

112TH CONGRESS
2D SESSION

S. 2342

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

IN THE SENATE OF THE UNITED STATES

APRIL 24 (legislative day, APRIL 23), 2012

Mr. TESTER (for himself and Mr. JOHANNIS) introduced the following bill;
which was read twice and referred to the Committee on Banking, Hous-
ing, and Urban Affairs

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Association
5 of Registered Agents and Brokers Reform Act of 2012”.

1 **SEC. 2. REESTABLISHMENT OF THE NATIONAL ASSOCIA-**
 2 **TION OF REGISTERED AGENTS AND BRO-**
 3 **KERS.**

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

7 **“Subtitle C—National Association**
 8 **of Registered Agents and Brokers**

9 **“SEC. 321. NATIONAL ASSOCIATION OF REGISTERED**
 10 **AGENTS AND BROKERS.**

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

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

15 “(1) be a nonprofit corporation;

16 “(2) have succession until dissolved by an Act
 17 of Congress;

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

20 “(4) except as otherwise provided in this sub-
 21 title, be subject to, and have all the powers conferred
 22 upon a nonprofit corporation by the District of Co-
 23 lumbia Nonprofit Corporation Act (D.C. Code, sec.
 24 29–301.01 et seq.).

25 “(c) EFFECTIVE DATE.—The provisions of this sub-
 26 title shall take effect upon the expiration of the 24-month

1 period beginning on the date of enactment of the National
2 Association of Registered Agents and Brokers Reform Act
3 of 2012. Notwithstanding such effective date, such per-
4 sons as are required to establish the Association shall take
5 such actions as are necessary to establish the operations
6 of the Association by the effective date.

7 **“SEC. 322. PURPOSE.**

8 “The purpose of the Association shall be to provide
9 a mechanism through which licensing, continuing edu-
10 cation, and other nonresident insurance producer quali-
11 fication requirements and conditions may be adopted and
12 applied on a multi-state basis without affecting the laws,
13 rules, and regulations, and preserving the rights of a
14 State, pertaining to—

15 “(1) licensing, continuing education, and other
16 qualification requirements of producers who are not
17 members of the Association;

18 “(2) resident or nonresident producer appoint-
19 ment requirements;

20 “(3) supervising and disciplining resident and
21 nonresident insurance producers;

22 “(4) establishing licensing fees for resident and
23 nonresident insurance producers so that there is no
24 loss of producer licensing revenue to the State; and

1 “(5) prescribing and enforcing laws and regula-
2 tions regulating the conduct of resident and non-
3 resident insurance producers.

4 **“SEC. 323. MEMBERSHIP.**

5 “(a) ELIGIBILITY.—

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

10 “(2) INELIGIBILITY FOR SUSPENSION OR REV-
11 OCATION OF LICENSE.—Subject to paragraph (3),
12 an insurance producer is not eligible to become a
13 member of the Association if a State insurance regu-
14 lator has suspended or revoked such producer’s in-
15 surance license in that State.

16 “(3) RESUMPTION OF ELIGIBILITY.—Paragraph
17 (2) shall cease to apply to any insurance producer
18 if—

19 “(A) the State insurance regulator reissues
20 or renews the license of such producer in the
21 State in which the license was suspended or re-
22 voked, or otherwise terminates or vacates the
23 suspension or revocation; or

1 “(B) the suspension or revocation expires
2 or is subsequently overturned by a court of
3 competent jurisdiction.

4 “(4) CRIMINAL BACKGROUND RECORD CHECK
5 REQUIRED.—

6 “(A) IN GENERAL.—An insurance pro-
7 ducer shall not be eligible to become a member
8 of the Association unless the producer has un-
9 dergone a national criminal background record
10 check of the producer’s Federal Bureau of In-
11 vestigation identification record that complies
12 with regulations prescribed by the Attorney
13 General under subparagraph (L).

