qualifications, education,
12 training, and experience.

13 “(2) QUALIFICATIONS.—In establishing criteria
14 under paragraph (1), the Association shall consider
15 the NAIC Producer Licensing Model Act and the
16 highest levels of insurance producer qualifications
17 established under the licensing laws of the States.

18 “(3) ASSISTANCE FROM STATES.—

19 “(A) IN GENERAL.—The Association may
20 request a State to provide assistance in inves-
21 tigating and evaluating a prospective member’s
22 eligibility for membership in the Association.

23 “(B) RULE OF CONSTRUCTION.—Subpara-
24 graph (A) shall not be construed as requiring or
25 authorizing any State to adopt new or addi-

1 tional requirements concerning the licensing or
2 evaluation of insurance producers.

3 “(4) DENIAL OF MEMBERSHIP.—The Associa-
4 tion may, based on reasonably consistently applied
5 standards, deny membership to any State-licensed
6 insurance producer for failure to meet the member-
7 ship criteria established by the Association.

8 “(e) EFFECT OF MEMBERSHIP.—

9 “(1) AUTHORITY OF ASSOCIATION MEMBERS.—
10 Membership in the Association shall—

11 “(A) authorize an insurance producer to
12 sell, solicit, negotiate, effect, procure, deliver,
13 renew, continue, or bind insurance in any State
14 for which the member pays the licensing fee set
15 by such State for any line or lines of insurance
16 specified in such producer’s home State license,
17 and exercise all such incidental powers, as shall
18 be necessary to carry out such activities, includ-
19 ing claims adjustments and settlement, risk
20 management, employee benefits advice, retire-
21 ment planning, and any other insurance-related
22 consulting activities;

23 “(B) be the equivalent of a nonresident in-
24 surance producer license issued in any State
25 where the member pays the licensing fee; and

1 “(C) subject an insurance producer to all
2 laws, regulations, provisions or other action of
3 any State concerning revocation or suspension
4 of a member’s ability to engage in any activity
5 within the scope of authority granted under this
6 subsection and to all State laws, regulations,
7 provisions and actions preserved under para-
8 graph (5).

9 “(2) DUPLICATIVE LICENSES.—No State, other
10 than the member’s home State, may require an indi-
11 vidual member to obtain a business entity license or
12 membership in order to engage in any activity within
13 the scope of authority granted in paragraph (1) or
14 in order for the member or any employer, employee,
15 or affiliate of the member to receive compensation
16 for the member’s performance of any such activity.

17 “(3) AGENT FOR REMITTING FEES.—The Asso-
18 ciation shall act as any member’s agent for purposes
19 of remitting licensing fees to any State pursuant to
20 paragraph (1).

21 “(4) REGULATOR NOTIFICATION.—The Associa-
22 tion shall notify the National Association of Insur-
23 ance Commissioners (hereinafter in this subtitle re-
24 ferred to as the ‘NAIC’) or its designee when a pro-
25 ducer becomes a member and identify, on an ongo-

1 ing basis, the States in which the member is author-
2 ized to operate.

3 “(5) PRESERVATION OF STATE CONSUMER PRO-
4 TECTION AND MARKET CONDUCT REGULATION.—No
5 provision of this section shall be construed as alter-
6 ing or affecting the continuing effectiveness of any
7 law, regulation, provision, or other action of any
8 State which purports to regulate market conduct or
9 unfair trade practices or establish consumer protec-
10 tions to the extent that such law, regulation, provi-
11 sion, or other action is not inconsistent with the pro-
12 visions of this subtitle, and then only to the extent
13 of such inconsistency.

14 “(f) BIENNIAL RENEWAL.—Membership in the Asso-
15 ciation shall be renewed on a biennial basis.

16 “(g) CONTINUING EDUCATION.—

17 “(1) IN GENERAL.—The Association shall es-
18 tablish, as a condition of membership, continuing
19 education requirements which shall be comparable to
20 the continuing education requirements under the li-
21 censing laws of a majority of the States.

