

103D CONGRESS
1ST SESSION

S. 1619

To create the Insurance Regulatory Commission.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4 (legislative day, NOVEMBER 2), 1993

Mr. METZENBAUM introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To create the Insurance Regulatory Commission.

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 “Insurance Protection
5 Act of 1993”.

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1 **TITLE I—INSURANCE**
 2 **REGULATORY COMMISSION**
 3 **SEC. 101. INSURANCE REGULATORY COMMISSION.**

4 (a) ESTABLISHMENT.—There is established an Insur-
 5 ance Regulatory Commission (hereinafter referred to as
 6 the “Commission”) to be composed of 5 commissioners to
 7 be appointed by the President, by and with the advice and
 8 consent of the Senate.

1 (b) CHAIRMAN.—The President shall designate 1 of
2 the members as Chairman of the Commission.

3 (c) POLITICAL PARTIES.—Not more than 3 of such
4 commissioners shall be members of the same political
5 party, and in making appointments members of different
6 political parties shall be appointed alternately as nearly
7 as may be practicable.

8 (d) FULL-TIME EMPLOYMENT.—No commissioner
9 shall engage in any other business, vocation, or employ-
10 ment than that of serving as commissioner, nor shall any
11 commissioner participate, directly or indirectly, in any in-
12 surance company operations or transactions of a character
13 subject to regulation by the Commission pursuant to this
14 title.

15 (e) TERMS.—Each commissioner shall hold office for
16 a term of 5 years and until his successor is appointed and
17 has qualified, except that—

18 (1) a commissioner shall not continue to serve
19 beyond the expiration of the next session of Con-
20 gress subsequent to the expiration of the fixed term
21 of office;

22 (2) any commissioner appointed to fill a va-
23 cancy occurring prior to the expiration of the term
24 for which his predecessor was appointed shall be ap-
25 pointed for the remainder of such term; and

1 (3) the terms of office of the commissioners
2 first taking office after the enactment of this title
3 shall expire as designated by the President at the
4 time of nomination, 1 at the end of the year, 1 at
5 the end of 2 years, 1 at the end of 3 years, 1 at the
6 end of 4 years, and 1 at the end of 5 years, after
7 the date of the enactment of this title.

8 (f) AGENCY OF THE UNITED STATES.—The Commis-
9 sion shall be deemed to be an agency of the United States
10 for purposes of subchapter II of chapter 5 and chapter
11 7 of title 5, United States Code.

12 **SEC. 102. POWERS OF THE COMMISSION; COMPENSATION;**
13 **PERSONNEL.**

14 (a) HEARINGS.—The Commission may hold such
15 hearings, sit and act at such times and places, take such
16 testimony, and receive such evidence as the Commission
17 considers advisable to carry out the purposes of this Act.

18 (b) INFORMATION FROM FEDERAL AGENCIES.—The
19 Commission may secure directly from any Federal depart-
20 ment or agency such information as the Commission con-
21 siders necessary to carry out the provisions of this Act.
22 Upon request of the Chairman of the Commission, the
23 head of such department or agency shall furnish such in-
24 formation to the Commission.

1 (c) POSTAL SERVICES.—The Commission may use
2 the United States mails in the same manner and under
3 the same conditions as other departments and agencies of
4 the Federal Government.

5 (d) COMPENSATION OF MEMBERS.—Each member of
6 the Commission shall be compensated in an amount equal
7 to that prescribed for level IV of the Executive Schedule
8 under section 5315 of title 5, United States Code.

9 (e) TRAVEL EXPENSES.—The members of the Com-
10 mission shall be allowed travel expenses, including per
11 diem in lieu of subsistence, at rates authorized for employ-
12 ees of agencies under subchapter I of chapter 57 of title
13 5, United States Code, while away from their homes or
14 regular places of business in the performance of services
15 for the Commission.

16 (f) APPOINTMENTS; COMPENSATION.—The Chair-
17 man of the Commission may appoint and fix the com-
18 pensation of an executive director and other personnel as
19 may be necessary to carry out this Act.

20 (g) DETAIL OF GOVERNMENT EMPLOYEES.—Any
21 Federal Government employee may be detailed to the
22 Commission without reimbursement, and such detail shall
23 be without interruption or loss of civil service status or
24 privilege.

1 (h) PROCUREMENT OF TEMPORARY AND INTERMIT-
2 TENT SERVICES.—The Chairman of the Commission may
3 procure temporary and intermittent services under section
4 3109(b) of title 5, United States Code, at rates for individ-
5 uals which do not exceed the daily equivalent of the annual
6 rate of basic pay prescribed for level V of the Executive
7 Schedule under section 5316 of such title.

8 **SEC. 103. OFFICE AND PLACE OF MEETING.**

9 The principal office of the Commission shall be in the
10 city of Washington, District of Columbia, but it may meet
11 and exercise all its powers at any other place. The Com-
12 mission may, by one or more of its members, or by such
13 examiners as it may designate, prosecute any inquiry nec-
14 essary to its duties in any part of the United States.

15 **SEC. 104. DEFINITIONS.**

16 As used in this Act, the term:

17 (1) “State insurance department” means a
18 State governmental bureau charged with the admin-
19 istration of insurance laws.

20 (2) “Insurer” means the party to an insurance
21 arrangement who undertakes to indemnify for losses,
22 provide pecuniary benefits or render services, but
23 does not include an employee benefit plan qualified
24 under section 1001 of title 29, United States Code.

1 (3) “Insurance” means a contract whereby a
2 person undertakes to indemnify another person or to
3 pay another person a specified amount upon deter-
4 minable contingencies.

5 (4) “Interstate Insurance License” means a
6 certification of authority for an insurer to do busi-
7 ness in interstate commerce issued by a State which
8 is accredited by the Insurance Regulatory Commis-
9 sion pursuant to the provisions of this title.

10 (5) “Person” means an individual, a corpora-
11 tion, a partnership, an association, a joint stock
12 company, a trust, an unincorporated organization, or
13 any similar entity or any combination of the fore-
14 going acting in concert.

15 (6) “State” means the 50 States, the District
16 of Columbia, Puerto Rico, Guam, the Virgin Islands
17 and any district, territory or other separately gov-
18 erned political subdivision under the authority of the
19 United States.

20 (7) “Reinsurance” means a type of insurance
21 that involves acceptance by an insurer of all or a
22 part of the risk of loss covered by another insurer.

23 (8) “Reinsurer” means an insurer that assumes
24 all or part of the insurance or reinsurance written
25 by another insurer.

1 **SEC. 105. DELEGATION OF FUNCTIONS BY THE COMMIS-**
2 **SION.**

3 (a) **AUTHORITY TO DELEGATE.**—The Commission
4 shall have the authority to delegate, by published order
5 or rule, any of its functions to a division of the Commis-
6 sion, an individual Commissioner, an administrative law
7 judge, or an employee or employee board, including func-
8 tions with respect to hearing, determining, ordering, cer-
9 tifying, reporting, or otherwise acting as to any work,
10 business, or matter. Nothing in this section shall be
11 deemed to supersede the provisions of section 556(b) of
12 title 5, United States Code, or to authorize the delegation
13 of the function of rule making as defined in subchapter
14 II of chapter 5 of title 5, United States Code, with ref-
15 erence to general rules as distinguished from rules of par-
16 ticular applicability, or of the making of any rule.

17 (b) **REVIEW.**—With respect to the delegation of any
18 of its functions, as provided in subsection (a) of this sec-
19 tion, the Commission shall retain a discretionary right to
20 review the action of any such division of the Commission,
21 individual Commissioner, administrative law judge, em-
22 ployee, or employee board, upon its own initiative or upon
23 petition of a party to or intervenor in such action, within
24 such time and in such manner as the Commission by rule
25 shall prescribe. The vote of one member of the Commis-
26 sion shall be sufficient to bring any such action before the

1 Commission for review. A person or party shall be entitled
2 to review by the Commission if adversely affected by action
3 at a delegated level.

4 (c) ACTION OF COMMISSION.—If the right to exercise
5 such review is declined, or if no such review is sought with-
6 in the time stated in the rules promulgated by the Com-
7 mission, then the action of any such division of the Com-
8 mission, individual Commissioner, administrative law
9 judge, employee, or employee board, shall, for all purposes,
10 including appeal or review thereof, be deemed the action
11 of the Commission.

12 **SEC. 106. RULES AND REGULATIONS.**

13 The Commission shall promulgate rules and regula-
14 tions necessary to carry out its responsibilities under this
15 Act.

16 **SEC. 107. INVESTIGATIVE POWERS OF THE COMMISSION.**

17 The Commission shall have the power to gather and
18 compile information concerning, and to investigate from
19 time to time the organization, business, conduct, practices
20 and management of any person, partnership, or corpora-
21 tion engaged in the business of insurance.

22 **SEC. 108. ANNUAL AND SPECIAL REPORTS.**

23 The Commission shall have the power to require, by
24 general or special orders or by subpoena, any person en-
25 gaged in the business of insurance, to file with the Com-

1 mission in such form as the Commission may prescribe
2 annual or special, or both annual and special, reports, or
3 answers in writing to specific questions, furnishing to the
4 Commission such information as it may require as to the
5 organization, business, conduct, practices, management,
6 and relation to other corporations, partnerships, and indi-
7 viduals of the respective persons, partnerships, and cor-
8 porations filing such reports or answers in writing. Such
9 reports and answers shall be made under oath, or other-
10 wise, as the Commission may prescribe, and shall be filed
11 with the Commission within such reasonable period as the
12 Commission may prescribe, unless additional time be
13 granted in any case by the Commission.

14 **SEC. 109. ASSESSMENTS TO PAY EXPENSES.**

15 (a) ASSESSMENTS.—The Commission shall have the
16 authority to levy semiannually upon insurers, including re-
17 insurers, in proportion to their premiums, an assessment
18 sufficient to pay the estimated expenses of the Commis-
19 sion and the salaries of its members and employees for
20 the half year succeeding the levying of such assessment,
21 together with any deficit carried forward from the preced-
22 ing half year. The formula for the assessment shall be de-
23 termined by the Commission.

24 (b) LOANS.—(1) At the time of the establishment of
25 the Commission and thereafter if, in the judgment of the

1 Commission, a loan to finance the activity of the Commis-
2 sion is required, the Secretary of the Treasury shall make
3 such loans as are required, but loans under this paragraph
4 shall not exceed in the aggregate \$20,000,000 outstanding
5 at one time. Each loan under this paragraph shall be made
6 on such terms as may be fixed by agreement between the
7 Commission and the Secretary of the Treasury. The
8 amount of the loan shall be a liability of the Commission.

9 (2) Interest shall accrue to the Treasury on the
10 amount of any outstanding loans made to the Commission
11 pursuant to paragraph (b)(1) of this section on the basis
12 of the average daily amount of such outstanding loans de-
13 termined at the close of each fiscal year with respect to
14 such year, and the Commission shall pay the interest so
15 accruing into the Treasury as miscellaneous receipts annu-
16 ally from the fund. The Secretary of the Treasury shall
17 determine the applicable interest rate in advance.

18 (3) So long as any loans to the fund are outstanding,
19 the Commission shall from time to time, not less often
20 than annually, determine whether the balance in the fund
21 is in excess of the amount which, in its judgment, is need-
22 ed to meet the requirements of the fund and shall pay
23 such excess to the Secretary of the Treasury, to be cred-
24 ited against the loans to the Commission.

1 **SEC. 110. STATE ACCREDITATION.**

2 (a) CERTIFICATIONS.—The Commission shall have
3 the authority to certify State insurance departments.

4 (b) STANDARDS.—The Commission shall grant cer-
5 tification to those States which the Commission deter-
6 mines—

7 (1) meet the standards promulgated by the
8 Commission pursuant this Act, and

9 (2) effectively implement such standards.

10 (c) LICENSES.—A State certified pursuant to sub-
11 section (b) may issue an interstate insurance license to
12 an insurer domiciled in that State. Each such license is-
13 sued by the State shall bear a seal authorized by the Com-
14 mission.

15 (d) FAILURE TO OBTAIN CERTIFICATION.—No in-
16 surer domiciled in a State which is not certified by the
17 Commission may conduct the business of insurance in
18 interstate commerce.

19 (e) EFFECTIVE DATE.—The provisions of this section
20 shall not apply in a State until 1 year after the date such
21 standards are first established by the Commission. For a
22 State which is not scheduled to meet in a legislative ses-
23 sion in the year following the establishment of the stand-
24 ards by the Commission, the date specified in this sub-
25 section is the first day of the first calendar quarter begin-
26 ning after the close of the first legislative session of the

1 State legislature that begins on or after January 1 of the
2 year next following establishment of the standards by the
3 Commission. For the purposes of the previous sentence,
4 in the case of a State that has a 2-year legislative session,
5 each year of such session shall be deemed to be a separate
6 regular session of the State legislature.

7 (f) TIME PERIOD.—The Commission shall provide a
8 time period for an insurer domiciled in a State which ei-
9 ther is not initially accredited or which has its accredita-
10 tion revoked to transfer its domicile to an accredited State.

11 **SEC. 111. EXAMINATION OF STATE INSURANCE DEPART-**
12 **MENTS.**

13 (a) EXAMINATION.—Prior to certifying a State, the
14 Commission shall examine the State Insurance Depart-
15 ment with regard to whether that Department meets the
16 requirements of section 110.

17 (b) CONTINUED EXAMINATION.—After initially cer-
18 tifying a State, the Commission may, on its own initiative
19 or at the request of any State Insurance Department,
20 order an examination of a State Insurance Department
21 with regard to whether that Department continues to meet
22 the requirements of section 110.

23 (c) REFUSAL TO ACCREDIT.—The Commission may
24 refuse to accredit or may revoke the accreditation of any

1 State which the Commission finds, pursuant to an exam-
2 ination, fails to meet the requirements of section 110.

3 **SEC. 112. EXAMINATION OF INSURANCE COMPANIES.**

4 (a) SPECIAL EXAMINATIONS.—The Commission may
5 order special examinations of any insurer which holds an
6 interstate insurance license. The examination shall be con-
7 ducted by examiners chosen by the Commission. The Com-
8 mission shall in all cases approve the form of the examina-
9 tion. The expenses of all examinations may, in the discre-
10 tion of the Commission, be assessed against the insurer
11 examined, and when so assessed, shall be paid by the in-
12 surer examined. Copies of the reports of such examina-
13 tions may, in the discretion of the Commission, be fur-
14 nished to the State Insurance Departments, to officers
15 and directors, or receivers of the insurer, and to any per-
16 sons as the Commission shall deem appropriate.

17 (b) STANDARDS.—The Commission shall establish
18 standards for determining which insurers to examine.

19 (c) ADDITIONAL REQUIREMENTS.—The Commission
20 may, on the basis of an examination of an insurer, request
21 that the State Insurance Department of the State which
22 issued the interstate insurance license to such insurer ex-
23 amine the insurer, and may further suggest that the State
24 take certain actions the Commission deems necessary to
25 assure the soundness of the insurer.

1 **SEC. 113. CENTRAL DEPOSITORY FOR INSURANCE DATA.**

2 (a) ANNUAL STATEMENTS; PERIODIC REPORTS.—

3 The Commission shall collect the annual statements and
4 other periodic reports of all insurers holding interstate in-
5 surance licenses. These statements and reports shall be
6 available to the public. The Commission shall compile in-
7 formation from these statements and reports in a data
8 base for the purpose of studying the insurance industry.

9 (b) DATA BASE.—The Commission shall maintain a
10 data base on information concerning any State or Federal
11 regulatory and legal actions involving any person engaged
12 in the business of insurance. The Commission shall gather
13 any such information from State Insurance Departments
14 and any other source of information.

15 (c) INFORMATION TO BE MADE PUBLIC.—(1) The
16 Commission shall—

17 (A) make public, from time to time, such por-
18 tions of the information obtained by it as are in the
19 public interest;

20 (B) make annual and special reports to the
21 Congress and submit therewith recommendations for
22 additional legislation; and

23 (C) provide for the publication of its reports
24 and decisions in such form and manner as may be
25 best adapted for public information and use.

1 (2) The Commission shall not have authority to make
2 public any information it determines is a trade secret or
3 any commercial or financial information which is obtained
4 from any person and which the Commission determines
5 is privileged or confidential, except that the Commission
6 may disclose such information to officers and employees
7 of appropriate Federal law enforcement agencies or to any
8 officer or employee of any State law enforcement agency
9 upon the prior certification of an officer of any such Fed-
10 eral or State law enforcement agency that such informa-
11 tion will be maintained in confidence and will be used only
12 for official law enforcement purposes.

13 **SEC. 114. REFERRAL OF MATTERS TO ENFORCEMENT AU-**
14 **THORITIES.**

15 The Commission shall refer to the Department of
16 Justice or to the appropriate State enforcement authori-
17 ties any information or matters which it deems warrant
18 investigation for possible civil or criminal enforcement ac-
19 tion.

20 **SEC. 115. SECURITIES VALUATION OFFICE.**

21 (a) ESTABLISHMENT OF OFFICE.—The Commission
22 shall establish a Securities Valuation Office (hereinafter
23 referred to as the “SVO”).

24 (1) The SVO shall value such assets as required
25 by the Commission.

1 (2) The SVO shall establish quality ratings for
2 such assets as required by the Commission.

3 (3) The SVO shall publish a Valuations of Se-
4 curities Manual containing the market prices and
5 SVO quality ratings for all securities owned by in-
6 surers.

7 (b) RULES AND REGULATIONS.—The Commission
8 shall promulgate such rules and regulations as are nec-
9 essary to provide a source for uniform prices and quality
10 ratings of assets held by insurers. Such rules and regula-
11 tions shall require—

12 (1) valuations for all securities including, but
13 not limited to stocks, bonds, warrants, options and
14 financial futures contracts;

15 (2) that all insurers holding an interstate insur-
16 ance license file with the SVO such financial and
17 other documentation as the Commission deems nec-
18 essary for determining a value for admissible assets
19 held by the insurer; and

20 (3) insurers to use SVO prices and ratings in
21 preparing their annual statements to be filed with
22 State and Federal regulatory authorities.

23 (c) RESERVES.—The Commission shall promulgate
24 rules and regulations requiring life insurers and fraternal
25 benefits societies to establish and maintain a mandatory

1 reserve for all assets based on the values and quality rat-
2 ings of the SVO.

3 (d) APPEALS PROCESS.—The Commission shall pro-
4 mulgate rules and regulations providing for an appeals
5 process by which any person can challenge an SVO price
6 or quality rating.

7 (e) MINIMUM STANDARDS.—The Commission shall
8 promulgate rules and regulations establishing minimum
9 standards for banks that issue letters of credit for reinsur-
10 ance purposes. Banks meeting these standards shall be
11 published in a list to be prepared by the SVO in order
12 to assist insurance regulatory officials in the evaluation
13 of reinsurance credits claimed by ceding insurers.

14 **TITLE II—FEDERAL MINIMUM**
15 **STANDARDS**

16 **SEC. 201. RULES AND REGULATIONS.**

17 The Commission shall establish, by regulation, stand-
18 ards for implementation by accredited State Insurance
19 Departments. The Commission shall establish initial
20 standards within 12 months following the date of the en-
21 actment of this Act.

22 **SEC. 202. MINIMUM CAPITAL AND SURPLUS REQUIRE-**
23 **MENTS.**

24 (a) MINIMUM CAPITAL.—The Commission shall re-
25 quire all insurers to maintain at all times minimum

1 amounts of capital and surplus necessary for insurers to
2 engage in the business of insurance.

3 (b) ADDITIONAL CAPITAL AND SURPLUS.—The Com-
4 mission shall require all insurers to maintain such addi-
5 tional capital and surplus, based upon the type, volume
6 and nature of insurance business transacted, as are re-
7 quired to assure the solidity of the insurer.

8 (c) RISK.—The Commission shall determine the ap-
9 propriateness of requiring each insurer to maintain
10 amounts of capital and surplus depending upon the risk
11 associated with that insurer.