14 “(B) CRIMINAL BACKGROUND RECORD
15 CHECK REQUESTED BY HOME STATE.—An in-
16 surance producer who is licensed in a State and
17 who has undergone a national criminal back-
18 ground record check of the producer’s Federal
19 Bureau of Investigation identification record
20 during the 2-year period preceding the date of
21 submission of an application to become a mem-
22 ber of the Association, in compliance with such
23 requirements as a condition for such licensure,
24 shall be deemed to have undergone a national

1 criminal background record check for purposes
2 of subparagraph (A).

3 “(C) CRIMINAL BACKGROUND RECORD
4 CHECK REQUESTED BY ASSOCIATION.—

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

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

23 “(D) FORM OF REQUEST.—A submission
24 under subparagraph (C)(i) shall include such
25 identification information as required by the At-

1 torney General concerning the person about
2 whom the record is requested and a statement
3 signed by the person authorizing the Associa-
4 tion to obtain the information.

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

17 “(F) LIMITATION ON PERMISSIBLE USES
18 OF INFORMATION.—The Association may use
19 information provided under subparagraph (E)
20 only—

21 “(i) for purposes of determining com-
22 pliance with membership criteria estab-
23 lished by the Association; and/or

24 “(ii) to disclose to State insurance
25 regulators, or Federal or State law en-

1 enforcement agencies, in conformance with
2 applicable law.

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

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

18 “(I) RELIANCE ON INFORMATION.—Nei-
19 ther the Association nor any of its directors, of-
20 ficers, or employees shall be liable in any action
21 for using information provided under subpara-
22 graph (E) as permitted under subparagraph
23 (F) in good faith and in reasonable reliance on
24 its accuracy.

“(J) FEES.—The Attorney General may charge a reasonable fee to defray the expense of conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association.

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

“(i) requiring a State insurance regulator to perform criminal background checks under this section; or

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

“(L) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this paragraph, which shall include—

“(i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and

“(ii) procedures providing a reasonable opportunity for a producer to contest the accuracy of information regarding the producer provided under subparagraph (E).

1 “(M) INELIGIBILITY FOR MEMBERSHIP.—

2 “(i) IN GENERAL.—The Association
3 may, under reasonably consistently applied
4 standards, deny membership to an insur-
5 ance producer on the basis of criminal his-
6 tory information provided under subpara-
7 graph (E), or where the insurance pro-
8 ducer has been subject to disciplinary ac-
9 tion, as described in paragraph (2).

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

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

20 “(II) challenge the accuracy and
21 completeness of the information.

22 “(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
23 TERIA.—The Association may establish membership cri-
24 teria that bear a reasonable relationship to the purposes
25 for which the Association was established.

1 “(c) ESTABLISHMENT OF CLASSES AND CATEGORIES
2 OF MEMBERSHIP.—

3 “(1) CLASSES OF MEMBERSHIP.—The Associa-
4 tion may establish separate classes of membership,
5 with separate criteria, if the Association reasonably
6 determines that performance of different duties re-
7 quires different levels of education, training, experi-
8 ence, or other qualifications.

9 “(2) BUSINESS ENTITIES.—The Association
10 shall establish a class of membership and member-
11 ship criteria for business entities. A business entity
12 that applies for membership shall be required to des-
13 ignate an individual Association member responsible
14 for the business entity’s compliance with Association
15 rules and the insurance laws, rules, and regulations
16 of any State in which the business entity seeks to do
17 business on the basis of Association membership.

18 “(3) 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. The Association shall not
13 establish criteria that unfairly limit the ability of a
14 small insurance producer to become a member of the
15 Association, including imposing discriminatory mem-
16 bership fees.

17 “(2) QUALIFICATIONS.—In establishing criteria
18 under paragraph (1), the Association shall not adopt
19 any qualification less protective to the public than
20 that contained in the NAIC Producer Licensing
21 Model Act in effect as of the date of enactment of
22 the National Association of Registered Agents and
23 Brokers Reform Act of 2012, and shall consider the
24 highest levels of insurance producer qualifications
25 established under the licensing laws of the States.

1 “(3) ASSISTANCE FROM STATES.—

2 “(A) IN GENERAL.—The Association may
3 request a State to provide assistance in inves-
4 tigating and evaluating a prospective member’s
5 eligibility for membership in the Association.