22 “(2) STATE CONTINUING EDUCATION REQUIRE-
23 MENTS.—A member may not be required to satisfy
24 continuing education requirements imposed under

1 the laws, regulations, provisions, or actions of any
2 State other than such member's home State.

3 “(3) RECIPROCITY.—The Association shall not
4 require a member to satisfy continuing education re-
5 quirements that are equivalent to any continuing
6 education requirements of the member's home State
7 that have been satisfied by the member during the
8 applicable licensing period.

9 “(4) LIMITATION ON ASSOCIATION.—The Asso-
10 ciation shall not directly or indirectly offer any con-
11 tinuing education courses for insurance producers.

12 “(h) PROBATION, SUSPENSION AND REVOCATION.—

13 “(1) DISCIPLINARY ACTION.—The Association
14 may place an insurance producer that is a member
15 of the Association on probation or suspend or revoke
16 such producer's membership in the Association, as
17 the Association determines to be appropriate, if—

18 “(A) the producer fails to meet the appli-
19 cable membership criteria of the Association; or

20 “(B) the producer has been subject to dis-
21 ciplinary action pursuant to a final adjudicatory
22 proceeding under the jurisdiction of a State in-
23 surance regulator.

24 “(2) REPORTING TO STATE REGULATORS.—The
25 Association shall notify the NAIC or its designee

1 when a producer's membership has been suspended,
2 revoked, and otherwise terminated.

3 “(i) CONSUMER COMPLAINTS.—

4 “(1) IN GENERAL.—The Association shall—

5 “(A) receive and, when appropriate, inves-
6 tigate complaints from both consumers and
7 State insurance regulators related to members
8 of the Association;

9 “(B) refer any proper complaint received
10 in accordance with subparagraph (A) and make
11 any related records and information available to
12 the NAIC or its designee and to each State in-
13 surance regulator for the State of residence of
14 the consumer who filed the complaint; and

15 “(C) refer, when appropriate, any such
16 complaint to any additional appropriate State
17 insurance regulator.

18 “(2) TELEPHONE AND OTHER ACCESS.—The
19 Association shall maintain a toll-free telephone num-
20 ber for the purpose of this subsection and, as prac-
21 ticable, other alternative means of communication
22 with consumers, such as an Internet web page.

23 **“SEC. 324. BOARD OF DIRECTORS.**

24 “(a) ESTABLISHMENT.—There is established the
25 board of directors of the Association (hereafter in this sub-

1 title referred to as the ‘Board’), which shall have authority
2 to govern and supervise all activities of the Association.

3 “(b) POWERS.—The Board shall have such of the As-
4 sociation’s powers and authority as may be specified in
5 the bylaws of the Association.

6 “(c) COMPOSITION.—

7 “(1) IN GENERAL.—The Board shall consist of
8 11 members who shall be appointed by the Presi-
9 dent, by and with the advice and consent of the Sen-
10 ate, of whom—

11 “(A) 6 shall be State insurance commis-
12 sioners appointed in the manner provided in
13 paragraph (2);

14 “(B) 2 shall be representatives of property
15 and casualty insurance producers;

16 “(C) 1 shall be a representative of life or
17 health insurance producers;

18 “(D) 1 shall be a representative of prop-
19 erty and casualty insurers; and

20 “(E) 1 shall be a representative of life or
21 health insurers.

22 “(2) STATE INSURANCE REGULATOR REP-
23 RESENTATIVES.—

24 “(A) Before making any appointments
25 pursuant to subparagraph (A) of paragraph

1 (1), the President shall request a list of rec-
2 ommended candidates from the NAIC, which
3 shall not be binding on the President. If the
4 NAIC fails to submit list of recommendations
5 within 15 days of the request, the President
6 may make the requisite appointments without
7 considering the views of the NAIC.

8 “(B) Not more than 3 members appointed
9 to membership on the Board pursuant to sub-
10 paragraph (A) of paragraph (1) shall belong to
11 the same political party.