12 **SEC. 203. ACCOUNTING PRACTICES AND PROCEDURES.**

13 (a) ANNUAL STATEMENTS.—The Commission shall
14 create and maintain uniform annual statement forms for
15 insurers. All insurers doing business in interstate com-
16 merce shall file the appropriate annual statement form
17 with the appropriate State and Federal authorities.

18 (b) ACCOUNTING PROCEDURES.—The Commission
19 shall prescribe accounting procedures and practices for in-
20 surers to follow in preparing the annual statement form
21 required by subsection (a).

1 **SEC. 204. STANDARDS AND COMMISSIONER'S AUTHORITY**
2 **FOR COMPANIES DEEMED TO BE IN HAZARD-**
3 **OUS FINANCIAL CONDITION.**

4 (a) IDENTIFICATION.—The Commission shall estab-
5 lish standards for State Insurance Departments to use in
6 identifying insurers found to be in such condition as to
7 render the continuance of their business hazardous to the
8 public or to holders of their policies or certificates of insur-
9 ance.

10 (b) CORRECTIVE ACTION.—The Commission shall de-
11 fine the authority of a State Insurance Department to
12 order a company to take necessary corrective action or
13 cease and desist certain practices which, if not corrected,
14 could place the company in a hazardous financial condi-
15 tion.

16 **SEC. 205. INSURANCE HOLDING COMPANY SYSTEMS.**

17 (a) DEFINITIONS.—For purposes of this section:

18 (1) The term “affiliate” means a person that
19 directly, or indirectly through one or more
20 intermediaries, controls, or is controlled by, or is
21 under common control with, the person specified.

22 (2) The term “insurance holding company sys-
23 tem” means two or more affiliated persons, one or
24 more of which is an insurer.

25 (b) FINANCIAL CONDITION.—The Commission shall
26 establish such requirements as necessary to ensure effec-

1 tive and comprehensive regulation of the financial condi-
2 tion of an insurer in a holding company system. These
3 requirements shall address but are not limited to
4 intrasystem transactions involving the insurer, mergers
5 and acquisitions of insurers, investments in subsidiaries,
6 registration of members of the system and disclosure and
7 verification by examination of matters which may affect
8 the financial status of an insurer in the system.

9 **SEC. 206. RISK LIMITATIONS.**

10 The Commission shall prescribe the amount of risk
11 which may be retained by a property and liability company
12 for an individual risk based upon the insurer's capital and
13 surplus.

14 **SEC. 207. INVESTMENT REGULATIONS.**

15 (a) DIVERSIFICATION.—The Commission shall re-
16 quire a diversified investment portfolio for all insurers.

17 (b) REQUIREMENTS.—Such requirement shall include
18 limitations as to type and issue of investment, percentage
19 limitations for certain investments such as non-investment
20 grade bonds and investments involving real estate and real
21 estate mortgages, and minimum levels of liquidity.

22 **SEC. 208. ADMISSIBLE ASSETS.**

23 (a) ASSETS.—The Commission shall prescribe assets
24 which may be admitted, authorized or allowed as assets
25 in the financial statement of insurers.

1 (b) VALUE OF ASSETS.—The Commission shall pre-
2 scribe methods for establishing the value of such assets
3 which will enable the most accurate estimates to be made.

4 **SEC. 209. LIABILITIES AND RESERVES.**

5 (a) LIABILITIES AND RESERVES.—The Commission
6 shall prescribe requirements for the establishment of li-
7 abilities and reserves resulting from insurance contracts
8 issued by an insurer.

9 (b) LIFE RESERVES.—The requirements established
10 pursuant to subsection (a) shall include, but should not
11 be limited to, requirements for life reserves; active life re-
12 serves and unearned premium reserves; liabilities for
13 claims and losses unpaid; and for claims incurred but not
14 reported.

15 **SEC. 210. INDEPENDENT CPA AUDITS.**

16 (a) ANNUAL AUDITS.—The Commission shall require
17 annual audits by qualified independent certified public ac-
18 countants of the financial statements reporting the finan-
19 cial condition and the results of operations of all insurers.

20 (b) NOTIFICATIONS.—The requirements in sub-
21 section (a) shall require the insurer furnishing the annual
22 audited financial reports to require the independent cer-
23 tified public accountant to immediately notify in writing
24 an executive officer and all directors of the insurer of the
25 final determination by that independent certified public

1 accountant that the insurer has materially misstated its
2 financial condition as reported to the Commission as of
3 the balance sheet date currently under examination or that
4 the insurer does not meet the minimum capital and sur-
5 plus required by law as of that date. The insurer shall
6 furnish such notification to the Commission within 5 days
7 of receipt thereof.

8 **SEC. 211. QUALIFIED ACTUARIAL ANALYSIS.**

9 The Commission shall require an opinion on life and
10 health policy and claim reserves and loss and loss adjust-
11 ment expense reserves by a qualified actuary or specialist
12 on an annual basis for all insurers.

13 **SEC. 212. TRANSFER OF POLICIES.**

14 (a) APPROVAL OF THE DIRECTOR.—Prior approval
15 of the Commission is required for any transaction where
16 an insurer assumes or transfers obligations or risks on
17 contracts of insurance under an assumption reinsurance
18 agreement. The Commission shall have not more than 30
19 days in which to approve or reject such application. If the
20 Commission approves such request, the Commission shall
21 issue to the insurer an “Approval of Assumption Reinsur-
22 ance” certificate.

23 (b) FACTORS TO BE CONSIDERED.—In reviewing an
24 application to assume or transfer obligations or risks on
25 contracts of insurance under an assumption reinsurance

1 agreement, the Commission shall consider the following
2 factors:

3 (1) the financial condition of the transferring
4 insurer and assuming insurer and the effect the
5 transaction will have on the financial condition of
6 the assuming insurer and the transferring insurer;

7 (2) the managerial expertise and experience of
8 those persons who will control the operations of the
9 assuming insurer;

10 (3) the plans or proposals the assuming insurer
11 has with respect to the administration of the policies
12 subject to the proposed transfer;

13 (4) whether the transfer is fair and reasonable
14 to the policyholders of both companies;

15 (5) whether an administrative or judicial pro-
16 ceeding has been instituted against the transferring
17 or assuming insurer for purposes of liquidating, re-
18 organizing or conserving such insurer and whether
19 the transfer of the contracts of insurance is in the
20 best interest of the policyholders;

21 (6) whether the contracts of insurance that are
22 the subject of the transfer provide that notice shall
23 be given to policyholders of a potential transfer of
24 policy; and

1 (7) whether the disclosure required by sub-
2 section (c) to the policyholders to be transferred is
3 fair, adequate and not misleading to the policy-
4 holders.

5 (c) REQUIREMENTS FOR A TRANSFER.—No transfer
6 of obligations or risks on contracts of insurance under an
7 assumption reinsurance agreement shall take place until—

8 (1) the transferring insurer gives advance writ-
9 ten notice of the potential transfer to each policy-
10 holder and provides each policyholder and the Com-
11 mission with information on the financial stability
12 and managerial capability of the assuming insurer
13 including but not limited to—

14 (i) all ratings issued within the previous 3
15 years by a nationally recognized rating agency,
16 the transferring insurer and the assuming in-
17 surer;

18 (ii) the financial statements of the trans-
19 ferring insurer and the assuming insurer for
20 the 3 previous years;

21 (iii) where the policies being transferred in-
22 volve at least 5 percent of the reserve liability
23 of either the transferring insurer and the as-
24 suming insurer, pro forma financial statements
25 forecasting the effect of the transfer on the

1 transferring insurer and on the assuming in-
2 surer; and

3 (iv) an option by a disinterested third
4 party expert that such transfer is fair and in
5 the best interests of the policyholders being
6 transferred, the policyholders who remain with
7 the transferring company, and the policyholders
8 of the assuming company; and

9 (2) each policyholder has affirmatively con-
10 sented in writing to the policy transfer.

11 (d) PROHIBITED TRANSFERS; SERVICING CON-
12 TRACTS; LIABILITY.—No assumption reinsurance agree-
13 ment shall be effective unless a policyholder has specifi-
14 cally consented to the transfer under subsection (c) of this
15 section. Each policyholder who has consented to the as-
16 sumption reinsurance agreement, may have their contract
17 of insurance assumed by another insurer. If a policy hold-
18 er has not consented to the assumption reinsurance agree-
19 ment, such contracts of insurance shall not be transferred.
20 The transferring insurer may enter into a contract with
21 the assuming insurer wherein the assuming insurer agrees
22 to provide the administrative servicing of those contracts
23 of insurance not transferred. The transferring insurer
24 shall remain directly liable to the policyholders for those
25 contracts of insurance that are not transferred.

1 (e) STATE INSURANCE DEPARTMENTS.—Any li-
2 censed insurer which enters into an assumption reinsur-
3 ance agreement shall file or cause to be filed a “Approval
4 of Assumption Reinsurance” certificate.

5 (f) EXCEPTIONS.—The Commission may establish ex-
6 ceptions to the requirements of subsections (b) and (c)
7 where the transfer is part of a conservatorship, receiver-
8 ship, or liquidation process approved by judicial order.

9 **SEC. 213. RESTRICTIONS ON OWNERSHIP AND TRANSFER**
10 **OF OWNERSHIP.**

11 The Commission shall restrict ownership and control
12 of an insurer to persons with appropriate qualifications
13 and good character. These requirements shall require that
14 any transfer of ownership be subject to a review of the
15 qualifications and character of persons who will own or
16 control the insurer.

17 **SEC. 214. CONSUMER DISCLOSURE.**

18 (a) INFORMATION REQUIRED.—The Commission
19 shall prescribe the information which must be provided by
20 representatives of the insurer to a consumer prior to the
21 purchase of any insurance policy or certificate. Such infor-
22 mation shall—

23 (1) inform the consumer of the rights and obli-
24 gations of the parties to the agreement;

1 (2) convey information, understandable to the
2 consumer, that will enable the consumer to make
3 meaningful cost and coverage comparisons of similar
4 policies offered by other insurers and of different
5 policies of the same insurer;

6 (3) with regard to life insurance policies, convey
7 to the consumer information regarding the relation-
8 ship of premiums to the accumulation of interest;

9 (4) convey to the consumer existing public in-
10 formation concerning the financial solidity of the in-
11 surer; and

12 (5) include any other information which the
13 Commission deems necessary to fully inform the
14 consumer.

15 (b) REVOCATIONS.—The Commission shall establish
16 requirements which allow a consumer to revoke the agree-
17 ment within a reasonable amount of time following accept-
18 ance.

19 (c) CLARITY OF CONTRACTS.—The Commission shall
20 establish requirements for the simplification and, where
21 appropriate, the standardization of insurers' contracts for
22 the benefit of consumers.

23 (d) GOOD FAITH.—The Commission shall require
24 that each individual who sells or offers to sell an insurance
25 policy has a duty of good faith and fair dealing to the

1 purchaser or potential purchaser of such policy. Such re-
2 quirements shall require that such an individual not know-
3 ingly make any misleading representation or fraudulent
4 comparison of any policy or insurer for the purpose of in-
5 ducing any person to purchase a policy or use undue pres-
6 sure to induce the purchase of a policy.

7 **SEC. 215. CONSUMER PROTECTION.**

8 (a) INFORMED DECISIONS.—The Commission shall
9 require that State Insurance Departments provide infor-
10 mation that will assist consumers in making informed de-
11 cisions when purchasing from insurers. The Commission
12 may require such assistance to include programs like toll
13 free telephone service for consumer information on insur-
14 ers and policies, counseling programs and buyer guides.

15 (b) CONSUMER COMPLAINTS.—The Commission shall
16 require that State Insurance Departments devote ade-
17 quate resources to handling consumer complaints and to
18 providing other consumer assistance. The Commission
19 shall also require that Departments maintain data on
20 consumer complaints.

21 (c) MARKET CONDUCT EXAMINATIONS.—The Com-
22 mission shall prescribe standards for market conduct ex-
23 aminations.

1 **SEC. 216. REAL ESTATE VALUATION.**

2 (a) MARKET VALUE.—The Commission shall require
3 that real estate holdings held as assets by insurers be val-
4 ued at market value on a regular basis.

5 (b) MATERIALITY.—Such requirements shall provide
6 for the weighing of the materiality of the asset against
7 the costs of determining the market value of the asset.
8 In promulgating a standard for materiality the Commis-
9 sion shall consider the real estate holding as a percentage
10 of an insurer's net worth and as a percentage of the insur-
11 er's other real estate holdings.

12 **SEC. 217. REINSURANCE.**

13 (a) CREDITS.—The Commission shall prescribe re-
14 quirements under which a ceding insurer may be allowed
15 credit for reinsurance either as an asset or as a deduction
16 from liability.

17 (b) VALID LICENSES.—Such requirements shall re-
18 quire that no credit be allowed except where the reinsurer
19 has a valid license issued pursuant to the provisions of
20 this Act.

21 (c) LEGITIMACY.—Such requirements shall establish
22 standards with regard to whether the reinsurance is legiti-
23 mate. In promulgating standards as to the legitimacy of
24 a reinsurance agreement the Commission shall consider a
25 variety of factors including, but not limited to, whether—

1 (1) the primary effect of the reinsurance agree-
2 ment is to transfer deficiency reserves or excess in-
3 terest reserves to the books of the reinsurer for a
4 “risk charge” and the agreement does not provide
5 for significant participation by the reinsurer in one
6 or more of the following risks: mortality, morbidity,
7 investment or surrender benefit;

8 (2) the reserve credit taken by the ceding in-
9 surer is not in compliance with the insurance laws,
10 rules or regulations, including actuarial interpreta-
11 tions or standards, adopted by the Federal or State
12 authorities;

13 (3) the reserve credit taken by the ceding in-
14 surer is greater than the underlying reserve of the
15 ceding company supporting the policy obligations
16 transferred under the reinsurance agreement;

17 (4) the ceding insurer is required to reimburse
18 the reinsurer for negative experience under the rein-
19 surance agreement, except that neither offsetting ex-
20 perience refunds against prior years losses nor pay-
21 ment by the ceding insurer of an amount equal to
22 prior years losses upon voluntary termination of in-
23 force reinsurance by that ceding insurer shall be
24 considered such reimbursement to the reinsurer for
25 negative experience;

1 (5) the ceding insurer can be deprived of sur-
2 plus at the reinsurer's option or automatically upon
3 the occurrence of some event, such as the insolvency
4 of the ceding insurer, except that termination of the
5 reinsurance agreement by the reinsurer for non-pay-
6 ment of reinsurance premiums shall not be consid-
7 ered to be such a deprivation of surplus;

8 (6) the ceding insurer must, at specific points
9 in time scheduled in the agreement, terminate or
10 automatically recapture all or part of the reinsur-
11 ance ceded;

12 (7) no cash payment is due from the reinsurer,
13 throughout the lifetime of the reinsurance agree-
14 ment, with all settlements prior to the termination
15 date of the agreement made only in a "reinsurance
16 account", and no funds in such account are available
17 for the payment of benefits;

18 (8) the reinsurance agreement involves the pos-
19 sible payment by the ceding insurer to the reinsurer
20 of amounts other than from income reasonably ex-
21 pected from the reinsured policies; and

22 (9) the reinsurance would allow an insurer oth-
23 erwise in hazardous financial condition to continue
24 to transact business to the detriment of consumers.

1 **SEC. 218. SURPLUS NOTES.**

2 The Commission shall restrict the use of surplus
3 notes and other financial devices where the Commission
4 determines such devices would allow an insurer otherwise
5 in hazardous financial condition to continue to transact
6 business to the detriment of consumers.

7 **SEC. 219. STATE INSURANCE DEPARTMENT RESOURCES.**

8 The Commission shall prescribe standards for the
9 adequacy of resources for State insurance departments. In
10 prescribing such standards the Commission shall consider
11 a variety of factors including, but not limited to, the fol-
12 lowing:

13 (1) The number of insurers domiciled in the
14 State.

15 (2) The annual amount of premiums collected
16 by insurers licensed in the State.

17 (3) The number of examiners necessary to ade-
18 quately regulate.

19 (4) The number of qualified actuaries necessary
20 to adequately regulate.

21 (5) The number of consumer complaints and in-
22 quiries received by the department.

23 (6) The adequacy of any other resource nec-
24 essary to effectively regulate insurance in the State.

1 **SEC. 220. OTHER STANDARDS.**

2 The Commission shall establish such other require-
3 ments as it deems necessary to ensure the effective regula-
4 tion of insurance by the States.

5 **SEC. 221. INSURANCE ADVISORY COMMITTEE.**

6 (a) ESTABLISHMENT OF COMMITTEE.—There is es-
7 tablished the Insurance Advisory Committee (hereinafter
8 referred to as the “Advisory Committee”).

9 (b) MEMBERSHIP.—(1) The Advisory Committee
10 shall consist of 13 members as follows:

11 (A) Secretary of Commerce.

12 (B) Secretary of the Treasury.

13 (C) Director of the Office of Reinsurance Regu-
14 lation (established by section 302 of this Act).

15 (D) Two members appointed by the Chairman
16 of the Commission from the members of the Com-
17 mission.

18 (E) Five members appointed by the Chairman
19 of the Commission from among State insurance reg-
20 ulators.

21 (F) Two members appointed by the Chairman
22 of the Commission, with a demonstrated understand-
23 ing of insurance and reinsurance regulation, and of
24 whom, one shall be an insurance broker and one a
25 commercial risk manager.

1 (G) One member appointed by the Chairman of
2 the Commission who shall be a consumer representa-
3 tive.

4 (2) Members of the Advisory Committee designated
5 by clauses (A), (B), and (C) shall serve ex officio.

6 (3) The Chairman of the Commission shall designate
7 a chairman and a vice chairman of the Advisory Commit-
8 tee from among the members thereof.

9 (c) FUNCTIONS.—It shall be the function of the Advi-
10 sory Committee to—

11 (1) investigate and study issues and problems
12 relating to the Federal regulation of insurance and
13 reinsurance;

14 (2) evaluate the advisability of proposals with
15 respect to such issues and problems;

16 (3) investigate the role and impact of insurance
17 and reinsurance and the insurance and reinsurance
18 markets on interstate and international commerce
19 and regulation; and

20 (4) prepare and submit to the President, the
21 Congress, and the Commission their findings and
22 any recommendations for legislative or administra-
23 tive action.

24 (d) TERM.—Members of the Advisory Committee,
25 other than those serving ex officio, shall be appointed for

1 a period of 5 years. No person who is appointed while a
2 full-time employee of a State or the Federal Government
3 shall serve in such position after he ceases to be so em-
4 ployed.

5 (e) QUORUM.—Five members of the Advisory Com-
6 mittee shall constitute a quorum, but a lesser number may
7 conduct meetings.

8 (f) MEETINGS.—The first meeting of the Advisory
9 Committee shall be called by the Chairman of the Commis-
10 sion and shall be held within 90 days after the date of
11 enactment of this title. The Advisory Committee shall
12 meet at such times and places as it or the Commission
13 may fix and determine, but shall hold at least 4 regularly
14 scheduled meetings a year. Special meetings may be held
15 at the call of the Chairman or any 3 members of the Advi-
16 sory Committee, or at the call of the Commission. The
17 Chairman shall preside at all meetings, and the Vice
18 Chairman shall preside in the absence or disability of the
19 Chairman. In the absence of both the Chairman and the
20 Vice Chairman, the Director may appoint any member to
21 act as Chairman pro tempore.

22 (g) VACANCY.—A vacancy on the Advisory Commit-
23 tee resulting from the death or resignation of a member
24 shall not affect its powers and shall be filled in the same
25 manner in which the original appointment was made.

1 (h) PAY.—

2 (1) NONGOVERNMENT EMPLOYEES.—Each
3 member of the Advisory Committee who is not other-
4 wise employed by the Federal Government or State
5 government shall be entitled to receive the daily
6 equivalent of the annual rate of basic pay payable
7 for level IV of the Executive Schedule under section
8 5315 of title 5, United States Code, for each day
9 (including travel time) during which he or she is en-
10 gaged in the actual performance of duties as a mem-
11 ber of the Advisory Committee.