6 “(B) RULE OF CONSTRUCTION.—Subpara-
7 graph (A) shall not be construed as requiring or
8 authorizing any State to adopt new or addi-
9 tional requirements concerning the licensing or
10 evaluation of insurance producers.

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

16 “(e) EFFECT OF MEMBERSHIP.—

17 “(1) AUTHORITY OF ASSOCIATION MEMBERS.—
18 Membership in the Association shall—

19 “(A) authorize an insurance producer to
20 sell, solicit, or negotiate insurance in any State
21 for which the member pays the licensing fee set
22 by such State for any line or lines of insurance
23 specified in such producer’s home State license,
24 and exercise all such incidental powers, as shall
25 be necessary to carry out such activities, includ-

1 ing claims adjustments and settlement to the
2 extent permissible under such State's laws, risk
3 management, employee benefits advice, retire-
4 ment planning, and any other insurance-related
5 consulting activities;

6 “(B) be the equivalent of a nonresident in-
7 surance producer license for purposes of author-
8 izing the producer to engage in the activities
9 described in subparagraph (A) in any State
10 where the member pays the licensing fee; and

11 “(C) be the equivalent of a nonresident in-
12 surance producer license for the purpose of sub-
13 jecting an insurance producer to all laws, regu-
14 lations, provisions or other action of any State
15 concerning revocation, suspension, or other en-
16 forcement action related to a member's ability
17 to engage in any activity within the scope of au-
18 thority granted under this subsection and to all
19 State laws, regulations, provisions and actions
20 preserved under paragraph (5).

21 “(2) VIOLENT CRIME CONTROL AND LAW EN-
22 FORCEMENT ACT OF 1994.—Nothing in this subtitle
23 shall be construed to alter, modify, or supercede any
24 requirement established by section 1033 of title 18,
25 United States Code.

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

5 “(4) REGULATOR NOTIFICATION.—

6 “(A) IN GENERAL.—The Association shall
 7 notify the States and the National Association
 8 of Insurance Commissioners or its designee
 9 when a producer has satisfied the membership
 10 criteria of this section. The States and the Na-
 11 tional Association of Insurance Commissioners
 12 or its designee shall have 10 business days after
 13 such notification to provide the Association with
 14 evidence that the producer does not satisfy the
 15 criteria for membership for the Association’s
 16 consideration in its final membership deter-
 17 mination.

18 “(B) ONGOING DISCLOSURES REQUIRED.—

19 On an ongoing basis, the Association shall dis-
 20 close to the States and the National Association
 21 of Insurance Commissioners or its designee the
 22 States in which each member is authorized to
 23 operate. The Association shall immediately no-
 24 tify the States and the National Association of
 25 Insurance Commissioners or its designee when

1 a member is newly authorized to operate in one
 2 or more States, or is no longer authorized to
 3 operate in one or more States on the basis of
 4 Association membership.

5 “(5) PRESERVATION OF STATE CONSUMER PRO-
 6 TECTION AND MARKET CONDUCT REGULATION.—No
 7 provision of this section shall be construed as alter-
 8 ing or affecting the applicability or continuing effec-
 9 tiveness of any law, regulation, provision, or other
 10 action of any State, including any law, regulation,
 11 provision, or other action that—

12 “(A) regulates market conduct, producer
 13 conduct, or unfair trade practices;

14 “(B) establishes consumer protections; or

15 “(C) requires insurance producers to be
 16 appointed by a licensed or authorized insurer,
 17 to the extent that such law, regulation, provision, or
 18 other action is not inconsistent with the provisions
 19 of this subtitle related to market entry for non-
 20 resident insurance producers, and then only to the
 21 extent of such inconsistency.

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

24 “(g) CONTINUING EDUCATION.—

1 “(1) IN GENERAL.—The Association shall es-
2 tablish, as a condition of membership, continuing
3 education requirements which shall be comparable to
4 the continuing education requirements under the li-
5 censing laws of a majority of the States.