12 “(C) If fewer than 6 State insurance com-
13 missioners accept appointment to the Board,
14 the President may appoint the remaining State
15 insurance commissioner members of the Board
16 from among individuals who are former State
17 insurance commissioners, provided that any
18 former insurance commissioner so appointed
19 shall not be employed by or have a present di-
20 rect or indirect financial interest in any insurer
21 or other entity in the insurance industry other
22 than direct or indirect ownership of, or bene-
23 ficial interest in, an insurance policy or annuity
24 contract written or sold by an insurer.

1 “(3) PRIVATE SECTOR REPRESENTATIVES.—In
2 making any appointments pursuant to subpara-
3 graphs (B) through (E) of paragraph (1), the Presi-
4 dent may seek recommendations for candidates from
5 national trade associations representing the category
6 of individuals described, which shall not be binding
7 on the President.

8 “(4) STATE INSURANCE COMMISSIONER DE-
9 FINED.—For purposes of this subsection, the term
10 ‘State insurance commissioner’ means a person who
11 serves in the position in State government, or on the
12 board, commission, or other body that is the prin-
13 cipal insurance regulatory authority for the State.

14 “(d) TERMS.—

15 “(1) IN GENERAL.—The term of each Board
16 member shall be for 2 years, except that—

17 “(A) the term of—

18 “(i) 3 of the State insurance commis-
19 sioner members of the Board initially ap-
20 pointed under subparagraph (A) of para-
21 graph (1);

22 “(ii) 1 of the property and casualty
23 insurance producer members of the Board
24 initially appointed under subparagraph (B)
25 of paragraph (1); and

1 “(iii) 1 of the insurer representative
2 members of the Board initially appointed
3 under subparagraphs (D) and (E) of para-
4 graph (1),

5 shall be 1 year, as designated by the President
6 at the time of the nomination of such members;

7 “(B) a member of the Board may continue
8 to serve after the expiration of the term to
9 which such member was appointed until a suc-
10 cessor is qualified; and

11 “(C) any member of the Board appointed
12 to fill a vacancy occurring before the expiration
13 of the term for which the member’s predecessor
14 was appointed shall be appointed only for the
15 remainder of that term.

16 “(2) SUCCESSIVE TERMS.—Board members
17 may be reappointed to successive terms.

18 “(e) MEETINGS.—

19 “(1) IN GENERAL.—The Board shall meet at
20 the call of the chairperson, as requested in writing
21 to the chairperson by at least four members of the
22 Board, or as otherwise provided by the bylaws of the
23 Association.

24 “(2) QUORUM REQUIRED.—A majority of direc-
25 tors shall constitute a quorum.

1 “(3) VOTING.—Decisions of the Board shall re-
2 quire the approval of a majority of all directors
3 present at a meeting, a quorum being present.

4 **“SEC. 325. OFFICERS.**

5 “(a) POSITIONS.—The officers of the Association
6 shall consist of a chairperson and a vice chairperson of
7 the Board, an executive director, secretary, and treasurer
8 of the Association, and such other officers and assistant
9 officers as may be deemed necessary.

10 “(b) MANNER OF SELECTION.—Each officer of the
11 Board and the Association shall be elected or appointed
12 at such time, in such manner, and for such terms as may
13 be prescribed in the bylaws of the Association.

14 **“SEC. 326. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

15 “(a) ADOPTION AND AMENDMENT OF BYLAWS.—

16 “(1) COPY REQUIRED TO BE FILED.—The
17 board of directors of the Association shall submit to
18 the President and the NAIC any proposed bylaw or
19 rules of the Association or any proposed amendment
20 to the bylaws or rules, accompanied by a concise
21 general statement of the basis and purpose of such
22 proposal.

23 “(2) EFFECTIVE DATE.—Any proposed bylaw
24 or rule or proposed amendment to the bylaws or
25 rules shall take effect, after notice published in the

1 Federal Register and opportunity for comment, upon
2 such date as the Association may designate, unless
3 suspended under subsection (c) of section 330.