12 (2) GOVERNMENT EMPLOYEES.—A member of
13 the Advisory Committee who is an officer or em-
14 ployee of the Federal Government or State govern-
15 ment shall serve without additional compensation.

16 (3) TRAVEL.—Members of the Advisory Com-
17 mittee shall be reimbursed for travel, subsistence,
18 and other necessary expenses incurred by them in
19 the performance of their duties.

20 (i) POWERS OF THE ADVISORY COMMITTEE.—

21 (1) HEARINGS AND MEETINGS.—The Advisory
22 Committee or, on authorization of the Advisory
23 Committee, a member of the Advisory Committee,
24 may hold such hearings, at such time and places,
25 take such testimony, and receive such evidence, as

1 the Advisory Committee considers appropriate. The
2 Advisory Committee or a member of the Advisory
3 Committee may administer oaths or affirmations to
4 witnesses appearing before it.

5 (2) FACILITIES AND SUPPORT SERVICES.—The
6 Administrator of General Services shall provide to
7 the Advisory Committee on a reimbursable basis
8 such facilities and support services as the Advisory
9 Committee may request. Upon request of the Advi-
10 sory Committee, the head of a Federal department
11 or agency may make any of the facilities or services
12 of the agency available to the Advisory Committee to
13 assist the Advisory Committee in carrying out its
14 duties under this title.

15 (3) MAILS.—The Advisory Committee may use
16 the United States mails in the same manner and
17 under the same conditions as other Federal depart-
18 ments and agencies of the United States.

19 (4) EXPERTS AND CONSULTANTS.—The Advi-
20 sory Committee may procure temporary and inter-
21 mittent services of experts and consultants under
22 section 3109(b) of title 5, United States Code.

23 (j) WRITTEN REPORT.—The Advisory Committee
24 shall submit to the Congress and the President, a yearly
25 written report. The report shall contain a detailed state-

1 ment of the findings and conclusions of the Advisory Com-
2 mittee, together with its recommendations for such legisla-
3 tive (including tax legislation) and administrative action
4 as it considers appropriate. The first report shall be due
5 not later than 6 months after the date of enactment of
6 this title. All subsequent reports shall be due on January
7 1, of each year.

8 (k) TERMINATION.—The Advisory Committee shall
9 cease to exist on a date that is 5 years after the date of
10 enactment of this title unless otherwise extended by Con-
11 gress.

12 **TITLE III—REINSURANCE**

13 **SEC. 301. COMMISSION AUTHORITY.**

14 (a) IN GENERAL.—The Commission shall have the
15 authority to establish, by regulation, the standards and
16 procedures for granting a license to professional reinsurers
17 under section 308A and other reinsurers and insurers in
18 the business of providing reinsurance under section 308B
19 (collectively may be referred to as “reinsurers”).

20 (b) RULES AND REGULATIONS.—The Commission
21 shall duly consider any proposals for rules and regulations
22 submitted by the Director of the Office of Reinsurance
23 Regulation and shall promulgate such rules and regula-
24 tions as it deems warranted.

1 (c) ANNUAL REPORTS.—The Commission through
2 regulations shall require each holder of a license to con-
3 duct the business of reinsurance to submit an annual re-
4 port of its financial condition and an annual report on the
5 condition of any trust fund regulated under this Act.

6 (d) QUALIFIED FINANCIAL INSTITUTION.—The Com-
7 mission shall establish, by regulation, appropriate criteria
8 for becoming a qualified financial institution for purposes
9 of the establishment of a trust fund under section
10 308B(c). Foreign banks with a United States presence
11 may apply for acceptance.

12 (e) NATIONAL SOLVENCY STANDARDS.—The Com-
13 mission shall establish national standards for the financial
14 soundness and solvency of all insurers or reinsurers that
15 seek a reinsurance license under this title.

16 (f) CERTIFICATE OF SOLVENCY.—The Commission is
17 authorized to issue a Federal certificate of solvency to an
18 insurer or reinsurer pursuant to the financial standards
19 and procedures adopted by the Commission if the Commis-
20 sion determines that the insurer or reinsurer meets such
21 standards.

22 **SEC. 302. OFFICE OF REINSURANCE REGULATION.**

23 (a) OFFICE.—There is hereby established within the
24 Insurance Regulatory Commission an Office of Reinsur-

1 ance Regulation (hereinafter referred to as the “Reinsur-
2 ance Office”).

3 (b) DIRECTOR.—

4 (1) APPOINTMENT.—The Chairman of the
5 Commission shall appoint and fix the compensation
6 of a Director of the Office of Reinsurance Regula-
7 tion (hereinafter referred to as the “Director”) from
8 among individuals who—

9 (A) are citizens of the United States,

10 (B) have a demonstrated understanding of
11 financial institution management or oversight,
12 and

13 (C) have a demonstrated understanding of
14 the insurance and reinsurance industries, and
15 insurance and reinsurance regulation.

16 (2) LIMITATION.—An individual may not be ap-
17 pointed as Director if the individual has served as
18 an officer or director of a reinsurance company, or
19 as an officer or director of a reinsurance
20 intermediary management or brokerage company at
21 any time during the 2-year period preceding the
22 nomination of such individual for appointment.

23 (3) TERM.—The Director shall be appointed for
24 a term of 5 years.

1 (4) VACANCY.—A vacancy in the position of Di-
2 rector shall be filled in the same manner as the
3 original appointment was made under subsection (b)
4 of this section.

5 (5) SERVICE AFTER THE END OF THE TERM.—
6 A Director may serve after the expiration of the
7 term for which the Director was appointed until a
8 successor has been appointed.

9 **SEC. 303. PERSONNEL.**

10 (a) DEPUTY DIRECTOR.—

11 (1) IN GENERAL.—The Reinsurance Office shall
12 have a Deputy Director who shall be appointed, and
13 whose compensation shall be fixed, by the Commis-
14 sion from among individuals who—

15 (A) are citizens of the United States,

16 (B) have a demonstrated understanding of
17 financial institution management or oversight,
18 and

19 (C) have a demonstrated understanding of
20 the insurance and reinsurance industries, and
21 insurance and reinsurance regulation.

22 (2) LIMITATION.—An individual may not be ap-
23 pointed as Deputy Director if the individual has
24 served as an officer or director of a reinsurance com-
25 pany, or as an officer or director of a reinsurance

1 management or brokerage company at any time dur-
2 ing the 2-year period immediately preceding the ap-
3 pointment of such individual as Deputy Director.

4 (3) POWERS, FUNCTIONS, AND DUTIES.—The
5 Deputy Director shall—

6 (A) have such powers, functions, and du-
7 ties as the Director or Commission shall pre-
8 scribe, and

9 (B) serve as Acting Director in the event
10 of the death, resignation, sickness, or absence
11 of the Director, until the return of the Director
12 or the appointment of a successor.

13 (b) OTHER EMPLOYEES.—The Director, with the ap-
14 proval of the Commission, may appoint and fix the com-
15 pensation of employees and agents necessary to carry out
16 the functions of the Director and the reinsurance office.

17 (c) CONFLICT OF INTEREST.—The Director, the
18 Deputy Director, officers, and employees of the reinsur-
19 ance office shall not be financially interested, directly or
20 indirectly, in any reinsurance or insurance company, any
21 insurance or reinsurance management or brokerage com-
22 pany, or in any reinsurance or insurance transaction ex-
23 cept as a policyholder or claimant under a policy.

24 (d) OUTSIDE EXPERTS AND CONSULTANTS.—Not-
25 withstanding any provision of law limiting pay or com-

1 pensionation, the Director may, with the approval of the
2 Commission, appoint and compensate such outside experts
3 and consultants as the Director determines necessary to
4 assist the work of the Office.

5 **SEC. 304. POWERS AND DUTIES OF DIRECTOR.**

6 (a) DUTIES.—The Director shall administer the Re-
7 insurance Office and enforce the provisions of and execute
8 the duties imposed by this title and delegated by the
9 Commission. The Director shall also ensure that reinsur-
10 ers licensed under this Act are adequately capitalized and
11 operating safely in the United States.

12 (b) LICENSES.—When required, the Director shall
13 issue licenses to transact reinsurance business. The Direc-
14 tor may refuse to issue or may revoke such licenses pursu-
15 ant to the requirements of this Act. Such licenses shall
16 bear a seal of the Commission.

17 (c) INVESTIGATIONS.—The Director shall conduct
18 such examinations and investigations on reinsurance mat-
19 ters, as are required to determine whether a person has
20 violated any provision of this title or for the purpose of
21 securing information useful in the lawful administration
22 of any such provision.

23 (d) ADDITIONAL RULES AND REGULATIONS.—The
24 Director shall propose to the Commission any rules and

1 regulations necessary for effectuating any provision of this
2 title.

3 (e) RECORDS.—The Director shall maintain records
4 of official transactions of the Reinsurance Office, examina-
5 tions, investigations and proceedings. Such records and re-
6 insurance filings shall be open to public inspections, except
7 as deemed necessary by the Director.

8 (f) REPORTS.—The Director shall annually prepare
9 a report for delivery to the Commission and the Congress
10 with respect to the work of the Reinsurance Office, rec-
11 ommendations for legislative or administrative action, pro-
12 posals for rules and regulations affecting reinsurance and
13 matters affecting the Reinsurance Office, and such other
14 pertinent information and matters as the Director deems
15 proper.

16 (g) WRONGFUL ACTS.—The Director shall refer to
17 the Commission any information concerning criminal or
18 tortious conduct, or breach of any contractual or fiduciary
19 obligation or any other wrongdoing by any officer, man-
20 ager, agent, broker, employee or other person related to
21 the reinsurer.

22 (h) REVOCATION OF LICENSES.—The Director may
23 suspend or revoke the license of any reinsurer which vio-
24 lates the provisions of this Act. In addition to, or in lieu
25 of suspension or revocation, the Director may fine any re-

1 insurer which violates the provisions of this Act in an
2 amount not to exceed \$100,000 per violation.

3 (i) RESEARCH.—The Director shall conduct research
4 and financial analysis of the reinsurance industry and any
5 other research and analysis deemed appropriate by the Di-
6 rector.

7 (j) HEARINGS.—The Director shall hold hearings
8 consistent with the requirements of subchapter II of chap-
9 ter 5 and chapter 7 of title 5, United States Code, for
10 any purpose deemed necessary and within the scope of this
11 Act.

12 (k) ASSESSMENTS.—The Director shall levy and col-
13 lect assessments and other fees imposed pursuant to this
14 Act.

15 **SEC. 305. RULES AND REGULATIONS.**

16 In addition to any other rules and regulations the
17 Commission deems necessary for the effective regulation
18 of reinsurance, the Commission shall promulgate rules and
19 regulations—

20 (1) requiring a license, issued by the Director,
21 to conduct the business of reinsurance in the United
22 States;

23 (2) establishing minimum levels of capital and
24 surplus necessary for reinsurers to transact busi-
25 ness;

1 (3) requiring, where appropriate, the establish-
2 ment of irrevocable trust accounts in qualified Unit-
3 ed States financial institutions adequate for the pay-
4 ment of the claims of their United States policy
5 holders and ceding insurers, their assigns and suc-
6 cessors in interest;

7 (4) requiring that all reinsurers agree to submit
8 to the jurisdiction and be bound by the final order
9 or judgment of any court of competent jurisdiction
10 in the United States;

11 (5) requiring the Director to review the busi-
12 ness plan of all reinsurers seeking a license to see
13 that the reinsurer's methods of operation are reason-
14 able, prudent and do not present a threat to the
15 public;

16 (6)(i) defining standards for identifying reinsur-
17 ers found to be in such condition as to render the
18 continuance of their business hazardous to the pub-
19 lic, and (ii) defining the authority of the Reinsur-
20 ance Office to order a company to take necessary
21 corrective action or cease and desist certain practices
22 which, if not corrected, could place the company in
23 a hazardous financial condition;

24 (7) requiring compliance with regulations
25 adopted pursuant to section 201 of this Act;

1 (8) requiring that all directors and senior offi-
2 cers of a reinsurer possess appropriate qualifications
3 and good character;

4 (9) requiring a diversified investment portfolio;

5 (10) prescribing assets which may be admitted,
6 authorized or allowed as assets in the statutory fi-
7 nancial statement;

8 (11) restricting the credit that may be allowed
9 to licensed reinsurers, either as asset or as a reduc-
10 tion of liabilities for retrocessions reinsurers not li-
11 censed to do business in the United States; and

12 (12) prescribing disciplinary authority to be ex-
13 ercised by the Director.

14 **SEC. 306. BUDGET AND FINANCIAL REPORTS.**

15 (a) FINANCIAL OPERATING PLANS AND FORE-
16 CASTS.—Before the beginning of each fiscal year, the Di-
17 rector shall submit to the Commission a copy of the Rein-
18 surance Office's financial operating plans and forecasts.

19 (b) REPORTS OF ADMINISTRATIVE OPERATIONS.—As
20 soon as practicable after the end of each fiscal year and
21 each quarter, the Director shall submit to the Commission
22 a copy of the report of the results of the operations of
23 the Office during such period.

24 (c) AUDITS.—

1 (1) IN GENERAL.—The Comptroller General of
2 the United States shall audit the operations of the
3 Reinsurance Office in accordance with generally ac-
4 cepted Government auditing standards. All books,
5 records, accounts, reports, files, and property be-
6 longing to or used by the Reinsurance Office shall
7 be made available to the Comptroller General.

8 (2) FREQUENCY.—Audits shall be conducted
9 annually for the first 2 years following the effective
10 date of the title and as appropriate thereafter.

11 **SEC. 307. INFORMATION, RECORDS, AND MEETINGS.**

12 For purposes of subchapter II of chapter 5 of title
13 5, United States Code, the Reinsurance Office and the
14 Commission shall, with respect to activities under this Act,
15 be considered agencies responsible for the regulation or
16 supervision of financial institutions.

17 **SEC. 308. ANNUAL REPORT BY THE DIRECTOR.**

18 Not later than June 15 of the calendar year next fol-
19 lowing the calendar year in which this Act is enacted, and
20 on or before June 15 of each year thereafter, the Director
21 shall submit to the Commission a written report which
22 shall include—

23 (1) a description of the actions taken, and being
24 undertaken, by the Director to carry out this Act;

1 (2) a description of the financial condition of
2 the reinsurance market, including the results and
3 conclusions of the annual examinations of reinsurers;
4 and

5 (3) an assessment of the extent to which rein-
6 surers are achieving their purpose of providing rein-
7 surance to the United States insurance market.

8 **SEC. 308A. LICENSE OF PROFESSIONAL REINSURERS.**

9 (a) IN GENERAL.—The Commission through the Di-
10 rector is authorized to license and otherwise regulate pro-
11 fessional reinsurers. A professional reinsurer shall be sub-
12 ject to regulation solely by the Commission as to the busi-
13 ness of reinsurance in the United States.

14 (b) ESTABLISHMENT OF STANDARDS.—The Commis-
15 sion in consultation with the Director shall, by regulation,
16 establish standards and procedures for the licensing and
17 regulation of professional reinsurers. Such standards shall
18 give due consideration to the public interest in providing
19 secure reinsurance capacity in the United States and to
20 the need for promptly collectible reinsurance recoverables.

21 (c) STANDARDS.—Licensing standards for profes-
22 sional reinsurers promulgated by the Commission under
23 subsection (b) shall include the following:

24 (1) Minimum net worth requirements, risk-
25 based or otherwise, appropriate to the nature of the

1 reinsurance written by the different types and sizes
2 of reinsurers, except that the Commission shall set
3 the minimum at an amount not less than
4 \$50,000,000 and shall establish additional net worth
5 requirements for appropriate categories of profes-
6 sional reinsurers based upon their operations, in-
7 cluding such factors as premium volume, volatility,
8 and loss development characteristics of the types of
9 reinsurance provided by such reinsurers. The Com-
10 mission shall adjust such minimum for inflation
11 every fifth year unless for good cause the Commis-
12 sion determines that it should be adjusted more fre-
13 quently.

14 (2) Appropriate standards for investments, re-
15 serves, and asset valuations relating to minimum net
16 worth, including percentage limitations for various
17 categories of investments; except that investments in
18 excess of minimum net worth and reserves shall be
19 subject to the prudent person standard.

20 (3) Limitations on the net amount of exposure
21 that may be retained on a single risk, based on the
22 amount of net worth.

23 (4) Accounting standards and standards for re-
24 serve valuation that will promote strong and appro-
25 priate financial monitoring.

1 (5) Liquidity requirements appropriate to the
2 nature of the reinsurance written.

3 (6) Requirements for annual reports by inde-
4 pendent accountants of financial statements report-
5 ing financial condition and financial activities.

6 (7) Limitations and controls on the use of rein-
7 surance, and standards for ceding, reporting on, and
8 credit for such reinsurance.

9 (8) Requirements for certification of loss re-
10 serves by actuaries and reports of such certification.

11 (9) Disclosure of all subsidiary and affiliate re-
12 lationships and the identity of all persons which con-
13 trol the professional reinsurer.

14 (10) Regulation of financial transactions within
15 holding company systems.

16 (11) Procedures for initial and special examina-
17 tions and for the annual financial review of financial
18 statements.

19 (12) Regulations under which a foreign insurer
20 or reinsurer may establish a United States branch
21 which may become a certified professional reinsurer.

22 (13) Minimum security deposit requirements for
23 United States branches of foreign insurers or rein-
24 surers that apply to become professional reinsurers.

1 (14) Appointment of an agent in the United
2 States upon whom may be served any lawful process
3 in any action, suit, or proceeding instituted by or on
4 behalf of any person in the United States, and an
5 agreement that, in the event such process may not
6 be served upon the appointed agent, process may be
7 served upon the Director.

8 (15) Agreement, by a foreign professional rein-
9 surer, to submit to the jurisdiction and be bound by
10 the final order or judgment of any court of com-
11 petent jurisdiction in the United States.

12 (16) Procedures for ongoing monitoring and en-
13 forcement of compliance with Commission standards.

14 (17) Minimum standards as to the qualifica-
15 tions of the management of professional reinsurers.

16 (18) Minimum standards governing the fidu-
17 ciary duties of officers and directors of professional
18 reinsurers.

19 (19) Submission of an outline of current and
20 projected operations in the United States dem-
21 onstrating that the methods of operation are reason-
22 able, prudent, and do not present an undue risk to
23 the public.

1 (20) Demonstration of sufficient data process-
2 ing capability and capacity to meet all data collec-
3 tion and reporting requirements of the Commission.

4 (21) Submission of biographical information,
5 which shall be updated annually, demonstrating that
6 all directors and senior officers possess sufficient ex-
7 perience and good character to manage business af-
8 fairs in a competent and trustworthy manner.

9 (22) Disclosure requirements, in addition to
10 those enumerated above, for information to be pro-
11 vided to the Director and the public.

12 (23) Such other standards as the Commission
13 determines to be necessary to evaluate and maintain
14 the sound financial condition of federally certified
15 professional reinsurers.

16 **SEC. 308B. LICENSE FOR OTHER PROVIDERS OF REINSUR-**
17 **ANCE.**

18 (a) **IN GENERAL.**—The Commission through the Di-
19 rector is authorized to issue a reinsurance license to insur-
20 ers and to any reinsurer that does not seek certification
21 as a professional reinsurer under section 308A.

22 (b) **ESTABLISHMENT OF QUALIFICATIONS.**—The
23 Commission shall establish, by regulation, standards and
24 procedures for licensing under this section.