6 “(2) STATE CONTINUING EDUCATION REQUIRE-
7 MENTS.—A member may not be required to satisfy
8 continuing education requirements imposed under
9 the laws, regulations, provisions, or actions of any
10 State other than such member’s home State.

11 “(3) RECIPROCITY.—The Association shall not
12 require a member to satisfy continuing education re-
13 quirements that are equivalent to any continuing
14 education requirements of the member’s home State
15 that have been satisfied by the member during the
16 applicable licensing period.

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

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

21 “(1) DISCIPLINARY ACTION.—The Association
22 may place an insurance producer that is a member
23 of the Association on probation or suspend or revoke
24 such producer’s membership in the Association, or

1 assess monetary fines or penalties, as the Associa-
2 tion determines to be appropriate, if—

3 “(A) the producer fails to meet the appli-
4 cable membership criteria or other rules of the
5 Association;

6 “(B) the producer has been subject to dis-
7 ciplinary action pursuant to a final adjudicatory
8 proceeding under the jurisdiction of a State in-
9 surance regulator;

10 “(C) an insurance license held by the pro-
11 ducer has been suspended or revoked by a State
12 insurance regulator; or

13 “(D) the producer has been convicted of a
14 crime that would have resulted in the denial of
15 membership pursuant to subsection (a)(4)(M)(i)
16 at the time of application and the Association
17 has received a copy of the final disposition from
18 a court of competent jurisdiction.

19 “(2) VIOLATIONS OF ASSOCIATION RULES.—

20 The Association shall have the power to investigate
21 alleged violations of Association rules.

22 “(3) REPORTING.—The Association shall imme-
23 diately notify the NAIC or its designee when a pro-
24 ducer’s membership has been placed on probation or
25 has been suspended, revoked, or otherwise termi-

1 nated, or when the Association has assessed mone-
 2 tary fines or penalties.

3 “(i) CONSUMER COMPLAINTS.—

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

5 “(A) refer any complaint against a mem-
 6 ber of the Association from a consumer relating
 7 to alleged misconduct or violations of State in-
 8 surance laws to the State insurance regulator
 9 where the consumer resides and, when appro-
 10 priate, to any additional State insurance regu-
 11 lator, as determined by rules adopted by the
 12 Association; and

13 “(B) make any related records and infor-
 14 mation available to the NAIC or its designee
 15 and to each State insurance regulator to whom
 16 the complaint is forwarded.

17 “(2) TELEPHONE AND OTHER ACCESS.—The
 18 Association shall maintain a toll-free number for
 19 purposes of this subsection and, as practicable, other
 20 alternative means of communication with consumers,
 21 such as an Internet webpage.

22 “(3) FINAL DISPOSITION OF INVESTIGATION.—
 23 State insurance regulators shall provide the Associa-
 24 tion with information regarding the final disposition
 25 of a complaint referred pursuant to paragraph

1 (1)(A), but nothing shall be construed to compel a
 2 State to release confidential investigation reports or
 3 other information protected by State law to the As-
 4 sociation.

5 “(j) INFORMATION SHARING.—The Association may
 6 share documents, materials, or other information, includ-
 7 ing confidential and privileged documents, with a State,
 8 Federal, or international regulatory agency or enforce-
 9 ment authority, or with the NAIC, provided that the re-
 10 cipient has the authority and agrees to maintain the con-
 11 fidentiality or privileged status of the document, material,
 12 or other information.

13 **“SEC. 324. BOARD OF DIRECTORS.**

14 “(a) ESTABLISHMENT.—There is established the
 15 board of directors of the Association (hereafter in this sub-
 16 title referred to as the ‘Board’), which shall have authority
 17 to govern and supervise all activities of the Association.

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

21 “(c) COMPOSITION.—

22 “(1) IN GENERAL.—The Board shall consist of
 23 13 members who shall be appointed by the Presi-
 24 dent, by and with the advice and consent of the Sen-
 25 ate, of whom—

1 “(A) 8 shall be State insurance commis-
 2 sioners appointed in the manner provided in
 3 paragraph (2);

4 “(B) 2 shall be representatives of property
 5 and casualty insurance producers;

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

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

10 “(E) 1 shall be a representative of life or
 11 health insurers.