4 “(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

5 “(1) SPECIFICATION OF CHARGES.—In any pro-
6 ceeding to determine whether membership shall be
7 denied, suspended, revoked, or not renewed (here-
8 after in this section referred to as a ‘disciplinary ac-
9 tion’) or to determine whether a member of the As-
10 sociation should be placed on probation, the Associa-
11 tion shall bring specific charges, notify such member
12 of such charges, give the member an opportunity to
13 defend against the charges, and keep a record.

14 “(2) SUPPORTING STATEMENT.—A determina-
15 tion to take disciplinary action shall be supported by
16 a statement setting forth—

17 “(A) any act or practice in which such
18 member has been found to have been engaged;

19 “(B) the specific provision of this subtitle,
20 the rules or regulations under this subtitle, or
21 the rules of the Association which any such act
22 or practice is deemed to violate; and

23 “(C) the sanction imposed and the reason
24 for such sanction.

1 **“SEC. 327. POWERS.**

2 “In addition to all the powers conferred upon a non-
3 profit corporation by the District of Columbia Nonprofit
4 Corporation Act, the Association shall have the following
5 powers:

6 “(1) To establish and collect such membership
7 fees as the Association finds necessary to impose to
8 cover the costs of its operations.

9 “(2) To adopt, amend, and repeal bylaws and
10 rules governing the conduct of Association business
11 and performance of its duties.

12 “(3) To establish procedures for providing no-
13 tice and opportunity for comment pursuant to sec-
14 tion 326(a).

15 “(4) To enter into and perform such agree-
16 ments as necessary to carry out its duties.

17 “(5) To hire employees, professionals or special-
18 ists, and elect or appoint officers, and to fix their
19 compensation, define their duties and give them ap-
20 propriate authority to carry out the purposes of this
21 subtitle, and determine their qualification; and to es-
22 tablish the Association’s personnel policies and pro-
23 grams relating to, among other things, conflicts of
24 interest, rates of compensation, and qualifications of
25 personnel.

26 “(6) To borrow money.

1 “(7) To secure funding from board member or-
2 ganizations and other industry associations for such
3 amounts that the Association determines to be nec-
4 essary and appropriate to organize and begin oper-
5 ations of the Association, which shall be treated as
6 loans to be repaid by the Association with interest
7 at market rate.

8 **“SEC. 328. REPORT BY ASSOCIATION.**

9 “(a) IN GENERAL.—As soon as practicable after the
10 close of each fiscal year, the Association shall submit to
11 the President and the NAIC a written report regarding
12 the conduct of its business, and the exercise of the other
13 rights and powers granted by this subtitle, during such
14 fiscal year.

15 “(b) FINANCIAL STATEMENTS.—Each report sub-
16 mitted under subsection (a) with respect to any fiscal year
17 shall include financial statements setting forth the finan-
18 cial position of the Association at the end of such fiscal
19 year and the results of its operations (including the source
20 and application of its funds) for such fiscal year.

21 **“SEC. 329. LIABILITY OF THE ASSOCIATION AND THE DI-**
22 **RECTORS, OFFICERS, AND EMPLOYEES OF**
23 **THE ASSOCIATION.**

24 “(a) IN GENERAL.—The Association shall not be
25 deemed to be an insurer or insurance producer within the

1 meaning of any State law, rule, regulation, or order regu-
2 lating or taxing insurers, insurance producers, or other en-
3 tities engaged in the business of insurance, including pro-
4 visions imposing premium taxes, regulating insurer sol-
5 vency or financial condition, establishing guaranty funds
6 and levying assessments, or requiring claims settlement
7 practices.

8 “(b) LIABILITY OF DIRECTORS, OFFICERS, AND EM-
9 PLOYEES.—No director, officer, or employee of the Asso-
10 ciation shall be personally liable to any person for any ac-
11 tion taken or omitted in good faith in any matter within
12 the scope of their responsibilities in connection with the
13 Association.