1 (c) QUALIFICATIONS FOR CERTIFICATE.—To qualify
2 for a reinsurance license, an insurer or reinsurer must
3 meet one of the following 3 standards:

4 (1) The insurer or reinsurer shall have met the
5 national standards established under this Act and
6 have a State license to transact the business of in-
7 surance or have a certificate of solvency issued by
8 the Commission under and either—

9 (A) maintain a net worth which is not less
10 than a minimum set by the Commission
11 which—

12 (i) shall be no less than \$5,000,000;

13 (ii) shall establish additional net
14 worth requirements for appropriate cat-
15 egories of reinsurers based upon their op-
16 erations, including such factors as pre-
17 mium volume, volatility, and loss develop-
18 ment characteristics of the types of rein-
19 surance provided by such reinsurers; and

20 (iii) shall ensure that reinsurance obli-
21 gations will be met; or

22 (B) in the case of a financially sound ap-
23 plicant that does not meet the net worth dollar
24 standard of subparagraph (A), obtain a waiver
25 of this minimum dollar standard if the Commis-

1 sion concludes that the applicant is sufficiently
2 financially sound, is able to pay its reinsurance
3 obligations, and has sufficient expertise to pro-
4 vide the type of reinsurance that it intends to
5 offer.

6 An applicant with a State license must have been
7 doing business in its State of domicile for at least
8 3 years unless the Commission for good cause
9 shown, pursuant to regulations, waives such 3-year
10 operating requirement. The Commission shall adjust
11 for inflation the minimum established in subpara-
12 graph (A) every fifth year unless the Commission
13 determines for good cause that it should be adjusted
14 more frequently.

15 (2) The insurer or reinsurer shall be authorized
16 by the law of its domiciliary jurisdiction to assume
17 reinsurance; demonstrate to the Director that it has
18 sufficient assets and management experience so that
19 it can operate safely in the United States reinsur-
20 ance market in a way that will protect the public in-
21 terest; and maintain a trust fund in a qualified fi-
22 nancial institution which includes a trusteed surplus
23 for the protection of United States ceding insurers
24 and which is—

1 (A) for a single company, an amount not
2 less than its United States reinsurance liabil-
3 ities arising from reinsurance contracts entered
4 into after the date of enactment of this Act plus
5 \$20,000,000;

6 (B) for an established group of individual
7 unincorporated underwriters regulated as a
8 group by its State or country of domicile, an
9 amount not less than the group's United States
10 reinsurance liabilities arising from reinsurance
11 contracts entered into after the date of enact-
12 ment of this Act plus \$100,000,000; or

13 (C) for a group of incorporated insurers
14 under common administration, and which has
15 continuously transacted an insurance or rein-
16 surance business outside the United States for
17 at least 10 years, in an amount not less than
18 the group's United States reinsurance liabilities
19 arising from reinsurance contracts entered into
20 after the date of enactment of this Act plus
21 \$100,000,000.

22 The Commission shall require additional amounts to
23 be held in a trust established under this paragraph
24 as a condition for initial or continued license if the
25 Commission determines that such additional

1 amounts are required for the protection of United
2 States ceding insurers.

3 (3) The insurer or reinsurer shall be authorized
4 by the laws of its domiciliary jurisdiction to assume
5 reinsurance and demonstrate to the Director that it
6 has sufficient assets and management experience so
7 that it will operate safely in the United States rein-
8 surance market in a way that will protect the public
9 interest and in addition complies with the following:

10 (A) Holders of licenses will be required to
11 fund their obligations to United States ceding
12 insurers pursuant to subsection (e) for such
13 ceding insurers to be able to count such rein-
14 surance as an asset or deduction from liabilities
15 on the ceding insurer's financial statements.

16 (B) In the event the Director determines
17 that the funding required by subsection (e) is
18 inadequate to protect United States ceding in-
19 surers, the Director may require, as a condition
20 for initial or continued license, additional secu-
21 rity requirements, including the establishment
22 of a United States trust fund for the exclusive
23 protection of United States ceding insurers.
24 The Commission may require such trust fund to
25 be in any amount that the Commission deter-

1 mines to be appropriate to protect United
2 States ceding insurers.

3 (d) REQUIREMENTS FOR A TRUST FUND UNDER
4 SUBSECTION (c).—A trust fund required by paragraphs
5 (2) and (3) of subsection (c) shall be in a form approved
6 by the Commission and shall meet the following require-
7 ments for all new reinsurance provided after the date the
8 license to provide reinsurance was granted:

9 (1) The trust fund shall be exclusively for the
10 purpose of securing the payment of valid claims of
11 United States ceding insurers and their assigns and
12 successors in interest.

13 (2) The trust fund shall be established in a
14 qualified financial institution in a form approved by
15 the Commission. The Commission shall establish ac-
16 ceptable criteria for assets held in trust, which shall
17 include cash, securities, bonds, commercial paper,
18 clean, irrevocable, unconditional, and automatically
19 renewable letters of credit issued by a qualified fi-
20 nancial institution, or any other appropriate assets,
21 whether United States or non-United States, the fair
22 market value of which can be readily ascertained
23 and which provide the stability necessary for ade-
24 quate protection of the trust beneficiaries.

1 (3) Assets may be held in trust by a qualified
2 financial institution the principal place of business of
3 which is outside the United States if the holder of
4 the license demonstrates that a beneficiary of the
5 trust can obtain immediate payment from a United
6 States branch, subsidiary, or representative office of
7 the institution.

8 (4) The trust instrument shall provide that
9 claims shall be paid with the concurrence of the
10 holder of the license or upon final order of any court
11 of competent jurisdiction in the United States. The
12 holder of the license may freely substitute and with-
13 draw assets in the trust so long as the value of the
14 assets maintained in the trust equals or exceeds the
15 amount set forth in paragraph (2) or (3) of sub-
16 section (c).

17 (5) The trustees of the trust shall report annu-
18 ally to the Director and to the insurance commis-
19 sioner of each ceding insurer's State of domicile, in
20 writing, setting forth the balance of the trust, pro-
21 viding an actuary's opinion as to the reasonableness
22 of the trust reserves, listing the trust's investments
23 at the preceding year end, and certifying the date of
24 termination of the trust if so planned, or certifying
25 that the trust shall not expire as to new business

1 prior to the next following December 31. The trust
2 shall remain in effect as long as there are outstand-
3 ing obligations under the reinsurance agreements to
4 which the trust pertains.

5 (6) The trust instrument shall provide that, in
6 the event the holder of the license is placed in super-
7 vision, rehabilitation, or liquidation, or its equivalent
8 by its State or country of domicile, or if the Director
9 determines, pursuant to regulations adopted by the
10 Commission, that the condition of the holder is such
11 that further transaction of business will be hazard-
12 ous to United States creditors or to the public, the
13 Director may take control of the trust.

14 (7) The trust shall be subject to annual review
15 and initial and special examination by the Director
16 in the same manner as the Director may examine
17 certified reinsurers.

18 (e) REQUIREMENTS FOR THE FORM OF FUNDING
19 UNDER SUBSECTION (c).—The funds required by sub-
20 section (c)(3) may be in the form of—

21 (1) cash under the control of the ceding in-
22 surer;

23 (2) a clean, irrevocable, unconditional, and
24 automatically renewable letter of credit issued by a

1 qualified financial institution and held by the ceding
2 insurer; or

3 (3) other funding acceptable to the Commission.

4 (f) PREVIOUS REINSURANCE OBLIGATIONS.—As a
5 pre-condition for obtaining a license to provide reinsurance
6 on the basis of meeting the requirements of paragraph (2)
7 or (3) of subsection (c), the applicant shall be required
8 to demonstrate to the Director that it has adequately se-
9 cured its reinsurance liabilities in existence at the time of
10 licensing. The adequacy of the funding of such previous
11 reinsurance liabilities shall be subject to the requirements
12 of this Act and shall be reviewed by the Director in deter-
13 mining the financial condition of the reinsurer in each an-
14 nual review.

15 (g) ADDITIONAL REQUIREMENTS FOR A FOREIGN
16 APPLICANT.—Any foreign insurer or reinsurer applying
17 under this section for a reinsurance license shall meet the
18 following additional requirements:

19 (1) Have been doing business in its country of
20 domicile for at least 3 years, or be an affiliate of an
21 insurer or reinsurer which has been doing business
22 in its country of domicile for at least 3 years, unless
23 the Director, for good cause shown, pursuant to reg-
24 ulations, waives this 3-year operating requirement.

1 (2) File an annual financial statement with its
2 domiciliary regulator and have established satisfac-
3 tory evidence of good repute and financial integrity.

4 (3) File annually with the Director a copy of
5 the financial statement provided to its domiciliary
6 regulator (if appropriate, translated from its original
7 language) and a report showing the volume of writ-
8 ten premiums assumed from United States insurers
9 in the past year and such other information as the
10 Director, in its sole discretion, requires.

11 (4) File with the Director a list identifying its
12 officers and directors (or similar principals) along
13 with biographical information for each, and provide
14 an annual update of this information.

15 (5) Agree to allow the Director to examine its
16 books and records and to waive any protection it has
17 under any secrecy laws of its domiciliary jurisdiction,
18 except that such examinations will only take place
19 upon the Director's showing of good cause for con-
20 cern about the financial soundness or solvency of the
21 subject entity.

22 (6) Appoint an agent in the United States upon
23 whom may be served any lawful process in any ac-
24 tion, suit, or proceeding instituted by or on behalf
25 of a domestic ceding insurer, and agree that, in the

1 event such process may not be served upon the ap-
2 pointed agent, process may be served upon the Di-
3 rector.

4 (7) Submit to the jurisdiction of any United
5 States court of competent jurisdiction for the resolu-
6 tion of any dispute arising out of a reinsurance
7 agreement with a domestic ceding insurer or to re-
8 spond to any allegations or charges made against it
9 by any United States Government official or agency
10 except that this paragraph does not override any
11 contractual agreement of the parties to resolve dis-
12 putes between them pursuant to other procedures.

13 **SEC. 308C. SUSPENSION AND REVOCATION OF FEDERAL LI-**
14 **CENSE TO PROVIDE REINSURANCE.**

15 (a) IN GENERAL.—The Commission through the Di-
16 rector shall suspend or revoke the certificate of a profes-
17 sional reinsurer issued under section 308A or a reinsur-
18 ance certificate issued under section 308B at any time the
19 Director determines the standards for holding such license
20 are no longer satisfied. The Director shall provide the op-
21 portunity for a hearing on the record before making a de-
22 termination to suspend or revoke such certificate.

23 (b) NOTICE OF SUSPENSION OR REVOCATION.—

24 (1) The Director shall notify the State or coun-
25 try of domicile of a licensed professional reinsurer or

1 holder of a reinsurance license that the license has
2 been suspended or revoked. Such notification shall
3 be made at the earliest possible date.

4 (2) The holder of a license that is suspended or
5 revoked under subsection (a) shall immediately no-
6 tify all insurers and reinsurers from which it has ac-
7 cepted cessions of such suspension or revocation.

8 **SEC. 308D. CREDIT FOR REINSURANCE.**

9 (a) IN GENERAL.—Notwithstanding any provision of
10 State law to the contrary, any insurer certified by the Di-
11 rector or regulated for financial condition by a State may
12 count reinsurance as an asset or a deduction from its li-
13 abilities on its annual financial statement only if the pro-
14 vider of reinsurance, at the time such statement is filed—

15 (1) holds a Federal license as a professional re-
16 insurer under section 308A;

17 (2) holds a State insurance license or a Federal
18 certificate of solvency and is licensed pursuant to
19 section 308B(c)(1);

20 (3) maintains a United States trust fund and is
21 licensed pursuant to section 308B(c)(2); or

22 (4) is licensed pursuant to section 308B(c)(3)
23 and funds its obligations to ceding insurers and rein-
24 surers as required in section 308B(e).

1 (b) LIMITATION ON CREDIT.—With regard to a rein-
2 surer licensed pursuant to section 308B(c)(3), a ceding
3 insurer may count as an asset or deduction from liabilities
4 only that portion of the reinsurance which meets the
5 standards for funding under section 308B(e). Such ceding
6 insurer may also not count as such an asset or deduction
7 any reinsurance secured by letters of credit, trust funds,
8 or other collateral if such sources of security are not trans-
9 ferable to it when due.

10 (c) CREDIT PENDING CERTIFICATION.—A United
11 States insurer may take credit for reinsurance from a rein-
12 surer that does not hold a professional reinsurer license
13 issued pursuant to section 308A or a reinsurance license
14 issued pursuant to section 308B only if—

15 (1) the reinsurer submits to the Director a
16 complete application for a license within 30 days of
17 the coverage being placed;

18 (2) the reinsurer places all premiums in trust in
19 a qualified financial institution pending consider-
20 ation of its application, and provides evidence to the
21 Director that all premiums from United States
22 ceding insurers have been placed in such trust;

23 (3) the reinsurer funds any liabilities pursuant
24 to reinsurance assumed in a manner consistent with

1 the requirements of section 308B(e) and submits to
2 the Director proof of such funding;

3 (4) the reinsurance agreement expressly pro-
4 vides that it may be canceled from inception or at
5 any subsequent time at the request of the Director
6 if the provider's application for a license is denied;

7 (5) the reinsurer is authorized in its State or
8 country of domicile to do an insurance business and
9 either has been doing business in its State or coun-
10 try of domicile for at least 3 years or is an affiliate
11 of an insurer which has been doing business in its
12 State or country of domicile for at least 3 years, ex-
13 cept that this 3-year operating requirement may be
14 waived by the Director for good cause pursuant to
15 regulations; and

16 (6) the ceding insurer has not, within the pre-
17 vious 3 years, taken a credit for reinsurance ceded
18 to the reinsurer pursuant to this subsection.

19 (d) PREEMPTION.—No State shall regulate credit for
20 reinsurance whether purchased by federally certified insur-
21 ers or insurers regulated for financial condition by a State.
22 The Commission through the Director shall have exclusive
23 jurisdiction to regulate such credit.

1 (e) EXCEPTIONS.—Notwithstanding any other provi-
2 sion of this section, a ceding insurer may count as an asset
3 or deduction from liabilities—

4 (1) reinsurance of risks located in jurisdictions
5 within or without the United States where such rein-
6 surance is required by applicable law of that juris-
7 diction;

8 (2) reinsurance ceded to a reinsurer which is li-
9 censed by one or more States and which is ceded
10 to—

11 (A) a member of the same holding com-
12 pany system as the ceding insurer; or

13 (B) an underwriting pool of which the
14 ceding insurer is a member;

15 (3) risks ceded to a pool authorized or per-
16 mitted by a statute, regulation, or policy of the
17 United States or under an arrangement approved by
18 the Federal or a State government;

19 (4) risks of a parent or affiliate ceded to a pool
20 or group captive insurer or reinsurer where the cap-
21 tive's obligations are funded or collateralized as pro-
22 vided in subsection (d) or (e) of section 308B; or

23 (5) risks ceded to a risk retention group au-
24 thorized by and operating pursuant to the Liability
25 Risk Retention Act of 1986 (15 U.S.C. 3901 et seq.)

1 if the risk retention group's obligations are funded
2 or collateralized as provided in subsection (d) or (e)
3 of section 308B.

4 (f) EFFECT OF LOSS OF LICENSE.—In the event that
5 the Director suspends or revokes a license issued pursuant
6 to this title or such license is lost for any other reason,
7 a ceding insurer may not count reinsurance as an asset
8 or a deduction from its liabilities on its annual financial
9 statement for any cessions made after the date the certifi-
10 cation ceases. For those cessions before the loss of license
11 under this Act—

12 (1) a ceding insurer may continue to count as
13 an asset or deduction any funds withheld from such
14 reinsurer; and

15 (2) a ceding insurer may also continue to count
16 as an asset or deduction any unfunded reinsurance
17 for 90 days or such longer period as approved by the
18 Director.

19 A ceding insurer affected by the suspension or revocation
20 of a license issued pursuant to this title shall immediately
21 notify the Director of this fact.

22 (g) EFFECTIVE DATE OF THIS SECTION.—This sec-
23 tion shall apply to cessions which take place 2 years after
24 the date of enactment of this Act.

1 **SEC. 308E. RELATIONSHIP TO STATE LAW.**

2 (a) PREEMPTION.—

3 (1) A professional reinsurer certified pursuant
4 to section 308A shall be exempt from the application
5 of any State law or regulation pertaining to the li-
6 censing or regulation of reinsurers or reinsurance
7 transactions.

8 (2) An insurer or reinsurer with a reinsurance
9 license issued pursuant to section 308B shall be sub-
10 ject to insurance regulation by a State, unless that
11 insurer or reinsurer has a Federal certificate of sol-
12 vency.

13 (3) Any insurer or reinsurer described in para-
14 graph (1) or (2) that maintains its corporate exist-
15 ence pursuant to State law shall be subject to appli-
16 cable State tax and corporate governance laws.

17 (b) NONDISCRIMINATION.—

18 (1) With respect to any State law requiring evi-
19 dence of insurance or of financial responsibility, re-
20 insurance contracts made by a professional reinsurer
21 licensed pursuant to section 308A or by the holder
22 of a reinsurance license issued pursuant to section
23 308B shall be accorded the same treatment as is ac-
24 corded to such contracts issued by insurers subject
25 to regulation for financial condition by that State.

1 (2) No State shall revoke, suspend, refuse to
2 issue, or refuse to renew any license, privilege, char-
3 ter, certificate, franchise, or any other right con-
4 ferred, guaranteed, or protected by law because an
5 insurer or reinsurer obtains or maintains a certifi-
6 cate to provide reinsurance from the Director. No
7 tax, fee, or assessment of any kind may be imposed
8 on an insurer or reinsurer certified by the Director
9 in any manner or on any basis different from that
10 applied to other insurers by that State. No corporate
11 charter or franchise issued to an insurer or reinsurer
12 licensed by the Director shall be rendered invalid or
13 subject to revocation, lapse, or forfeiture merely by
14 reason of the failure of an insurer or reinsurer li-
15 censed by the Director to obtain a license or certifi-
16 cate of authority issued by a State in addition to the
17 license issued by the Director.

18 **SEC. 309. FINANCIAL REPORTS BY REINSURERS.**

19 (a) IN GENERAL.—The Director shall conduct exami-
20 nations of reinsurers licensed under section 308A and in-
21 surers and reinsurers licensed under section 308B that
22 have a Federal solvency certificate. Each reinsurer shall
23 provide to the Director annual and, as deemed appropriate
24 by the Director, quarterly reports of its financial condition
25 and operations which shall be in such form, contain such

1 information, and be made on such dates, as the Director
2 may require.

3 (b) INSURERS OR REINSURERS REGULATED FOR FI-
4 NANCIAL CONDITION BY A STATE.—The State insurance
5 regulator shall conduct the examination of insurers or re-
6 insurers subject to State regulation for financial condition.

7 (c) CONTENTS OF ANNUAL REPORT.—Each annual
8 report shall include—

9 (1) financial statements;

10 (2) any supplemental information or alternative
11 presentation that the Director may require; and

12 (3) a report signed by the reinsurer's chief ex-
13 ecutive officer and chief accounting or financial offi-
14 cer, that assesses, as of the reinsurer's most recent
15 fiscal year—

16 (A) the effectiveness of the reinsurer's in-
17 ternal audit control structure and procedures;

18 (B) the reinsurer's compliance with des-
19 ignated safety and soundness laws and require-
20 ments; and

21 (C) any other information required by the
22 Director.

23 (d) FINANCIAL EXAMINATIONS.—The Commission
24 shall establish, by regulation, procedures for an effective
25 system of examining the activities, operations, financial

1 condition and affairs of insurers and reinsurers. The Di-
2 rector shall follow such procedures for reinsurers licensed
3 under section 308A and insurers or reinsurers licensed
4 under section 308B that have a Federal solvency certifi-
5 cate and State insurance regulators shall follow such pro-
6 cedures for the examination of insurers or reinsurers
7 under the regulator's responsibility.

8 (e) ANNUAL INDEPENDENT AUDITS OF FINANCIAL
9 STATEMENTS.—

10 (1) AUDITS REQUIRED.—Each reinsurer shall
11 have an annual independent audit made of its finan-
12 cial statements by an independent certified public
13 accountant in accordance with accounting standards
14 determined by the Commission.