12 “(2) STATE INSURANCE REGULATOR REP-
 13 RESENTATIVES.—

14 “(A) Before making any appointments
 15 pursuant to subparagraph (A) of paragraph
 16 (1), the President shall request a list of rec-
 17 ommended candidates from the NAIC, which
 18 shall not be binding on the President. If the
 19 NAIC fails to submit a list of recommendations
 20 within 15 business days of the request, the
 21 President may make the requisite appointments
 22 without considering the views of the NAIC.

23 “(B) Not more than 4 members appointed
 24 to membership on the Board pursuant to sub-

1 paragraph (A) of paragraph (1) shall belong to
2 the same political party.

3 “(C) If fewer than 8 State insurance com-
4 missioners accept appointment to the Board,
5 the President may appoint the remaining State
6 insurance commissioner members of the Board
7 from among individuals who are former State
8 insurance commissioners, provided that any
9 former insurance commissioner so appointed
10 shall not be employed by or have a present di-
11 rect or indirect financial interest in any insurer,
12 insurance producer, or other entity in the insur-
13 ance industry other than direct or indirect own-
14 ership of, or beneficial interest in, an insurance
15 policy or annuity contract written or sold by an
16 insurer.

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

24 “(4) STATE INSURANCE COMMISSIONER DE-
25 FINED.—For purposes of this subsection, the term

1 ‘State insurance commissioner’ means a person who
 2 serves in the position in State government, or on the
 3 board, commission, or other body that is the prin-
 4 cipal insurance regulatory authority for the State.

5 “(d) TERMS.—

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

8 “(A) the term of—

9 “(i) 4 of the State insurance commis-
 10 sioner members of the Board initially ap-
 11 pointed under subparagraph (A) of para-
 12 graph (1);

13 “(ii) 1 of the property and casualty
 14 insurance producer members of the Board
 15 initially appointed under subparagraph (B)
 16 of paragraph (1); and

17 “(iii) 1 of the insurer representative
 18 members of the Board initially appointed
 19 under subparagraphs (D) and (E) of para-
 20 graph (1),

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

23 “(B) a member of the Board may continue
 24 to serve after the expiration of the term to

1 which such member was appointed until a suc-
2 cessor is qualified; and

3 “(C) any member of the Board appointed
4 to fill a vacancy occurring before the expiration
5 of the term for which the member’s predecessor
6 was appointed shall be appointed only for the
7 remainder of that term.

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

10 “(e) INITIAL APPOINTMENTS.—The appointment of
11 initial Board members shall be made no later than 90 days
12 after the date of enactment of the National Association
13 of Registered Agents and Brokers Reform Act of 2012.

14 “(f) MEETINGS.—

15 “(1) IN GENERAL.—The Board shall meet at
16 the call of the chairperson, as requested in writing
17 to the chairperson by at least 5 members of the
18 Board, or as otherwise provided by the bylaws of the
19 Association.

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

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

1 “(4) INITIAL MEETING.—The Board shall hold
2 its first meeting not later than 45 days after the
3 date on which all initial members of the Board have
4 been appointed.

5 “(g) RESTRICTION ON CONFIDENTIAL INFORMA-
6 TION.—Members of the Board appointed pursuant to
7 paragraph (3) of subsection (c) shall not have access to
8 confidential information received by the Association in
9 connection with complaints, investigations, or disciplinary
10 proceedings involving insurance producers.