14 **“SEC. 330. PRESIDENTIAL OVERSIGHT.**

15 “(a) REMOVAL OF BOARD.—If the President deter-
16 mines that the Association is acting in a manner contrary
17 to the interests of the public or the purposes of this sub-
18 title or has failed to perform its duties under this subtitle,
19 the President may remove the entire existing Board for
20 the remainder of the term to which the members of the
21 Board were appointed and appoint, in accordance with
22 section 324 and with the advice and consent of the Senate,
23 new members to fill the vacancies on the Board for the
24 remainder of such terms.

1 “(b) REMOVAL OF BOARD MEMBER.—The President
2 may remove a member of the Board only for neglect of
3 duty or malfeasance in office.

4 “(c) SUSPENSION OF RULES OR ACTIONS.—The
5 President, or a person designated by the President for
6 such purpose, may suspend the effectiveness of any rule,
7 or prohibit any action, of the Association which the Presi-
8 dent or the designee determines is contrary to the pur-
9 poses of this subtitle.

10 **“SEC. 331. RELATIONSHIP TO STATE LAW.**

11 “(a) PREEMPTION OF STATE LAWS.—State laws,
12 regulations, provisions, or other actions purporting to reg-
13 ulate insurance producers shall be preempted to the extent
14 provided in subsection (b).

15 “(b) PROHIBITED ACTIONS.—

16 “(1) IN GENERAL.—No State shall—

17 “(A) impede the activities of, take any ac-
18 tion against, or apply any provision of law or
19 regulation arbitrarily or discriminatorily to, any
20 insurance producer because that insurance pro-
21 ducer or any affiliate plans to become, has ap-
22 plied to become, or is a member of the Associa-
23 tion;

24 “(B) impose any requirement upon a mem-
25 ber of the Association that it pay fees different

1 from those required to be paid to that State
2 were it not a member of the Association;

3 “(C) impose any continuing education re-
4 quirements on nonresident insurance producers;
5 or

6 “(D) impose any licensing, registration, or
7 appointment requirements upon any non-
8 resident insurance producer that sells, solicits,
9 negotiates, effects, procures, delivers, renews,
10 continues, or binds insurance for commercial
11 property and casualty risks to an insured with
12 risks located in more than 1 State, if such non-
13 resident insurance producer is otherwise li-
14 censed as an insurance producer in the State
15 where the insured maintains its principal place
16 of business and the contract of insurance in-
17 sures risks located in that State.

18 “(2) STATES OTHER THAN A HOME STATE.—
19 No State, other than a member’s home State,
20 shall—

21 “(A) impose any licensing, integrity, per-
22 sonal or corporate qualifications, education,
23 training, experience, residency, continuing edu-
24 cation, or bonding requirement upon a member
25 of the Association that is different from the cri-

1 teria for membership in the Association or re-
2 newal of such membership;

3 “(B) impose any requirement upon a mem-
4 ber of the Association that it be licensed, reg-
5 istered, or otherwise qualified to do business or
6 remain in good standing in such State, includ-
7 ing any requirement that such insurance pro-
8 ducer register as a foreign company with the
9 secretary of state or equivalent State official; or

10 “(C) require that a member of the Associa-
11 tion submit to a criminal history record check
12 as a condition of doing business in such State.

13 **“SEC. 332. COORDINATION WITH OTHER REGULATORS.**

14 “(a) COORDINATION WITH STATE INSURANCE REGU-
15 LATORS.—The Association may—

16 “(1) establish a central clearinghouse, or utilize
17 the NAIC or any other appropriate entity as a cen-
18 tral clearinghouse, through which members of the
19 Association may pursuant to section 323(e) disclose
20 their intent to operate in 1 or more States and pay
21 the licensing fees to the appropriate States; and

22 “(2) establish a national database for the collec-
23 tion of regulatory information concerning the activi-
24 ties of insurance producers or contract with the
25 NAIC or any other entity to utilize such a database.