15 (2) SCOPE OF AUDIT.—In conducting an audit
16 under this subsection, an independent certified pub-
17 lic accountant shall determine and report on whether
18 the financial statements—

19 (A) are presented fairly in accordance with
20 accounting principles determined by the Com-
21 mission; and

22 (B) to the extent determined necessary by
23 the Director, comply with such other disclosure
24 requirements as may be imposed under sub-
25 section (b).

1 (f) REVIEW OF AUDITS.—At the request of the Direc-
2 tor and the Commission, the Comptroller General of the
3 United States, may review any audit of a financial state-
4 ment conducted under this section. Upon such request a
5 reinsurer and its auditors shall provide all books, ac-
6 counts, financial records, reports, files, workpapers, and
7 property that the Director or the Comptroller General con-
8 siders necessary to the performance of any review under
9 this subsection.

10 (g) CERTIFICATION OF ANNUAL AND QUARTERLY
11 REPORTS.—

12 (1) DECLARATION.—Annual and quarterly re-
13 ports shall contain a declaration by the chief execu-
14 tive officer of the reinsurer that the report is true
15 and correct to the best of his or her knowledge and
16 belief.

17 (2) ATTESTATION.—The correctness of the an-
18 nual and quarterly report shall be attested by the
19 signature of at least 3 of the directors or executive
20 officers of the reinsurer other than the officer mak-
21 ing the declaration required above. Such attestation
22 shall include a declaration that the report has been
23 examined by them and to the best of their knowledge
24 and belief is true and correct.

1 (h) SPECIAL REPORTS.—The Director may require
2 special reports from a reinsurer, in such form and contain-
3 ing such information as the Director may prescribe, on
4 dates fixed by the Director, whenever in the Director’s
5 judgment, such reports are necessary for the Director to
6 carry out the purposes of this Act.

7 **SEC. 309A. ACCOUNTING STANDARDS.**

8 The financial statements of insurers and reinsurers
9 shall be prepared in conformity with accounting principles
10 determined by the Commission. Insurers and reinsurers
11 that obtain and maintain Federal certificates of solvency
12 or State insurance license on the basis of trust fund or
13 funding mechanisms shall prepare the financial state-
14 ments as to such trust funds or mechanisms in conformity
15 with these principles. The Commission may establish, by
16 regulation, additional disclosure requirements applicable
17 to reports required to be filed with it.

18 **SEC. 310. EXAMINATIONS.**

19 (a) IN GENERAL.—The Director shall conduct a full
20 scope examination of the affairs, transactions, accounts,
21 records and assets of each licensed reinsurer to assure the
22 solidity and proper functioning of the reinsurer. In addi-
23 tion, the Director may conduct an examination under this
24 section whenever the Director determines that an exam-
25 ination is necessary to determine the condition of the rein-

1 surer for the purpose of ensuring its financial safety and
2 soundness.

3 (b) INITIAL APPLICATION AND EXAMINATION.— The
4 Director or State insurance regulator shall conduct an ini-
5 tial examination of every insurer or reinsurer that applies
6 for a Federal certificate of solvency or State insurance li-
7 cense to determine if the applicant satisfies the national
8 standards established under this Act.

9 (c) EXAMINATION OF HOLDING COMPANY, AFFILI-
10 ATES, AND SUBSIDIARIES.—In connection with examina-
11 tions of a reinsurer, examiners selected or approved by the
12 Director shall make such examinations of the affairs of
13 holding companies, and all affiliates and subsidiaries of
14 such reinsurer as shall be necessary to disclose fully the
15 relations between the reinsurer and its holding company,
16 affiliates or subsidiaries and the effect of such relations
17 upon the affairs of the reinsurer. The expense of examina-
18 tion of such holding company, affiliates, and subsidiaries
19 of any reinsurer shall be assessed against the reinsurer
20 and, when so assessed, shall be paid by the reinsurer. The
21 refusal to give any information requested in the course of
22 the examination, or to permit such examination, or to pay
23 any expense so assessed, is grounds for suspension or re-
24 fusal of, or nonrenewal of any license or authority held
25 by the reinsurer to engage in any business subject to the

1 Director's authority. Any such proceeding for suspension,
2 revocation or refusal of any license or authority shall be
3 conducted pursuant to a hearing.

4 (d) INFORMATION PROVIDED TO EXAMINER.—Each
5 reinsurer, its officers, directors, agents or other persons
6 from whom information is sought must provide to the ex-
7 aminers appointed under subsection (b) timely, convenient
8 and free access at all reasonable hours at its office to all
9 books, records, accounts, papers, documents and any or
10 all computer or other recordings relating to the property,
11 assets, business and affairs of the reinsurer being exam-
12 ined. The officers, directors, employees, agents of the rein-
13 surer and other persons from whom information is sought,
14 must facilitate the examination and aid in the examination
15 so far as it is in their power to do so. The refusal of any
16 reinsurer, by its officers, directors, employees, agent or
17 other persons, to submit to examination or to comply with
18 any reasonable written request of the examiners shall be
19 grounds for suspension or refusal of, or nonrenewal of any
20 license or authority held by the reinsurer to engage in any
21 business subject to the Director's approval. Any such pro-
22 ceeding for suspension, revocation or refusal of any license
23 or authority shall be conducted pursuant to a hearing.

24 (e) EXAMINATION REPORT.—

1 (1) FILING OF EXAMINATION REPORT.—No
2 later than 60 days following completion of an exam-
3 ination, the examiner in charge shall file with the
4 Director a verified written report of examination
5 under oath. Upon receipt of the verified report, the
6 Director shall transmit the report to the reinsurer
7 examined, together with notice which shall afford the
8 reinsurer examined, a reasonable opportunity of not
9 more than 30 days to make a written submission or
10 rebuttal with respect to any matters contained in the
11 examination report.

12 (2) ADOPTION OF REPORT ON EXAMINATION.—
13 Within 30 days of the end of the period allowed for
14 the receipt of written submissions or rebuttals, the
15 Director shall fully consider and review the report,
16 together with any written submissions or rebuttals
17 and any relevant portions of the examiner's
18 workpapers and enter an order—

19 (A) adopting the examination report as
20 filed or with modification or corrections. If the
21 examination report reveals that the reinsurer is
22 operating in violation of any law, regulation, or
23 prior order of the Director, the Director may
24 refer such violation to the Commission, or order
25 the reinsurer to take any action the Director

1 considers necessary and appropriate to cure
2 such violation; or

3 (B) rejecting the examination report with
4 directions to the examiners to reopen the exam-
5 ination for purposes of obtaining additional
6 data, documentation or information, and
7 refiling the report pursuant to paragraph (1) of
8 this subsection.

9 (f) LAW APPLICABLE TO EXAMINERS.—The Director
10 and each examiner shall have the same authority and each
11 examiner shall be subject to the same disclosures, prohibi-
12 tions, obligations, and penalties as are applicable to exam-
13 iners employed by the Federal Reserve banks.

14 (g) EXPENSES.—Each reinsurer shall pay to the Di-
15 rector the expense attendant to conducting the examina-
16 tion.

17 (h) TECHNICAL EXPERTS.—The Director may obtain
18 the services of any technical experts the Director considers
19 appropriate to provide temporary technical assistance re-
20 lating to an examination under this Act. The Director
21 shall describe, in the record of each examination, the na-
22 ture and extent of any such temporary technical assist-
23 ance.

24 (i) PRESERVATION OF RECORDS BY PHOTOG-
25 RAPHY.—

1 (1) IN GENERAL.—The Director may cause any
2 record, paper, or document to be copied or photo-
3 graphed, in a manner that complies with the mini-
4 mum standards of quality approved for permanent
5 photographic records by the National Institute of
6 Standards and Technology.

7 (2) DEEMED AS ORIGINALS.—Such copies or
8 photographs shall be deemed to be an original record
9 for all purposes, including introduction in evidence
10 in all State and Federal courts or administrative
11 agencies.

12 (3) PRESERVATION.—Any such photograph or
13 copy shall be preserved as the Director shall pre-
14 scribe, and the original may be destroyed.

15 (j) PUBLICATION AND USE.—

16 (1) PUBLIC DISCLOSURE.—Upon the adoption
17 of the examination report under subsection (f), the
18 Director shall continue to hold the content of the ex-
19 amination report as private and confidential infor-
20 mation for a period of 60 days except to the extent
21 provided in paragraph (2) below. Thereafter, the Di-
22 rector may open the report for public inspection so
23 long as no court of competent jurisdiction has stayed
24 its publication.

1 (2) DISCLOSURE FOR ENFORCEMENT PUR-
2 POSES.—Nothing in this Act shall prevent or be con-
3 strued as prohibiting the Director from disclosing
4 the content of an examination report, preliminary
5 examination report or results, of any matter relating
6 thereto, to a State insurance department, to the in-
7 surance department of another country, or to Fed-
8 eral or State law enforcement officials at any time,
9 as long as such agency or office receiving the report
10 or matters relating thereto agrees in writing to hold
11 it confidential and in a manner consistent with this
12 Act.

13 (3) DISCLOSURE TO CONGRESS.—This section
14 may not be construed to authorize the withholding
15 of any information from, or to prohibit the disclo-
16 sure of any information to, the Congress or any
17 committee or subcommittee thereof.

18 (k) IMMUNITY FROM LIABILITY.—

19 (1) THE DIRECTOR.—No cause of action shall
20 arise nor shall liability be imposed against the Direc-
21 tor, the Director's authorized representatives or any
22 examiner appointed by the Director for any state-
23 ments made or conduct performed in good faith
24 while carrying out the provisions of this Act.

1 (2) OTHER PERSONS.—No cause of action shall
2 arise, nor shall liability be imposed against any per-
3 son for the act of communicating or delivering infor-
4 mation or data to the Director or the Director’s au-
5 thorized representative or examiner pursuant to an
6 examination made under this Act, if such act of
7 communication or delivery was performed in good
8 faith and without fraudulent intent or the intent to
9 deceive.

10 **SEC. 310A. ACTUARIES.**

11 (a) REQUIREMENT TO USE QUALIFIED ACTUAR-
12 IES.—The Board of Directors of each insurer and rein-
13 surer shall appoint an actuary who is qualified to issue
14 an opinion on the reasonableness of the reserves of such
15 insurer or reinsurer. A qualified actuary is a person who
16 is a member in good standing of the American Academy
17 of Actuaries or someone who is otherwise qualified as de-
18 termined by the Commission. The Board of Directors of
19 the certified insurer or reinsurer shall notify the Director
20 or the State insurance regulator of the name of the ap-
21 pointed actuary at the time of the appointment and shall
22 notify the Director or such regulator within 10 days when
23 an appointed actuary is dismissed, resigns, or otherwise
24 leaves the position.

1 **SEC. 311. LIMITATION ON SUBSEQUENT EMPLOYMENT.**

2 (a) IN GENERAL.—Neither the Director nor any
3 former officer or employee of the Office may accept com-
4 pensation from any reinsurer during the 2-year period be-
5 ginning on the date of separation from employment by the
6 Reinsurance Office.

7 (b) APPLICABILITY.—The limitation contained in
8 subsection (a) applies only to any former officer or em-
9 ployee who, while employed by the Office, was com-
10 pensated at a rate in excess of the lowest rate for a posi-
11 tion classified higher than GS-15 of the General Schedule
12 under section 5107 of title 5, United States Code.

13 **SEC. 312. EXCHANGE OF INFORMATION.**

14 At the request of the Director, State insurance de-
15 partments and other State authorities shall furnish the
16 Director with any records, reports, results of examination,
17 or other information in their possession relevant to mat-
18 ters under this Act.

19 **SEC. 313. ARBITRATION CLAUSES.**

20 In the event of any difference of opinion between the
21 reinsurer and the ceding insurer with respect to the inter-
22 pretation of an agreement or contract to transfer obliga-
23 tions or risks of contract of insurance, such disagreements
24 shall be resolved by arbitration under the Federal Arbitra-
25 tion Act.

1 **SEC. 314. REINSURANCE INTERMEDIARIES.**

2 (a) REQUIREMENTS.—A reinsurer shall not engage
3 the services of any person, firm, association or corporation
4 to act as a reinsurance intermediary broker or manager,
5 either directly or indirectly, unless such intermediary is
6 licensed by the Director.

7 (b) INTERMEDIARY LICENSE.—

8 (1) IN GENERAL.—The Director may issue a re-
9 insurance intermediary's license to any person, firm,
10 association or corporation who or which has com-
11 plied with the rules and regulations adopted by the
12 Commission.

13 (2) FIRMS OR ASSOCIATION.—Any such license
14 issued to a firm or association and any employees
15 designated to act as reinsurance intermediaries
16 under such license, shall be named in the application
17 and any supplements to the application.

18 (3) CORPORATIONS.—Any such license issued to
19 a corporation shall authorize all of the officers and
20 any designated employees and directors of the cor-
21 poration to act as reinsurance intermediaries on be-
22 half of such corporation, and all such persons shall
23 be named in the application and any supplements to
24 the application.

25 (c) WRITTEN APPLICATIONS.—

1 (1) IN GENERAL.—Before a reinsurance
2 intermediary’s license shall be issued or renewed, the
3 prospective licensee shall properly file with the Di-
4 rector a written application that shall be in such
5 form or forms and supplements as the Director pre-
6 scribes, and pay a fee in an amount determined by
7 the Director.

8 (2) EXPIRATION.—Every reinsurance
9 intermediary’s license shall expire on the thirty-first
10 day of August next following the date of issue.

11 (3) RENEWALS.—If an application for renewal
12 has been filed with the Director before September 1
13 of the year of expiration, license sought to be re-
14 newed shall continue in full force and effect either
15 until the issuance by the Director of the renewal li-
16 cense applied for, or until five days after the Direc-
17 tor has refused to issue such renewal license and
18 given notice of such refusal to the applicant.

19 (4) REFUSAL TO RENEW.—Before refusing to
20 renew any such license, the Director shall notify the
21 applicant of the Director’s intention and shall give
22 such applicant an opportunity for a hearing.

23 (d) REFUSAL TO ISSUE A LICENSE.—The Director
24 may refuse to issue a reinsurance intermediary’s license
25 if, in his judgment, the applicant or any member, prin-

1 cipal, officer or director of such applicant, is not trust-
2 worthy and competent to act as a reinsurance
3 intermediary, or that any controlling person of such appli-
4 cant is not trustworthy to act as a reinsurance
5 intermediary, or that any of the foregoing has given cause
6 for revocation or suspension of such license, or has failed
7 to comply with any prerequisite for the issuance of such
8 license.

9 (e) EXAMINATIONS.—A reinsurance intermediary
10 shall be subject to examination by the Director as often
11 as may be deemed necessary by the Director to assure
12 compliance with this section and any rules and regulations
13 promulgated under this title. The Director shall have ac-
14 cess to all books, accounts and records of the reinsurance
15 intermediary in a form usable to the Director.

16 (f) WRITTEN CONTRACT.—Transactions between a
17 reinsurance intermediary broker or manager and the rein-
18 surer it represents in such capacity shall only be entered
19 into pursuant to a written authorization, specifying the re-
20 sponsibilities of each party and shall be specifically ap-
21 proved by the reinsurer's board of directors. At least 30
22 days before a reinsurer assumes or cedes business through
23 a reinsurance intermediary or broker, a copy of the ap-
24 proved contract shall be filed with the Director for ap-
25 proval.

1 (g) FIDUCIARY RESPONSIBILITY.—Every reinsurance
2 intermediary acting as such shall be responsible, in a fidu-
3 ciary capacity, for all funds received or collected in such
4 capacity, and shall not, without the express consent of the
5 principals, mingle any such funds with the intermediary’s
6 own funds held by the intermediary in any other capacity.

7 **SEC. 315. APPOINTMENT OF RECEIVERS.**

8 (a) JURISDICTION.—The Director shall act as a re-
9 ceiver for a reinsurer licensed under section 308A and
10 those insurers or reinsurers licensed under section 308B
11 who have a Federal certificate for solvency (hereinafter re-
12 ferred collectively as “reinsurers”), for purposes of reha-
13 bilitation and liquidation when appointed as a receiver in
14 proceedings instituted in accordance with the provisions
15 of this Act. The United States District Court courts shall
16 have exclusive jurisdiction of proceedings to appoint the
17 Director as receiver for a reinsurer.

18 (b) PETITION FOR APPOINTMENT.—

19 (1) THE FILING OF A PETITION.—A proceeding
20 to appoint the Director as receiver of a reinsurer
21 shall be commenced by the filing of a petition seek-
22 ing such appointment in the appropriate United
23 States district court for the district in which the re-
24 insurer has its principal office or domicile, or in the

1 United States District Court for the District of Co-
2 lumbia.

3 (2) WHO MAY FILE.—A petition may be filed by
4 the Director.

5 (3) QUALIFICATIONS.—The receiver shall be—

6 (A) the Director or any person or other
7 governmental agency acting under the Direc-
8 tor's authority; and

9 (B) any person acting under the Director's
10 authority that—

11 (i) has no claim against, or financial
12 interest in, the reinsurer or other basis of
13 conflict of interest; and

14 (ii) has the financial and management
15 expertise necessary to direct the operations
16 and affairs of the reinsurer.

17 (c) JUDICIAL REVIEW.—

18 (1) TIMING AND JURISDICTION.—A reinsurer
19 for which a receiver is appointed may bring an ac-
20 tion in the United States district court, in the dis-
21 trict in which the court ordered the appointment of
22 a receiver, for an order requiring the Director to ter-
23minate the appointment of the receiver. The court,
24 upon the merits, may dismiss such action, or may
25 direct the Director to terminate the appointment of

1 the receiver. Such an action may be commenced no
2 later than 20 days after the date in which the court
3 ordered an appointment of a receiver.

4 (2) CONSENSUAL APPOINTMENTS.—The ap-
5 pointment of a receiver under subsection (b) pursu-
6 ant to consent of the reinsurer shall not be subject
7 to judicial review under this subsection.

8 (3) STANDARD OF REVIEW.—A decision of the
9 Director to appoint a receiver may be set aside
10 under this subsection only if the court finds that the
11 decision was arbitrary, capricious, an abuse of dis-
12 cretion, or otherwise not in accordance with applica-
13 ble laws.

14 (4) LIMITATION ON JURISDICTION.—Except as
15 otherwise provided in this subsection, no court may
16 take any action regarding the removal of a receiver
17 or otherwise restrain or affect the exercise of powers
18 or functions of a receiver.

19 **SEC. 316. ORDER APPOINTING RECEIVER.**

20 (a) IN GENERAL.—An order appointing a receiver
21 shall specify whether the receiver is to act to rehabilitate
22 or to liquidate the reinsurer.

23 (b) REGULAR ACCOUNTING TO COURT.—The order
24 appointing the Director as receiver shall require regular
25 accounting to the court of the receiver's administration of

1 the reinsurer's assets including, but not limited to, a list-
2 ing of all funds received or disbursed by the receiver dur-
3 ing the period covered by the report. Accounting shall be
4 at such intervals as the court specifies in its order or by
5 rule, but no less frequently than every quarter.

6 (c) COPY OF REPORT TO STATE INSURANCE REGU-
7 LATOR.—A copy of the accounting reports shall be pro-
8 vided to the appropriate State insurance regulators in the
9 State where the reinsurer transacts any reinsurance busi-
10 ness.

11 **SEC. 317. EFFECT OF ORDER.**

12 (a) TRANSFER OF CONTROL.—The order appointing
13 the Director as receiver shall have the effect of imme-
14 diately transferring to the receiver the possession and con-
15 trol and the unconditional right to possession and control
16 of all the business, assets, contract and rights of action,
17 books, records, and affairs of the reinsurer, wherever lo-
18 cated.

19 (b) NO BREACH OF CONTRACT.—The entry of any
20 order appointing the Director as receiver shall not con-
21 stitute an anticipatory breach of any contract of the rein-
22 surer, nor provide grounds for revocation or cancellation
23 of any such contract other than by the receiver.