11 “(h) ETHICS AND CONFLICTS OF INTEREST.—The
12 Board shall issue and enforce an ethical conduct code to
13 address permissible and prohibited activities of Board
14 members and Association officers, employees, agents, or
15 consultants. The code shall, at a minimum, include provi-
16 sions that prohibit any Board member or Association offi-
17 cer, employee, agent or consultant from—

18 “(1) engaging in unethical conduct in the
19 course of performing Association duties;

20 “(2) participating in the making or influencing
21 the making of any Association decision, the outcome
22 of which he or she knows or had reason to know
23 would have a reasonably foreseeable material finan-
24 cial effect, distinguishable from its effect on the pub-

1 licly generally, on the person or a member of his or
2 her immediate family;

3 “(3) accepting any gift from any person or enti-
4 ty other than the Association that is given because
5 of the position held by the person in the Association;

6 “(4) making political contributions to any per-
7 son or entity on behalf of the Association; and

8 “(5) lobbying or paying someone to lobby on be-
9 half of the Association.

10 **“SEC. 325. OFFICERS.**

11 “(a) POSITIONS.—The officers of the Association
12 shall consist of a chairperson and a vice chairperson of
13 the Board, an executive director, secretary, and treasurer
14 of the Association, and such other officers and assistant
15 officers as may be deemed necessary.

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

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

21 “(a) ADOPTION AND AMENDMENT OF BYLAWS AND
22 RULES.—

23 “(1) COPY REQUIRED TO BE FILED.—The
24 board of directors of the Association shall submit to
25 the President and the NAIC any proposed bylaw or

1 rules of the Association or any proposed amendment
2 to the bylaws or rules, accompanied by a concise
3 general statement of the basis and purpose of such
4 proposal. Rules shall be promulgated in accordance
5 with the Federal Administrative Procedure Act.

6 “(2) EFFECTIVE DATE.—Any proposed bylaw
7 or rule or proposed amendment to the bylaws or
8 rules shall take effect, after notice published in the
9 Federal Register and opportunity for comment, upon
10 such date as the Association may designate, unless
11 suspended under subsection (c) of section 330.

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

13 “(1) SPECIFICATION OF CHARGES.—In any pro-
14 ceeding to determine whether membership shall be
15 denied, suspended, revoked, or not renewed or to de-
16 termine whether a member of the Association should
17 be placed on probation (in this section referred to as
18 a ‘disciplinary action’) or whether to assess fines or
19 monetary penalties, the Association shall bring spe-
20 cific charges, notify such member of such charges,
21 give the member an opportunity to defend against
22 the charges, and keep a record.

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

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

3 “(B) the specific provision of this subtitle,
4 the rules or regulations under this subtitle, or
5 the rules of the Association which any such act
6 or practice is deemed to violate; and

7 “(C) the sanction imposed and the reason
8 for such sanction.

9 “(3) INELIGIBILITY OF PRIVATE SECTOR REP-
10 RESENTATIVES.—Members of the Board appointed
11 pursuant to section 324(c)(3) shall not participate in
12 any disciplinary action, and shall not have access to
13 confidential information concerning such actions.

14 **“SEC. 327. POWERS.**

15 “In addition to all the powers conferred upon a non-
16 profit corporation by the District of Columbia Nonprofit
17 Corporation Act, the Association shall have the following
18 powers:

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

22 “(2) To adopt, amend, and repeal bylaws and
23 rules governing the conduct of Association business
24 and performance of its duties.

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

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

6 “(5) To hire employees, professionals or special-
7 ists, and elect or appoint officers, and to fix their
8 compensation, define their duties and give them ap-
9 propriate authority to carry out the purposes of this
10 subtitle, and determine their qualification; and to es-
11 tablish the Association’s personnel policies and pro-
12 grams relating to, among other things, conflicts of
13 interest, rates of compensation, and qualifications of
14 personnel.

15 “(6) To borrow money.

16 “(7) To secure funding for such amounts as the
17 Association determines to be necessary and appro-
18 priate to organize and begin operations of the Asso-
19 ciation, which shall be treated as loans to be repaid
20 by the Association with interest at market rate, ex-
21 cept that the Board shall not secure funding from
22 an insurer, insurance producer, or insurance associa-
23 tion, but may secure funding from the NAIC.

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

2 “(a) IN GENERAL.—As soon as practicable after the
3 close of each fiscal year, the Association shall submit to
4 the President and the NAIC a written report regarding
5 the conduct of its business, and the exercise of the other
6 rights and powers granted by this subtitle, during such
7 fiscal year.