1 “(b) COORDINATION WITH THE FINANCIAL INDUS-
2 TRY REGULATORY AUTHORITY.—The Association shall
3 coordinate with the Financial Industry Regulatory Au-
4 thority in order to ease any administrative burdens that
5 fall on persons that are members of both associations, con-
6 sistent with the requirements of this subtitle and the Fed-
7 eral securities laws.

8 **“SEC. 333. RIGHT OF ACTION.**

9 “(a) RIGHT OF ACTION.—Any person aggrieved by
10 a decision or action of the Association may, after reason-
11 ably exhausting available avenues for resolution within the
12 Association, commence a civil action in an appropriate
13 United States district court, and obtain all appropriate re-
14 lief.

15 “(b) ASSOCIATION INTERPRETATIONS.—In any such
16 action, the court shall give appropriate weight to the Asso-
17 ciation’s interpretation of its bylaws and this subtitle.

18 **“SEC. 334. DEFINITIONS.**

19 “For purposes of this subtitle, the following defini-
20 tions shall apply:

21 “(1) HOME STATE.—The term ‘home State’
22 means the State in which the insurance producer
23 maintains its principal place of residence or business
24 and is licensed to act as an insurance producer.

1 “(2) INSURANCE.—The term ‘insurance’ means
2 any product, other than title insurance, defined or
3 regulated as insurance by the appropriate State in-
4 surance regulatory authority.

5 “(3) INSURANCE PRODUCER.—The term ‘insur-
6 ance producer’ means any insurance agent or
7 broker, excess or surplus lines broker or agent, in-
8 surance consultant, limited insurance representative,
9 and any other individual or entity that solicits, nego-
10 tiates, effects, procures, delivers, renews, continues
11 or binds policies of insurance or offers advice, coun-
12 sel, opinions or services related to insurance.

13 “(4) STATE.—The term ‘State’ includes any
14 State, the District of Columbia, any territory of the
15 United States, and Puerto Rico, Guam, American
16 Samoa, the Trust Territory of the Pacific Islands,
17 the Virgin Islands, and the Northern Mariana Is-
18 lands.

19 “(5) STATE LAW.—

20 “(A) IN GENERAL.—The term ‘State law’
21 includes all laws, decisions, rules, regulations,
22 or other State action having the effect of law,
23 of any State.

24 “(B) LAWS APPLICABLE IN THE DISTRICT
25 OF COLUMBIA.—A law of the United States ap-

1 plicable only to or within the District of Colum-
 2 bia shall be treated as a State law rather than
 3 a law of the United States.”.

4 (b) CLERICAL AMENDMENT.—The table of contents
 5 for the Gramm-Leach-Bliley Act is amended by striking
 6 the items relating to subtitle C of title III and inserting
 7 the following new items:

“Subtitle C—National Association of Registered Agents and Brokers

“Sec. 321. National association of registered agents and brokers.

“Sec. 322. Purpose.

“Sec. 323. Membership.

“Sec. 324. Board of directors.

“Sec. 325. Officers.

“Sec. 326. Bylaws, rules, and disciplinary action.

“Sec. 327. Powers.

“Sec. 328. Report by association.

“Sec. 329. Liability of the association and the directors, officers, and employees
 of the association.

“Sec. 330. Presidential oversight.

“Sec. 331. Relationship to State law.

“Sec. 332. Coordination with other regulators.

“Sec. 333. Judicial review and enforcement.

“Sec. 334. Definitions.”.

8 **SEC. 3. COMPLIANCE PROVISION.**

9 The budgetary effects of this Act, for the purpose of
 10 complying with the Statutory Pay-As-You-Go-Act of 2010,
 11 shall be determined by reference to the latest statement
 12 titled “Budgetary Effects of PAYGO Legislation” for this
 13 Act, submitted for printing in the Congressional Record
 14 by the Chairman of the Committee on the Budget of the

1 House of Representatives, provided that such statement
2 has been submitted prior to the vote on passage.

Passed the House of Representatives March 3,
2010.

Attest: LORRAINE C. MILLER,
Clerk.