24 (c) RIGHTS AND LIABILITIES.—Upon issuance of the
25 order under subsection (a), the rights, and liabilities of

1 the reinsurer and of its creditors, and all other persons
2 interested in its estate, shall be fixed as of the date of
3 entry of the order.

4 **SEC. 318. JURISDICTION OVER PROPERTY OF REINSURER.**

5 The filing of a petition under section 315 shall imme-
6 diately vest the district court with exclusive jurisdiction
7 over the reinsurer and its property wherever located and
8 over all parties to the proceedings by which the receiver
9 acquired the right to possession and control of the busi-
10 ness, assets and affairs of the reinsurer and shall suspend
11 the further jurisdiction of other courts and administrative
12 bodies with respect to such proceeding.

13 **SEC. 319. EXAMINATIONS.**

14 The Director may examine and supervise a reinsurer
15 in receivership during the period in which the reinsurer
16 continues to operate as a going concern.

17 **SEC. 320. EXPENSES OF ESTABLISHING RECEIVERSHIP.**

18 All expenses of the receiver or any person acting
19 under the receiver's authority and direction in the taking
20 possession of the reinsurer and of conducting the proceed-
21 ings placing it in receivership, of obtaining the appoint-
22 ment of the Director as receiver, in the administration of
23 the receivership, and in the conduct of all proceedings re-
24 lated to it, shall be paid out of the funds or assets of the
25 reinsurer.

1 **SEC. 321. COMPENSATION OF RECEIVER AND EMPLOYEES.**

2 A receiver and professional employees (other than
3 Federal employees) shall be compensated for activities
4 conducted as receiver. Compensation may not be provided
5 in amounts greater than the compensation paid to employ-
6 ees of the Federal Government for similar services.

7 **SEC. 322. STANDING OF GUARANTY ASSOCIATIONS.**

8 Any guaranty association shall have standing to ap-
9 pear in any court proceeding concerning the rehabilitation
10 or liquidation of a reinsurer if such association has paid
11 guaranty obligations for which it has not been reimbursed
12 or is or may become liable for as guarantor of obligations
13 of the reinsurer in rehabilitation or liquidation.

14 **SEC. 323. APPLICABILITY OF RECEIVERSHIP TO FOREIGN**
15 **REINSURER.**

16 The Director shall be appointed as receiver under this
17 Act for a foreign reinsurer or insurer licensed under sec-
18 tion 308A or 308B to the extent of its assets, operations,
19 and business in the United States. To the extent that such
20 assets are insufficient to cover claims against the foreign
21 reinsurer or insurer, the Director may bring an action in
22 the United States district court with jurisdiction over the
23 receivership to recover amounts due and owing.

24 **SEC. 324. STAY OF ACTIONS.**

25 (a) IN GENERAL.—The entry of an order appointing
26 the Director as receiver shall operate as a stay of the com-

1 mencement or continuation of any action or proceeding in
2 any Federal or State court, or any administrative or other
3 proceeding, against the insolvent reinsurer or against an
4 insured of the insurer on a claim for which the reinsurer
5 may be liable, or against the Director as receiver, except
6 as provided in subsection (b).

7 (b) JUDICIAL RELIEF FROM STAY.—The district
8 court shall have power to grant relief from the stay pro-
9 vided in subsection (a) in such cases, and upon such
10 terms, as the court determines to be consistent with the
11 preservation of assets and the efficient administration of
12 the estate of the reinsurer. Such relief may be granted
13 upon the application of any party in interest, and may
14 be granted as to particular cases or as to classes of cases
15 as may be prescribed by the court's order.

16 (c) ACTIONS BY THE RECEIVER.—Upon issuance of
17 an order appointing the Director as receiver, the Director
18 may within 2 years from such order, or such other longer
19 time as applicable law may permit, institute an action or
20 proceeding on behalf of the estate of the reinsurer upon
21 any cause of action against which the period of limitation
22 fixed by applicable law has not expired at the time of the
23 filing of the petition upon which such order is entered.

24 (d) STATUTE OF LIMITATIONS.—No statute of limi-
25 tations or defense of laches shall run with respect to any

1 cause of action against a reinsurer between the filing of
2 a petition for receivership and the denial of the petition.
3 Any action against the reinsurer that might have been
4 commenced when the petition was filed may be commenced
5 within 60 days after the petition is denied.

6 **SEC. 325. COOPERATION OF OFFICERS, OWNERS AND EM-**
7 **PLOYEES.**

8 Any officer, manager, director, trustee, owner, em-
9 ployee or agent of any reinsurer, or any other person with
10 authority over or in charge of any segment of the reinsur-
11 er's affairs including any person who exercises control di-
12 rectly or indirectly over activities of the reinsurer through
13 any holding company or other affiliate of the reinsurer,
14 shall cooperate with the receiver. For purposes of this sec-
15 tion, the term "cooperate" shall include, but shall not be
16 limited to, the following:

17 (1) To reply promptly in writing to any inquiry
18 from the receiver requesting such a reply.

19 (2) To make available to the receiver any books,
20 accounts, documents, or other records or information
21 or property of or pertaining to the reinsurer and in
22 the possession, custody or control of such persons.

23 **SEC. 326. INJUNCTIONS AND ORDERS.**

24 (a) IN GENERAL.—The United States District Court
25 upon application of the Director, as receiver, may grant

1 injunctions and orders directed to any and all courts, per-
2 sons, and parties as necessary to confirm or secure such
3 stays of proceedings, or to extend any such stay upon a
4 showing by the Director that additional time is necessary
5 for it to participate completely in the further conduct of
6 the action or proceeding.

7 (b) TYPES OF INJUNCTIONS.—The Director, as re-
8 ceiver, may at any time apply for such restraining orders,
9 preliminary and permanent injunctions, and other orders
10 as may be deemed necessary and proper to prevent—

11 (1) the transaction of further business by or on
12 behalf of the reinsurer;

13 (2) the transfer of property by or on behalf of
14 the reinsurer;

15 (3) interference with the receiver or with a pro-
16 ceeding under this Act;

17 (4) waste of the reinsurer's assets;

18 (5) dissipation and transfer of bank accounts of
19 the reinsurer;

20 (6) the institution or further prosecution of any
21 actions or proceedings against the reinsurer or the
22 receiver;

23 (7) the obtaining of preferences, judgments, at-
24 tachments, garnishments or liens against the rein-
25 surer, or its assets;

1 (8) the levying of execution against the rein-
2 surer, or its assets;

3 (9) the making of any sale or deed for
4 nonpayment of taxes or assessments that would less-
5 en the value of the assets of the reinsurer;

6 (10) the withholding from the receiver of books,
7 accounts, documents, or other records relating to the
8 reinsurer; or

9 (11) any other threatened or contemplated ac-
10 tion that might lessen the value of the reinsurer's
11 assets or prejudice the rights of creditors, sharehold-
12 ers, or the administration of any proceeding under
13 this title.

14 (c) BONDS OR OTHER SECURITY.—The court shall
15 not require the receiver to submit a bond or other security
16 as a condition of issuing an order under this section.

17 (d) PAYMENT OF CREDITORS.—The Director may re-
18 quire a receiver to set aside and make available for pay-
19 ment to creditors any amounts that the Director deter-
20 mines may safely be used for such purpose. All creditors
21 who are similarly situated shall be treated in a similar
22 manner.

23 **SEC. 327. PENDING LITIGATION.**

24 The Director shall take such action respecting all
25 pending litigation as it deems necessary in the interests

1 of justice and for the protection of creditors and the pub-
2 lic.

3 **SEC. 328. CONFLICTS OF INTEREST AND FINANCIAL DIS-**
4 **CLOSURE.**

5 A receiver shall be subject to any laws and regula-
6 tions relating to conflicts of interest and financial disclo-
7 sure that apply to employees of the Office.

8 **SEC. 329. PROCEEDING AGAINST CULPABLE PERSONS.**

9 If it appears to the receiver that there has been crimi-
10 nal or tortious conduct, or breach of any contractual or
11 fiduciary obligation detrimental to the reinsurer by any
12 officer, manager, agent broker, employee or other person,
13 the receiver may refer such matter to the Commission.

14 **SEC. 330. LIABILITY PROTECTION FOR RECEIVERS.**

15 (a) FEDERAL AGENCIES AND EMPLOYEES.—In any
16 case in which a receiver appointed under this title is a
17 Federal agency or an officer or employee of the Federal
18 Government, the provisions of chapters 161 and 171 of
19 title 28, United States Code, shall apply with respect to
20 the liability of the receiver for acts or omissions performed
21 pursuant to and in the course of the duties and respon-
22 sibilities of the receivership.

23 (b) OTHER RECEIVERS.—In any case where the re-
24 ceiver is not a receiver described in subsection (a), the re-
25 ceiver shall not be personally liable for damages in tort

1 or otherwise for acts or omissions performed pursuant to
2 and in the course of the duties and responsibilities of the
3 receivership, unless such acts or omissions constitute gross
4 negligence or any form of intentional tortious conduct or
5 criminal conduct.

6 (c) INDEMNIFICATION.—The Director, with the ap-
7 proval of the Commission, may indemnify the receiver on
8 such terms as the Commission considers appropriate.

9 **SEC. 331. POWERS OF EXAMINATION; SUBPOENAS.**

10 The Director may take depositions, subpoena wit-
11 nesses or documentary evidence, administer oaths and ex-
12 amine under oath any person being examined or relative
13 to the subject of any hearing or investigation. The sub-
14 poena shall be served in the same manner as if issued by
15 the Commission.

16 **SEC. 332. GROUNDS FOR THE APPOINTMENT OF RECEIVER**
17 **FOR REHABILITATION.**

18 (a) IN GENERAL.—The Director may, after providing
19 written notice under subsection (c), file a petition in a
20 United States District Court to be appointed a receiver
21 of a reinsurer for purposes of rehabilitation upon a deter-
22 mination in writing that—

23 (1) the reinsurer is not likely to pay its obliga-
24 tions in the normal course of business;

1 (2) the reinsurer has incurred or is reasonably
2 likely to incur losses that would deplete substantially
3 all of its capital and is unlikely that the reinsurer
4 will replenish its capital within a reasonable period;

5 (3) the reinsurer has concealed or is concealing
6 books, papers, records, or assets of the reinsurer
7 that are material to the discharge of the Director's
8 responsibilities under this subtitle, or has refused or
9 is refusing to submit such books, papers, records, or
10 information regarding the affairs of the reinsurer for
11 inspection to the Director upon request;

12 (4) the reinsurer has willfully violated, or is
13 willfully violating, a final cease-and-desist order;

14 (5) the reinsurer is in such condition that the
15 further transaction of business would be hazardous
16 financially to its creditors, or the public;

17 (6) there is reasonable cause to believe that
18 there has been embezzlement from the reinsurer,
19 wrongful sequestration or diversion of its assets, or
20 forgery, fraud affecting it or other illegal conduct in,
21 by, or with respect to it that if established would en-
22 danger assets in an amount threatening the solvency
23 of the reinsurer;

24 (7) without first obtaining the written consent
25 of the Director, the reinsurer has transferred, or at-

1 tempted to transfer, in a manner in violation of any
2 solvency regulation or order of the Commission, sub-
3 stantially its entire property or business, or has en-
4 tered into any transaction the effect of which is to
5 merge, consolidate, or reinsure substantially its en-
6 tire property or business in or with the property or
7 business of any other person;

8 (8) the reinsurer has failed to file its annual re-
9 port or other financial report required by statute
10 within the time allowed by law and, after written de-
11 mand by the Director, has failed to give an adequate
12 explanation immediately;

13 (9) the reinsurer has neglected or refused to
14 comply with an order of the Director to cure within
15 the time prescribed by the Director any deficiency,
16 whenever its capital and minimum required surplus,
17 is below statutory requirements; and

18 (10) the reinsurer is found to be in such condi-
19 tion that it could not meet the requirements for or-
20 ganization and authorization as required by applica-
21 ble law.

22 (b) CONSENT OF THE REINSURER.—Notwithstand-
23 ing subsection (a), the Director may file a petition to be
24 appointed a receiver for a reinsurer, if a majority of the
25 members of its board of directors or a majority of its

1 shareholders by an affirmative vote consent to such ap-
2 pointment.

3 (c) NOTICE.—Upon making a determination under
4 subsection (a) of this subsection to file a petition to be
5 appointed a receiver for a reinsurer, or upon consent of
6 the reinsurer under subsection (b) to such an appoint-
7 ment, the Director shall provide written notice to the rein-
8 surer—

9 (1) that the Director will seek to be appointed
10 as receiver for the reinsurer for purposes of rehabili-
11 tation; and

12 (2) stating the reasons for the appointment of
13 such receiver.

14 **SEC. 333. REHABILITATION ORDERS.**

15 An order to rehabilitate a reinsurer shall direct the
16 receiver forthwith to take possession of the assets of the
17 entity and to administer them under the general super-
18 vision of the United States District Court which ordered
19 the rehabilitation. The filing or recording of the order with
20 the clerk of the court or recorder of deeds of the county
21 in which the principal business of the insurer or reinsurer
22 is conducted, or the county in which its principal office
23 or place of business is located, shall impart the same no-
24 tice as a deed, bill of sale, or other evidence of title duly

1 filed or recorded with the recorder of deeds would have
2 imparted.

3 **SEC. 334. POWERS OF RECEIVER FOR PURPOSES OF REHA-**
4 **BILITATION.**

5 (a) GENERAL POWERS.—A receiver shall have all the
6 powers of the shareholders, directors, and officers of the
7 reinsurer under receivership and may operate the rein-
8 surer in the name of the reinsurer. The receiver may take
9 such action as it deems necessary or appropriate to reform
10 and revitalize or rehabilitate the reinsurer. It shall have
11 full power to direct and manage, to hire and discharge
12 employees subject to any contract rights they may have,
13 and to deal with the property of the reinsurer.

14 (b) REORGANIZATION, CONSOLIDATION, MERGER
15 AND OTHER TRANSFORMATION.—If the receiver deter-
16 mines that reorganization, consolidation, merger, or other
17 transformation of the reinsurer is appropriate, it shall pre-
18 pare a plan to effect such changes. Upon application of
19 the receiver for approval of the plan, and after such notice
20 and hearings as the court may prescribe, the court may
21 either approve or disapprove the plan proposed, or may
22 modify it and approve it as modified. Any plan approved
23 under this section shall be, in the judgment of the court,
24 fair and equitable to all parties concerned. If the plan is
25 approved, the receiver shall carry out the plan.

1 (c) ADDITIONAL POWER.—A receiver may avoid any
2 security interest taken by a creditor with the intent to
3 hinder, delay, or defraud the reinsurer.

4 (d) LIMITATIONS.—A receiver shall be subject to any
5 rules, regulations, and orders issued from time to time by
6 the Director and, except as otherwise specifically provided
7 in rules, regulations, or orders, shall have the same rights
8 and privileges and be subject to the same duties, restric-
9 tions, penalties, conditions, and limitations applicable to
10 directors, officers, or employees of the reinsurer.

11 (e) ENFORCEMENT OF CONTRACTS.—

12 (1) IN GENERAL.—A receiver may enforce any
13 contract described in paragraph (2), notwithstanding
14 any provision of the contract providing for the termi-
15 nation, default, acceleration or other exercise of
16 rights upon, or solely by reason of, the insolvency of
17 the reinsurer or the appointment of a receiver.

18 (2) ENFORCEABLE CONTRACTS.—Any contract
19 shall be enforceable under paragraph (1), if the re-
20 ceiver—

21 (A) determines that the continued enforce-
22 ability of the contract is necessary to achieve
23 the purpose of receivership; and

24 (B) specifically provides for the enforce-
25 ability of the contract in a regulation or order,

1 issued for the purpose of this subsection, which
2 describes such contract.

3 (3) APPLICABILITY.—This subsection and any
4 regulation issued under this subsection shall apply
5 only to contracts entered into, modified, extended, or
6 renewed after the effective date of the regulation or
7 order.

8 **SEC. 335. TERMINATION OF THE RECEIVERSHIP FOR REHA-**
9 **BILITATION.**

10 (a) DISCRETIONARY.—At any time the receiver deter-
11 mines that termination of a receivership for purposes of
12 rehabilitation is in the public interest and may safely be
13 accomplished, the receiver may file a petition in United
14 States District Court to terminate the receivership and
15 permit the reinsurer to resume the transaction of business
16 subject to such terms, conditions and limitations as the
17 receiver may prescribe.

18 (b) TERMS.—Any terms, conditions, and limitations
19 imposed by the receiver upon termination of a receivership
20 shall be enforceable and reviewable.

21 (c) PETITION THE COURT.—

22 (1) The receiver or the board of directors of the
23 reinsurer may at any time petition the district court
24 for an order terminating the receivership for pur-
25 poses of rehabilitation on the grounds that the rein-

1 surer may safely recommence the transaction of
2 business.

3 (2) If any such petition is denied, another such
4 petition shall not be made by the board of directors
5 of the reinsurer for at least 6 months. The district
6 court may order payment from the estate of the re-
7 insurer of the costs and other expenses of such peti-
8 tion.

9 (3) If the district court finds that rehabilitation
10 has been accomplished and that the reinsurer may
11 safely return to the transaction of the reinsurance
12 business under the control of its owners and direc-
13 tors, it shall order that the reinsurer and its owners
14 be restored to possession of its property and the con-
15 trol of the business.

16 **SEC. 336. LIQUIDATION.**

17 (a) ORDER.—Whenever the receiver believes further
18 efforts to rehabilitate the reinsurer would substantially in-
19 crease the risk of financial loss or would be futile, it may
20 petition the district court for an order of liquidation. The
21 district court shall permit the directors of the reinsurer
22 to take such actions as are reasonably necessary to defend
23 against the petition and may order the payment from the
24 estate of the reinsurer of such costs and other expenses
25 of defense as the court deems appropriate.

1 (b) GROUNDS FOR LIQUIDATION.—The receiver may
2 petition the district court for an order directing it to liq-
3 uidate the reinsurer on the grounds—

4 (1) that the reinsurer is insolvent (and unable
5 to pay debts as they become due); or

6 (2) that the reinsurer is in such condition that
7 the further transaction of business would be hazard-
8 ous, financially or otherwise.

9 (c) RECEIVER.—A court order to liquidate the busi-
10 ness of the reinsurer shall appoint the Director as receiver
11 for liquidation.

12 **SEC. 337. LIQUIDATION ORDERS.**

13 (a) IN GENERAL.—The filing or recording of the
14 order of liquidation with the clerk of the court and the
15 recorder of deeds of the county in which the reinsurer's
16 principal office or place of business is located, or, in the
17 case of real estate, with the recorder of deeds of the county
18 where the property is located, shall impart the same notice
19 as a deed, bill of sale, or other evidence of title duly filed
20 or recorded with that recorder of deeds would have im-
21 parted.

22 (b) FIXING OF RIGHTS AND LIABILITIES.—Upon is-
23 suance of the order, the rights and liabilities of the rein-
24 surer in liquidation and of its creditors, shareholders,
25 members, and all other persons interested in its estate

1 shall become fixed as of the date of entry of the order
2 of liquidation.

3 (c) FOREIGN INSURER OR REINSURER.—An order to
4 liquidate the business of a foreign insurer or reinsurer
5 shall be in the same terms and have the same legal effect
6 as an order to liquidate an insurer or reinsurer licensed
7 in the United States, except that the assets, operations,
8 and business in the United States shall be the only assets,
9 operations, and business included in the order.