8 “(b) FINANCIAL STATEMENTS.—Each report sub-
9 mitted under subsection (a) with respect to any fiscal year
10 shall include financial statements setting forth the finan-
11 cial position of the Association at the end of such fiscal
12 year and the results of its operations (including the source
13 and application of its funds) for such fiscal year.

14 **“SEC. 329. LIABILITY OF THE ASSOCIATION AND THE DI-**
15 **RECTORS, OFFICERS, AND EMPLOYEES OF**
16 **THE ASSOCIATION.**

17 “(a) IN GENERAL.—The Association shall not be
18 deemed to be an insurer or insurance producer within the
19 meaning of any State law, rule, regulation, or order regu-
20 lating or taxing insurers, insurance producers, or other en-
21 tities engaged in the business of insurance, including pro-
22 visions imposing premium taxes, regulating insurer sol-
23 vency or financial condition, establishing guaranty funds
24 and levying assessments, or requiring claims settlement
25 practices.

1 “(b) LIABILITY OF DIRECTORS, OFFICERS, AND EM-
 2 PLOYEES.—No director, officer, or employee of the Asso-
 3 ciation shall be personally liable to any person for any ac-
 4 tion taken or omitted in good faith in any matter within
 5 the scope of their responsibilities in connection with the
 6 Association.

7 **“SEC. 330. PRESIDENTIAL OVERSIGHT.**

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

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

21 “(c) SUSPENSION OF RULES OR ACTIONS.—Fol-
 22 lowing notice to the Board, the President, or a person des-
 23 ignated by the President for such purpose, may suspend
 24 the effectiveness of any rule, or prohibit any action, of the

1 Association which the President or the designee deter-
 2 mines is contrary to the purposes of this subtitle.

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

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

8 “(b) PROHIBITED ACTIONS.—

9 “(1) IN GENERAL.—No State shall—

10 “(A) impede the activities of, take any ac-
 11 tion against, or apply any provision of law or
 12 regulation arbitrarily or discriminatorily to, any
 13 insurance producer because that insurance pro-
 14 ducer or any affiliate plans to become, has ap-
 15 plied to become, or is a member of the Associa-
 16 tion;

17 “(B) impose any requirement upon a mem-
 18 ber of the Association that it pay fees different
 19 from those required to be paid to that State
 20 were it not a member of the Association; or

21 “(C) impose any continuing education re-
 22 quirements on any nonresident insurance pro-
 23 ducer that is a member of the Association.

1 “(2) STATES OTHER THAN A HOME STATE.—

2 No State, other than a member’s home State,
3 shall—

4 “(A) impose any licensing, personal or cor-
5 porate qualifications, education, training, expe-
6 rience, residency, continuing education, or
7 bonding requirement upon a member of the As-
8 sociation that is different from the criteria for
9 membership in the Association or renewal of
10 such membership;

11 “(B) impose any requirement upon a mem-
12 ber of the Association that it be licensed, reg-
13 istered, or otherwise qualified to do business or
14 remain in good standing in such State, includ-
15 ing any requirement that such insurance pro-
16 ducer register as a foreign company with the
17 secretary of state or equivalent State official;

18 “(C) require that a member of the Associa-
19 tion submit to a criminal history record check
20 as a condition of doing business in such State;
21 or

22 “(D) impose any licensing, registration, or
23 appointment requirements upon a member of
24 the Association, or require a member of the As-
25 sociation to be authorized to operate as an in-

1 insurance producer, in order to sell, solicit, or ne-
 2 gotiate insurance for commercial property and
 3 casualty risks to an insured with risks located
 4 in more than one State, if such member is li-
 5 censed or otherwise authorized to operate in the
 6 State where the insured maintains its principal
 7 place of business and the contract of insurance
 8 insures risks located in that State.

9 “(3) PRESERVATION OF STATE DISCIPLINARY
 10 AUTHORITY.—Nothing in this section may be con-
 11 strued to prohibit a State from investigating and
 12 taking appropriate disciplinary action, including sus-
 13 pension or revocation of a producer’s authority to do
 14 business in a State, in accordance with such State’s
 15 law and that is not inconsistent with the provisions
 16 of this section, against a member of the Association
 17 as a result of a complaint or for any alleged activity,
 18 regardless of whether such activity occurred before
 19 or after the producer commenced doing business in
 20 that State pursuant to Association membership.

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

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

24 “(1) establish a central clearinghouse, or utilize
 25 the NAIC or any other appropriate entity as a cen-

1 tral clearinghouse, through which members of the
 2 Association may pursuant to section 323(e) disclose
 3 their intent to operate in 1 or more States and pay
 4 the licensing fees to the appropriate States; and

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

9 “(b) COORDINATION WITH THE FINANCIAL INDUS-
 10 TRY REGULATORY AUTHORITY.—The Association shall
 11 coordinate with the Financial Industry Regulatory Au-
 12 thority in order to ease any administrative burdens that
 13 fall on persons that are members of both associations, con-
 14 sistent with the requirements of this subtitle and the Fed-
 15 eral securities laws.

16 **“SEC. 333. RIGHT OF ACTION.**

17 “(a) RIGHT OF ACTION.—Any person aggrieved by
 18 a decision or action of the Association may, after reason-
 19 ably exhausting available avenues for resolution within the
 20 Association, commence a civil action in an appropriate
 21 United States district court, and obtain all appropriate re-
 22 lief.

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

1 **“SEC. 334. DEFINITIONS.**

2 “For purposes of this subtitle, the following defini-
3 tions shall apply:

4 “(1) BUSINESS ENTITY.—The term ‘business
5 entity’ means a corporation, association, partnership,
6 limited liability company, limited liability partner-
7 ship, or other legal entity.

8 “(2) HOME STATE.—The term ‘home State’
9 means the State in which the insurance producer
10 maintains its principal place of residence or business
11 and is licensed to act as an insurance producer.

12 “(3) INSURANCE.—The term ‘insurance’ means
13 any product, other than title insurance or bail
14 bonds, defined or regulated as insurance by the ap-
15 propriate State insurance regulatory authority.

16 “(4) INSURANCE PRODUCER.—The term ‘insur-
17 ance producer’ means any insurance agent or
18 broker, excess or surplus lines broker or agent, in-
19 surance consultant, limited insurance representative,
20 and any other individual or entity that sells, solicits,
21 or negotiates policies of insurance or offers advice,
22 counsel, opinions or services related to insurance.

23 “(5) PRINCIPAL PLACE OF BUSINESS.—The
24 term ‘principal place of business’ means the State in
25 which an insurance producer maintains the head-
26 quarters of the producer and, in the case of a busi-

1 ness entity, where the entity’s high-level officers di-
 2 rect, control, and coordinate the business activities
 3 of the entity.

4 “(6) PRINCIPAL PLACE OF RESIDENCE.—The
 5 term ‘principal place of residence’ means the State
 6 in which an insurance producer resides for the great-
 7 est number of days during a calendar year.

8 “(7) STATE.—The term ‘State’ includes any
 9 State, the District of Columbia, any territory of the
 10 United States, and Puerto Rico, Guam, American
 11 Samoa, the Trust Territory of the Pacific Islands,
 12 the Virgin Islands, and the Northern Mariana Is-
 13 lands.

14 “(8) STATE LAW.—

15 “(A) IN GENERAL.—The term ‘State law’
 16 includes all laws, decisions, rules, regulations,
 17 or other State action having the effect of law,
 18 of any State.

19 “(B) LAWS APPLICABLE IN THE DISTRICT
 20 OF COLUMBIA.—A law of the United States ap-
 21 plicable only to or within the District of Colum-
 22 bia shall be treated as a State law rather than
 23 a law of the United States.”.

24 (b) CLERICAL AMENDMENT.—The table of contents
 25 for the Gramm-Leach-Bliley Act is amended by striking

- 1 the items relating to subtitle C of title III and inserting
- 2 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. Right of action.
- “Sec. 334. Definitions.”.