10 **SEC. 338. POWERS OF THE DIRECTOR AS RECEIVER FOR**
11 **LIQUIDATION.**

12 The Director as receiver shall have the power—

13 (1) to employ employees, agent, attorney, actu-
14 aries, accountant, appraisers, consultants and such
15 other personnel as it may deem necessary to conduct
16 the liquidation;

17 (2) to appoint, with the approval of the court,
18 an advisory committee of representatives of claim-
19 ants, creditors, and other persons or groups with
20 substantial interest in the liquidation proceeding, if
21 such committee be deemed necessary;

22 (3) to audit the books and records of the hold-
23 ing company (when applicable), affiliates, and all
24 agents of the reinsurer insofar as those records re-
25 late to the business activities of the reinsurer;

1 (4) to collect all assets, debts and moneys due
2 and claims belonging to the reinsurer, wherever lo-
3 cated;

4 (5) to conduct public and private sales of the
5 property of the reinsurer;

6 (6) to continue to prosecute and to institute in
7 the name of the reinsurer or in its own name any
8 and all suits and other legal proceedings, and to
9 abandon the prosecution of claims it deems unprofit-
10 able to pursue further;

11 (7) to assert all defenses available to the rein-
12 surer as against third persons, including statutes of
13 limitation and statutes of fraud and the defense of
14 usury. A waiver of any defense by the reinsurer after
15 a petition for liquidation has been filed shall not
16 bind the Director;

17 (8) to promulgate rules and regulations with
18 the approval of the Commission regarding the allow-
19 ance or disallowance of claims and providing for ad-
20 ministrative determination of claims and review of
21 such determination;

22 (9) to acquire, encumber, lease, improve, sell,
23 transfer, abandon, or otherwise dispose of or deal
24 with, any property of the reinsurer at its market

1 value or upon such terms and conditions as are fair
2 and reasonable;

3 (10) to execute, acknowledge, and deliver any
4 deed, assignment, release, and other instrument nec-
5 essary or proper to effectuate any sale of property
6 or other transaction in connection with the liquida-
7 tion;

8 (11) to hold hearings, to subpoena witnesses to
9 compel their attendance, to administer oaths, to ex-
10 amine any person under oath, and, in connection
11 therewith, to require the production of any books,
12 papers, records, or other documents which the re-
13 ceiver deems relevant to the liquidation;

14 (12) to remove any record and property of the
15 reinsurer to such place as may be convenient for the
16 purposes of efficient and orderly execution of the liq-
17 uidation;

18 (13) to prosecute any action or right of action
19 which may exist on behalf of the creditors, or share-
20 holders of the reinsurer against any of its officers or
21 any other person;

22 (14) to borrow money on the security of the re-
23 insurer's assets or without security and to execute
24 and deliver all documents necessary to that trans-
25 action for the purpose of facilitating the liquidation.

1 Any such funds borrowed may be repaid as an ad-
2 ministrative expense;

3 (15) to enter into such contracts as are nec-
4 essary to carry out the order to liquidate and to af-
5 firm or disavow any contract to which the reinsurer
6 is a party;

7 (16) to deposit in one or more banks such sums
8 as are required for meeting current administrative
9 expenses and dividend distributions;

10 (17) to invest all sums not currently needed;

11 (18) to file any necessary documents for record-
12 ing in the office of any recorder of deeds or record
13 office wherever property of the reinsurer is located;

14 (19) to exercise and enforce all the rights, rem-
15 edies, and powers of any creditor, shareholder, or
16 member, including any power to avoid any transfer
17 or lien that may be given by the law;

18 (20) to intervene in any proceeding wherever in-
19 stituted that may affect the reinsurer or its assets;
20 and

21 (21) to exercise all powers now held or here-
22 after conferred upon a receiver by the laws of the
23 United States.

1 **SEC. 339. DISSOLUTION OF REINSURER.**

2 The receiver may petition for an order dissolving the
3 corporate existence of a reinsurer, or its United States
4 branch in the case of a foreign insurer or reinsurer, at
5 the time the receiver applies for a liquidation order. The
6 court shall order dissolution of the reinsurer upon petition
7 by the receiver upon or after the granting of a liquidation
8 order.

9 **SEC. 340. OBLIGATION OF REINSURER.**

10 In the event of a receivership, the reinsurance
11 recoverables due under any reinsurance contract shall be
12 payable by the reinsurer directly to the receiver. Subject
13 to the right of setoff and verification of coverage under
14 the relevant contract, the assuming reinsurer shall pay its
15 share of the loss at the time that the amount of the claim
16 is ultimately determined in the liquidation proceeding. The
17 receiver shall, within a reasonable time after the initiation
18 of the receivership, provide the assuming reinsurer with
19 claim information in accordance with the reinsurance con-
20 tracts. During the pendency of any such claim, the assum-
21 ing reinsurer may investigate the claim and, at its own
22 expense, interpose in the proceeding where the claim is
23 to be adjudicated any defenses which it may deem avail-
24 able to the ceding insurer or reinsurer, or its receiver. Ex-
25 penses of investigation and defense incurred by the assum-
26 ing reinsurer shall be chargeable against the ceding in-

1 surer or reinsurer as part of the administrative expense
2 of liquidation, in proportion to the benefit accruing to the
3 ceding insurer or reinsurer solely as a result of the defense
4 undertaken by the assuming reinsurer. The reinsurance
5 proceeds shall be payable as provided in the agreement,
6 except when such assuming reinsurer has a valid contrac-
7 tual obligation to pay reinsurance proceeds to a party
8 other than the ceding insurer or reinsurer.

9 **SEC. 341. REINSURER'S LIABILITY.**

10 The amount recoverable by the receiver from a rein-
11 surer shall not be reduced as a result of delinquency pro-
12 ceedings regardless of any provision in the reinsurance
13 contract or other agreement. Payment made directly to an
14 insured or other creditor shall not diminish the reinsurer's
15 obligation to such ceding insurer's or reinsurer's estate ex-
16 cept when such reinsurer has a valid contractual obligation
17 to pay reinsurance proceeds to a party other than the in-
18 surer or reinsurer.

19 **SEC. 342. NOTICE TO CREDITORS AND OTHERS.**

20 (a) NOTICE OF LIQUIDATION.—The Director shall
21 give or cause to be given notice of the liquidation order
22 as soon as possible—

23 (1) by first class mail and either by telegram or
24 telephone to the State Insurance Department of

1 each jurisdiction in which the reinsurer is doing
2 business;

3 (2) by first class mail to all insurance agents or
4 brokers of the reinsurer;

5 (3) by first class mail to all persons known or
6 reasonably expected to have claims against the rein-
7 surer, at their last known address as indicated by
8 the records of the reinsurer; and

9 (4) by publication in a newspaper of general
10 circulation in such other locations as the receiver
11 deems appropriate.

12 (b) FILING CLAIMS.—Except as otherwise established
13 by the receiver with approval of the court, notice to poten-
14 tial claimants under this Act shall require claimants to
15 file with the receiver their claims together with proper
16 proof, by a date specified in the notice which shall be not
17 less than 90 days after the publication of such notice. All
18 claimants shall have a duty to keep the liquidator in-
19 formed of any changes of address.

20 **SEC. 343. PROOF OF CLAIMS.**

21 The Commission shall promulgate rules and regula-
22 tions regarding—

23 (1) the filing of claims;

1 (2) information that must be contained in a
2 proof of claim, including any written instruments or
3 other documents that support the claim;

4 (3) third-party claims;

5 (4) secured creditor's claims;

6 (5) claims of surety; and

7 (6) disputed claims.

8 **SEC. 344. PAYMENT OF CLAIMS.**

9 (a) PAYMENT OF CLAIMS BY DIRECTOR.—In the case
10 of a liquidation of any insolvent reinsurer, payment of
11 claims against the reinsurer shall be made by the Director
12 as soon as possible, either by cash or any other means
13 determined by the rules and regulations promulgated by
14 the Commission.

15 (b) DISPUTED CLAIMS.—In the case of any disputed
16 claim relating to an reinsurer, the Director may resolve
17 such disputed claims in accordance with regulations pro-
18 mulgated by the Commission. If the Commission has not
19 promulgated procedures for resolving disputed claims, the
20 Director may require the final determination of a court
21 of competent jurisdiction before paying any such claims.

22 (c) JUDICIAL REVIEW OF FINAL DETERMINATION.—
23 Final determination made by the Director shall be
24 reviewable in accordance with chapter 7 of title 5, United
25 States Code (5 U.S.C. 701 et seq.), the United States

1 Court of Appeals for the District of Columbia or the Court
2 of Appeals for the Federal Judicial Circuit where the dis-
3 trict court that ordered the liquidation is located. Any re-
4 quest for review of a final determination by the Director
5 shall be filed with the appropriate circuit court of appeals
6 not later than 60 days after such determination is ordered.

7 **SEC. 345. DUTIES OF AGENTS AND INTERMEDIARIES.**

8 Every person who receives notice that a reinsurer
9 which the person represents as an agent or intermediary
10 is the subject of a liquidation order shall within 30 days
11 of such notice provide to the Director the information in
12 the agency's or intermediary's records related to any con-
13 tract agreed to by the reinsurer through the agent.

14 **SEC. 346. FRAUDULENT TRANSFERS.**

15 (a) IN GENERAL.—Every transfer made and every
16 obligation incurred by a reinsurer within 3 years prior to
17 the filing of a successful petition for liquidation under this
18 Act is fraudulent as to then existing and future creditors
19 if made or incurred without fair consideration, or with ac-
20 tual intent to hinder, delay, or defraud either existing or
21 future creditors. A transfer made or an obligation incurred
22 by an insurer ordered to be liquidated under this Act,
23 which is fraudulent under this section, may be avoided by
24 the liquidator, except as to a person who in good faith
25 is a purchaser, lienor, or obligee for a present fair equiva-

1 lent value, and except that any purchaser, lienor or obli-
2 gee, who in good faith has given a consideration less than
3 fair for such transfer, lien or obligation, may retain the
4 property, lien or obligation as security for repayment. The
5 court may, on due notice, order any such transfer or obli-
6 gation to be preserved for the benefit of the estate, and
7 in that event, the receiver shall succeed to and may enforce
8 the rights of the purchaser, lienor, or obligee.

9 (b) **PERSONAL LIABILITY.**—Every person receiving
10 any property from the reinsurer or any benefit thereof
11 which is a fraudulent transfer under this title shall be per-
12 sonally liable and shall be bound to account to the liquida-
13 tor.

14 (c) **REGULATIONS BY COMMISSION.**—The Commis-
15 sion shall promulgate such rules and regulations that are
16 necessary to implement this section.

17 **SEC. 347. VOIDABLE PREFERENCES AND LIENS.**

18 (a) **IN GENERAL.**—A preference is a transfer of any
19 of the property of a reinsurer to or for the benefit of a
20 creditor, for or on account of an antecedent debt, made
21 by the reinsurer within 1 year before the filing of a suc-
22 cessful petition for liquidation under this Act, the effect
23 of which transfer may be to enable the creditor to obtain
24 a greater percentage of his debt than another creditor of
25 the same class would receive. If a liquidation order is en-

1 tered while the reinsurer is already subject to a receiver-
2 ship order, then such transfers shall be deemed pref-
3 erences if made within 1 year before the filing of the suc-
4 cessful petition for receivership, or within 2 years before
5 the filing of the successful petition for liquidation, which-
6 ever time is shorter.

7 (b) RECOVERY OF PROPERTY.—Where the preference
8 is voidable, the receiver may recover the property or, if
9 it has been converted, its value, from any person who has
10 received or converted the property; except where a bona
11 fide purchaser or lienor has given less than fair value, he
12 shall have a lien upon the property to the extent of the
13 consideration actually given by him. Where a preference
14 by way of lien or security title is voidable, the court may
15 on due notice order the lien or title to be preserved for
16 the benefit of the estate, in which even the lien or title
17 shall pass to the liquidator.

18 (c) REGULATIONS BY THE COMMISSION.—The Com-
19 mission shall promulgate rules and regulations specifying
20 the circumstances under which a preference may be
21 voided.

22 **SEC. 348. SETOFFS.**

23 (a) IN GENERAL.—Mutual debts or mutual credits,
24 whether arising out of one or more reinsurance or other
25 contracts between the reinsurer in receivership and an-

1 other person shall be set off and the balance only shall
2 be allowed or paid.

3 (b) LIMITATIONS ON SETOFF.—No setoff shall be al-
4 lowed in favor of a person if—

5 (1) the circumstances creating the obligation of
6 the insurer or reinsurer in receivership occurred
7 after the effective date of the cancellation or termi-
8 nation of policies in effect at the time of the entry
9 of the receivership order;

10 (2) the obligation of the insurer or reinsurer to
11 the person was purchased by or transferred to the
12 person with the intent of its being used as a setoff;

13 (3) the obligation of the insurer or reinsurer is
14 owed to an affiliate of the person or to any other en-
15 tity or association other than the person;

16 (4) the obligation of the person is owed to an
17 affiliate of the insurer or reinsurer, or to any other
18 person;

19 (5) the obligation of the person is to pay an as-
20 sessment levied against the members or subscribers
21 of the insurer or reinsurer, or is to pay a balance
22 upon a subscription to the capital stock of the in-
23 surer or reinsurer, or is in any other way in the na-
24 ture of a capital contribution; or

1 (6) the obligations between the person and the
2 insurer or reinsurer arise out of transactions where
3 either the person of the insurer or reinsurer has as-
4 sumed risks and obligations from the other party
5 and then has ceded back to that party substantially
6 the same risks and obligations.

7 (c) DEBTS DUE AND PAYABLE.—The receiver shall
8 provide persons claiming a setoff with the accounting
9 statements identifying debts which are due and payable.
10 Where a person owes amounts which are due and payable,
11 against which the person asserts setoff of mutual credits
12 which may become due and payable from the insurer or
13 reinsurer in receivership in the future, the person shall
14 promptly pay to the receiver the amounts due and payable.
15 The receiver shall promptly and fully refund, to the extent
16 of the person's prior payments, any mutual credits that
17 become due and payable to the person by the insurer or
18 reinsurer in receivership.

19 **SEC. 349. RECOVERY OF PREMIUMS OWED.**

20 The Commission shall promulgate the rules and regu-
21 lations regarding the recovery of premiums owed to a rein-
22 surer that is being liquidated by the Director.

23 **SEC. 350. PRIORITY OF DISTRIBUTION.**

24 The priority of distribution of claims from the rein-
25 surer's estate shall be in accordance with the order in

1 which each class of claims is herein set forth. Every claim
2 in each class shall be paid in full or adequate funds re-
3 tained for such payment before the members of the next
4 class receive any payment. No subclasses shall be estab-
5 lished within any class. The order of distribution of claims
6 shall be:

7 (1) CLASS 1.—The costs and expenses of ad-
8 ministration during liquidation, including but not
9 limited to—

10 (A) the actual and necessary costs of pre-
11 serving or recovering the assets of the insurer;

12 (B) compensation for all authorized serv-
13 ices rendered in the liquidation, including rea-
14 sonable compensation to the receiver as ap-
15 proved by the court to cover the portion of the
16 total expenses of the receiver which are reason-
17 ably related to the conduct by it of the rehabili-
18 tation or liquidation of the reinsurer, without
19 provision for any profit to the receiver;

20 (C) any necessary filing fees;

21 (D) the fees and mileage payable to wit-
22 nesses; and

23 (E) reasonable attorney's fees and other
24 professional services rendered in the rehabilita-
25 tion and liquidation.

1 (2) CLASS 2.—Reasonable compensation to em-
2 ployees for services performed to the extent that
3 they do not exceed 2 months of monetary compensa-
4 tion and represent payment for services performed
5 within 1 year before the filing of the petition for liq-
6 uidation. Principal officers and directors shall not be
7 entitled to the benefit of this priority except as oth-
8 erwise approved by the receiver and the court. Such
9 priority shall be in lieu of any similar priority which
10 may be authorized by law as to wages or compensa-
11 tion of employees.

12 (3) CLASS 3.—All claims under reinsurance
13 contracts issued by the reinsurer, unearned pre-
14 miums and other premium refunds.

15 (4) CLASS 4.—Claims for any amount due an
16 assuming reinsurer or ceding insurer for sums due
17 under reinsurance contracts entered into with the re-
18 insurer in receivership.

19 (5) CLASS 5.—Claims for punitive or exemplary
20 damages and any claim for any amount due an in-
21 surer, insurance pool, or underwriting association as
22 subrogated recoveries, contribution, indemnification,
23 or otherwise. All other claims of general creditors
24 not falling within any other priority under this sec-
25 tion, including claims for taxes and debts due the

1 Federal Government or any State or local govern-
2 ment.

3 (6) CLASS 6.—Claims filed late and all other
4 claims other than claims under classes 7 and 8.

5 (7) CLASS 7.—Surplus or contribution notes, or
6 similar obligations, and premium refunds on assess-
7 able policies.

8 (8) CLASS 8.—The claims of stockholders or
9 other owners in their capacity as shareholders.

10 **SEC. 351. UNCLAIMED AND WITHHELD FUNDS.**

11 All unclaimed funds subject to distribution remaining
12 in the receiver's possession at the time it applies to the
13 court for discharge including the amount distributable to
14 any creditor, shareholder, or other person who is unknown
15 or cannot be found, shall be paid into the court and dis-
16 posed of as under chapter 129 of title 28, United States
17 Code.

18 **SEC. 352. TERMINATION OF PROCEEDINGS.**

19 (a) BUSINESS CONCLUDED.—When all business re-
20 garding the liquidation of a reinsurer has been concluded,
21 the Director as receiver shall apply to the court for dis-
22 charge.

23 (b) PETITION TO REOPEN.—After the liquidation
24 proceeding has been terminated and the receiver dis-
25 charged, the Director or other interested party may at any

1 time petition the district court to reopen the proceedings
2 for good cause, including the discovery of additional as-
3 sets. If the court is satisfied that there is justification for
4 reopening, it shall so order.

5 **SEC. 353. CONSTRUCTION.**

6 Nothing in this Act may be construed as being in con-
7 flict with any treaty or other international agreement to
8 which the United States is a party.

9 **SEC. 354. LIMITATION ON TRANSACTION OF REINSURANCE.**

10 No insurer or reinsurer shall transact the business
11 of reinsurance in the United States without complying
12 with the applicable provisions of this Act.

13 **SEC. 355. PREEMPTION.**

14 This Act is intended to preempt all State laws regu-
15 lating reinsurers.

16 **SEC. 356. EXISTING LICENSES AND CONTRACTS.**

17 (a) **DISCLAIMER.**—No provision of this title shall
18 apply with respect to the transaction of reinsurance until
19 2 years following the date of enactment.

20 (b) **CONTRACTS.**—No provision of this title shall be
21 deemed to modify or invalidate any contract lawfully in
22 force prior to 2 years following the date of enactment of
23 this title.

1 **SEC. 357. PROTECTION OF CONFIDENTIAL INFORMATION.**

2 Section 1905 of title 18, United States Code, is
3 amended by inserting “a consultant to the Office of Rein-
4 surance Regulation” after “or agency thereof,”.

5 **TITLE IV—NATIONAL INSUR-**
6 **ANCE GUARANTY CORPORA-**
7 **TION**

8 **SEC. 401. ESTABLISHMENT OF THE CORPORATION.**

9 (a) IN GENERAL.—There is hereby established a non-
10 profit Corporation to be known as the “National Insur-
11 ance Guaranty Corporation” (herein referred to as “the
12 Corporation”) which shall be an instrumentality of the
13 United States.

14 (b) STATUS.—The Corporation shall be deemed to be
15 an agency of the United States for purposes of subchapter
16 II of chapter 5 and chapter 7 of title 5, United States
17 Code, when it is acting as a corporation. The Corporation
18 shall also be deemed to be an agency of the United States
19 when it is acting as a liquidator of an insolvent member
20 insurer.

21 (c) DUTIES.—The Corporation shall—

22 (1) provide a program for the payment of cov-
23 ered claims under certain life, health, and property
24 and casualty insurance policies, and any other insur-
25 ance policies deemed appropriate by the Board of
26 Directors;

1 (2) assess the cost of such program among
2 member insurers;

3 (3) provide a uniform national system of admin-
4 istration for the liquidation of insolvent member in-
5 surers; and

6 (4) perform any other function authorized
7 under this title.

8 (d) GOVERNMENT ASSISTANCE.—The Corporation
9 shall receive no financial assistance, direct or indirect from
10 the United States except as provided by section 416 of
11 this title.

12 (e) AUDIT BY THE GENERAL ACCOUNTING OF-
13 FICE.—The financial transactions of the Corporation shall
14 be subject to audit by the General Accounting Office.

15 **SEC. 402. DEFINITIONS.**

16 As used in this title, the term:

17 (1) “Member insurer” or “insurer” means an
18 insurer which has an interstate insurance license.

19 (2) “State insurance regulator” means State
20 Insurance Department.

21 **SEC. 403. BOARD OF DIRECTORS.**

22 (a) MANAGEMENT.—The management of the Cor-
23 poration shall be vested in a Board of Directors consisting
24 of 7 members. The members shall be the 5 members of

1 the Insurance Regulatory Commission, the Secretary of
2 the Treasury, and the Comptroller of the Currency.

3 (b) CHAIRPERSON.—The Chairperson of the Cor-
4 poration shall be the Chairperson of the Insurance Regu-
5 latory Commission.

6 (c) COMPENSATION AND EXPENSES.—Members of
7 the Board of Directors shall receive allowances in accord-
8 ance with subchapter I of chapter 57 of title 5, United
9 States Code, for necessary expenses of travel, lodging, and
10 subsistence incurred in attending meetings and other ac-
11 tivities of the Corporation, as set forth in the bylaws is-
12 sued by the Corporation. Members of the Board of Direc-
13 tors shall receive no additional pay by reason of service
14 on such Board.

15 (d) VACANCY.—In the event of a vacancy in the Of-
16 fice of the Comptroller of the Currency or the Office of
17 Secretary of the Treasury and pending the appointment
18 of a successor, or during the absence or disability of the
19 Comptroller of the Currency or the Secretary of the Treas-
20 ury, the Acting Comptroller of the Currency or the Acting
21 Secretary of the Treasury, as the case may be, shall be
22 a member of the Board of Directors.

1 **SEC. 404. DUTIES AND RESPONSIBILITIES OF THE BOARD.**

2 (a) IN GENERAL.—The Board of Directors shall have
3 the following duties and responsibilities with respect to the
4 Corporation—

5 (1) to establish the overall policies, strategies,
6 and goals for the Corporation;

7 (2) to establish all rules, regulations, bylaws,
8 principles, procedures, and guidelines that may be
9 adopted or announced by the Corporation; and

10 (3) to establish such national advisory and re-
11 gional boards as the Board of Directors determines
12 to be appropriate.

13 (b) ESTABLISHMENT OF FUND ACCOUNTS AND
14 CLAIMS ACCOUNT.—The Board of Directors shall estab-
15 lish “guarantee fund accounts” (hereinafter referred to as
16 “fund accounts”) for the principal lines of insurance of
17 life, health, property and casualty, and may establish with-
18 in those fund accounts, separate “claims accounts” for
19 each line of insurance to which this title applies. “Line
20 of insurance” for purposes of this section shall mean a
21 category of insurance to which premiums are allocated for
22 purposes of reporting on the form of annual financial
23 statement prescribed by the Insurance Regulatory Com-
24 mission. The Board of Directors may establish claim ac-
25 counts for such other lines of insurance as appropriate.

1 (c) DIRECTORATES FOR FUND ACCOUNTS.—The
2 Board of Directors shall appoint separate directorates for
3 each fund account. Each directorate shall be responsible
4 for the administration of the fund account under its au-
5 thority. Each directorate shall consist of 5 members each
6 and shall serve for a term of 4 years. Each directorate
7 shall be compensated consistent with this Act.

8 (d) REVIEW OF THE DIRECTORATES.—The Board of
9 Directors shall—

10 (1) review the performance of each directorate
11 on a periodic basis including its work, management
12 activities and internal controls, and the performance
13 of the directorates relative to their approved budg-
14 ets; and

15 (2) require from each directorate any reports,
16 documents, and records it deems necessary to carry
17 out its oversight responsibilities.

18 (e) COVERED POLICIES AND CONTRACTS.—The
19 Board of Directors shall establish the type of insurance
20 policies and contracts that are covered under this title and
21 the limits on the amount of benefits available pursuant
22 to such coverage. Under no circumstances shall this title
23 apply to any portion of a claim which is not based on an
24 insurance policy or contract.

1 (f) REINSURANCE.—The Board of Directors shall de-
2 termine to what extent, if any, reinsurance shall be cov-
3 ered under this title.

4 (g) ASSESSMENTS.—The Board of Directors shall es-
5 tablish the assessments that member insurers are required
6 to pay pursuant to section 408 of this title.

7 **SEC. 405. NATIONAL INSURANCE GUARANTY FUND.**

8 (a) ESTABLISHMENT OF FUND.—There is hereby es-
9 tablished a fund to be known as the National Insurance
10 Guaranty Fund (hereinafter referred as “the Fund”)
11 which shall be used by the Corporation to carry out the
12 purposes of this title. The Fund shall consist of all pay-
13 ments made by member insurers pursuant to assessments
14 established by the Board of Directors under section
15 404(g), interest received on bank accounts or investments,
16 amounts recovered under title V of this Act, and any other
17 amounts consistent with this title.

18 (b) TREASURY DEPOSITS.—All amounts described in
19 paragraph (a) shall be deposited with the Treasurer of the
20 United States for the account of the Corporation and may
21 be expended by the Corporation to defray the expenses in-
22 curred in carrying out the provisions of this title and
23 title V.

24 (c) AVAILABILITY OF FUND.—Money in the Fund
25 shall be available upon requisition by the Corporation

1 without fiscal year limitation, for making payments on
2 covered claims, for providing assistance and making ex-
3 penditures in connection with the Corporation's liquida-
4 tion responsibilities in title V, and for such administrative
5 and other expenses incurred in carrying out the purposes
6 of this title as it may determine to be proper. Such moneys
7 shall be available for insolvencies which occur later than
8 2 years after the date of enactment of this Act.

9 (d) INVESTMENTS OF THE FUND.—The Board of Di-
10 rectors may authorize the Secretary of the Treasury to
11 invest and reinvest such portions of the Fund as the
12 Board may determine are not needed for current oper-
13 ations, in any interest-bearing securities of the United
14 States or in any securities guaranteed as to both principal
15 and interest by the United States or in bonds or other
16 obligations which are lawful investments for fiduciary,
17 trust and public funds of the United States, and the in-
18 come therefrom shall constitute a part of the Fund.

19 (e) COVERED CLAIMS.—Covered claims, including
20 the direct expenses of handling such covered claims, which
21 the Corporation pays or becomes obligated to pay by rea-
22 son of its guaranty obligations, shall be allocated to the
23 appropriate fund account, or where applicable, the appro-
24 priate claims account based upon rules and regulations
25 promulgated by the Board of Directors. Claims covered

1 by this title shall not include any amount awarded as puni-
2 tive or exemplary damages, any amount sought as a return
3 of premium under any retrospective rating plan, or any
4 amount due any reinsurer, insurer, insurance pool, or un-
5 derwriting association as subrogation recoveries or other-
6 wise.

7 (f) AMOUNTS RECOVERED ON BEHALF OF FUND.—
8 Amounts recovered from any source as reimbursement,
9 subrogation, deferred assessments, or other recovery of
10 amounts previously paid out or incurred pursuant to the
11 Corporations' guaranty obligations shall be credited to the
12 appropriate fund account, or where applicable, the appro-
13 priate claims account which has been charged with the
14 guaranteed claim.

15 **SEC. 406. CORPORATE POWERS.**

16 (a) CORPORATE BODY.—Upon the date of enactment
17 of this Act, the Corporation shall become a corporate body
18 and shall be an instrumentality of the United States, and
19 as such shall have power—

- 20 (1) to adopt, alter, and use a corporate seal;
21 (2) to have succession until dissolved by an Act
22 of Congress;
23 (3) to pay, as guarantor, claims against insol-
24 vent members to the extent and in the manner pro-

1 vided by the rules and regulations promulgated by
2 the Corporation;

3 (4) to make contracts, to execute all instru-
4 ments necessary and appropriate in the exercise of
5 its power, to incur liabilities, and to do any and all
6 other acts and things as may be necessary or inci-
7 dental to the conduct of its business and the exercise
8 of all other rights and powers granted to the Cor-
9 poration by this Act;

10 (5) to make advances or other payments;

11 (6) to sue and be sued in its corporate capacity
12 in any court of competent jurisdiction;

13 (7) to appoint such officers, employees, attor-
14 neys, agents, adjusters, examiners, and other per-
15 sons as may be necessary for the performance of its
16 duties, to define their duties, fix their compensation,
17 require bonds of them and fix the penalty thereof,
18 and to dismiss such officers or employees;

19 (8) to conduct its business (including the carry-
20 ing on of operations and the maintenance of offices)
21 and to exercise all other rights and powers granted
22 to it by this Act in any State or other jurisdiction
23 without regard to any qualification, licensing or
24 other statute in such State or other jurisdiction;

1 (9) to acquire, hold, lease, purchase, improve,
2 mortgage, maintain or dispose of at public or private
3 sale, real and personal property, and otherwise exer-
4 cise all the usual incidents of ownership of property
5 necessary and convenient to the operations of the
6 Corporation;

7 (10) to levy assessments upon member insurers
8 in the manner and to the extent provided by the
9 rules and regulations of the Corporation, to collect,
10 or enforce by legal proceedings, if necessary, the
11 payment of all assessment for which any insurer
12 may be liable under this title; to collect any other
13 obligation due to the Corporation or the Fund;

14 (11) to pay the administrative expenses of the
15 Corporation, and to provide the funds necessary to
16 discharge the Corporation's liquidation obligations
17 under title V of this Act; and

18 (12) to use the United States mails in the same
19 manner and under the same conditions as other de-
20 partments and agencies of the United States.

21 (b) NATIONAL INSURANCE GUARANTY CORPORA-
22 TION.—No individual, association, partnership, or cor-
23 poration, other than the Corporation, shall hereafter use
24 the words "National Insurance Guaranty Corporation" or
25 any combination of such words, as the name or part there-

1 of under which he or it shall do business. Any violation
2 of this subsection shall be punishable by a fine of not more
3 than \$100,000 for each day during which such violation
4 is committed.

5 **SEC. 407. MEMBERSHIP.**

6 Member insurers of the Corporation shall be all insur-
7 ers with an interstate insurance license. The Board of Di-
8 rectors shall prescribe such additional qualifications for
9 membership as are appropriate for the protection of pol-
10 icyholders. Such additional qualifications shall be applica-
11 ble to members 2 years after the adoption of any such
12 additional qualification. Such additional qualification shall
13 be reasonably related to the enhancement of the financial
14 solidity of insurers and shall have uniform application.

15 **SEC. 408. ASSESSMENTS.**

16 (a) IN GENERAL.—All members of the Corporation
17 shall be subject to assessments to cover administrative
18 costs, guaranteed claims charged against the Fund, and
19 any other expense deemed appropriate under this title and
20 title V, as prescribed in the rules and regulations promul-
21 gated by the Corporation.

22 (b) RESERVE ACCOUNTS.—All member insurers shall
23 pay the assessments determined under section 404(g) of
24 this title and the moneys collected pursuant to such as-

1 assessments shall be deposited in reserve accounts to be used
2 for the purposes outlined in subsection (a).

3 (c) DIRECT PREMIUMS, RISK-BASED ASSESS-
4 MENTS.—Such assessments shall be based on an insurer’s
5 direct premiums, risk-based premiums, or any other
6 standard determined by the Board of Directors.

7 (d) MEMBER LIABILITY.—A member insurer shall
8 have no liability, under any State law or State guaranty
9 fund, for any assessments for an insurance insolvency
10 which was not commenced on or before the date of enact-
11 ment of this Act. A member insurer shall remain liable,
12 notwithstanding its membership in the Corporation, for
13 any assessments for which it would have been liable under
14 any State law or State guaranty fund, for an insurance
15 insolvency which was commenced on or before the date
16 it became a member insurer of the Corporation.

17 **SEC. 409. EXCHANGE OF INFORMATION.**

18 At the request of the Corporation, State insurance
19 regulators and other State authorities shall furnish it with
20 any records, reports, results of examinations and inspec-
21 tions, orders, recommendations, or other information in
22 their possession relevant to the financial condition of a
23 member.

1 **SEC. 410. LIABILITY OF DIRECTORS AND OFFICERS OF THE**
2 **CORPORATION.**

3 No director, officer, agent, or other representative of
4 the Corporation shall be individually liable to any person,
5 firm or corporation, including the Corporation for any act
6 or omission to act, or for any liability incurred or assumed,
7 on behalf of the Corporation. Any such liability so incurred
8 or assumed shall be collectible only out of the Fund.

9 **SEC. 411. TAX EXEMPTION.**

10 (a) CORPORATION EXEMPTED FROM TAXES.—The
11 Corporation, including its franchise, capital, reserves, sur-
12 plus, and its income, shall be exempt from all taxation
13 now or hereafter imposed by the United States, by any
14 Territory, dependency, or possession thereof, or by any
15 State, county, municipality, or local taxing authority, ex-
16 cept that any real property of the Corporation shall be
17 subject to State, Territorial, county, municipal or local
18 taxation to the same extent according to its value as other
19 real property is taxed.

20 (b) ACTING AS LIQUIDATOR.—When acting as a liq-
21 uidator, the following provisions shall apply:

22 (1) The Corporation including its franchise its
23 capital, reserves, surplus, and its income, shall be
24 exempt from all taxation imposed by any State,
25 county, municipally, or local taxing authority, except
26 that any real property of the Corporation shall be

1 subject to State, territorial, county, municipal, or
2 local taxation to the same extent according to its
3 value as other real property is taxed.

4 (2) No property of the Corporation shall be
5 subject to levy, attachment, garnishment, fore-
6 closure, or sale without the consent of the Corpora-
7 tion, nor shall any involuntary lien attach to the
8 property of the Corporation.

9 **SEC. 412. REPORTS BY THE CORPORATION.**

10 (a) ANNUAL REPORTS.—The Corporation shall annu-
11 ally submit a full report of its operations, activities, budg-
12 et, receipts, and expenditures for the preceding 12-month
13 period. The report shall include, with respect to the Fund,
14 an analysis by the Corporation of—

15 (1) the current financial condition of each fund
16 account;

17 (2) the purpose, effect, and estimated cost of
18 each resolution action taken for a member insurer
19 during the preceding year;

20 (3) the exposure of each fund account to
21 changes in those economic factors most likely to af-
22 fect the condition of the Fund;

23 (4) the current estimate of the resources needed
24 for the Fund to achieve the purpose of this Act; and

1 (5) any findings, conclusions, and recommenda-
2 tions for legislative and administrative action consid-
3 ered appropriate in order for the Corporation to
4 handle future insurance insolvencies.

5 Such report shall be submitted to the Congress and the
6 President as soon as practicable after the first day of Jan-
7 uary each day.

8 (b) AUDITS BY THE COMPTROLLER GENERAL.—The
9 Comptroller General shall audit annually the financial
10 transactions of the Corporation and the Fund in accord-
11 ance with generally accepted government auditing stand-
12 ards. All books, records, accounts, reports, files and prop-
13 erty belonging to or used by the Corporation, the Fund,
14 or by an independent certified public accountant retained
15 to audit the Fund's financial statements, shall be made
16 available to the Comptroller General.

17 (c) GAO AUDIT.—The financial transaction of the
18 Corporation shall be audited by the General Accounting
19 Office, at least once in every 3 years, in accordance with
20 the principles and procedures applicable to commercial
21 corporate transactions and under such rules and regula-
22 tions as may be prescribed by the Comptroller General of
23 the United States. The audit shall be conducted at the
24 place or places where accounts of the Corporation are nor-
25 mally kept. The representatives of the General Accounting

1 Office shall have access to all books, account, records, re-
2 ports, files, and all other papers, things, or property be-
3 longing to or in use by the Corporation pertaining to its
4 financial transactions and necessary to facilitate the audit,
5 and they shall be afforded full facilities for verifying trans-
6 actions with the balances or securities held by depositories,
7 fiscal agents and custodians. All such books, accounts,
8 records, reports, files, papers, and property of the Cor-
9 poration shall remain in possession and custody of the
10 Corporation.

11 (d) REPORT OF AUDITS.—A report of each audit con-
12 ducted under this section shall be made by the Comptroller
13 General to the Congress not later than 6 months following
14 the close of the last year covered by such audit. The report
15 to the Congress shall set forth the scope of the audit and
16 shall include a statement of assets and liabilities and sur-
17 plus or deficit; a statement of sources and application of
18 funds and such comments and information as may be
19 deemed necessary to inform Congress of the financial op-
20 erations and conditions of the Corporation, together with
21 such recommendations with respect thereto as the Comp-
22 troller General may deem advisable. The report shall also
23 show specifically any program, expenditure, or other fi-
24 nancial transaction or undertaking observed in the course
25 of the audit, which in the opinion of the Comptroller Gen-

1 eral has been carried on or made without authority of law.
2 A copy of each report shall be furnished to the President,
3 to the Secretary of the Treasury, Comptroller of the Cur-
4 rency and to the Corporation at the time submitted to
5 Congress.

6 (e) ASSISTANCE IN AUDITS.—For the purpose of con-
7 ducting such audit, the Comptroller General is authorized
8 to employ by contract, without regard to section 3709 of
9 the Revised Statutes (41 U.S.C. 5), professional services
10 of firms and organizations of certified public accounts,
11 with the concurrence of the Corporation, for temporary
12 periods or for special purposes. The Corporation shall re-
13 imburse the General Accounting Office for the cost of any
14 such audit as billed thereof by the Comptroller General,
15 and the General Accounting Office shall deposit the sums
16 so reimbursed into the Treasury as miscellaneous receipts.
17 The financial statements shall be examined by an inde-
18 pendent public accountant or firm of independent public
19 accountants, selected by the Corporation, and shall be ac-
20 companied by the report thereon of such accountant or
21 firm. The report shall be submitted to the Congress, and
22 to the State insurance regulators in each of the States,
23 and shall be made available for dissemination to the
24 public.

1 **SEC. 413. PREEMPTION.**

2 No State shall assess an insurer with an interstate
3 insurance license for any insurer insolvency occurring 2
4 years after the date of enactment of this Act.

5 **TITLE V—LIQUIDATION OF**
6 **MEMBER INSURERS**

7 **SEC. 501. CORPORATION AS LIQUIDATOR.**

8 Notwithstanding any other provision of Federal law,
9 the law of any State, or the constitution of any State, the
10 Corporation shall act as receiver of a member insurer for
11 purposes of liquidation. The United States district courts
12 shall have exclusive jurisdiction over a proceeding to ap-
13 point the Corporation as liquidator of a member insurer
14 and, following such appointment, to supervise the liquida-
15 tion of such member in conformity with the provisions of
16 this title.

17 **SEC. 502. DEFINITIONS.**

18 For the purposes of this title:

19 (1) “Corporation” means the National Insur-
20 ance Guaranty Fund Corporation.

21 (2) “Claimant” means any insured making a
22 first party claim or any person instituting a liability
23 claim, provided that no person who is an affiliate of
24 the insolvent insurer may be a claimant.

25 (3) “The District Court” and “the Court”
26 means the United States District Court which by

1 order approves the transfer of the receivership of an
2 insurer to the Corporation for liquidation purposes
3 and which thereafter has general jurisdiction and
4 control over the receivership proceeding.

5 (4) “Creditor” is a person having any claim,
6 whether matured or unmatured, liquidated or unliq-
7 uidated, secured or unsecured, absolute, fixed or
8 contingent.

9 (5) “Insolvency” or “insolvent” means that an
10 insurer is unable to pay its obligations when they
11 are due, or that its admitted assets (as determined
12 under the laws and regulations of the State of domi-
13 cile) do not exceed its liabilities plus the greater of—

14 (A) any capital and surplus required by
15 law for its organization; or

16 (B) the total par or stated value of its au-
17 thorized capital stock.

18 For purposes of this title, liabilities shall include but
19 not be limited to reserves required by statute im-
20 posed by the State insurance regulator upon a sub-
21 ject company at the time of licensing or subsequent
22 thereto.

23 (6) “Liquidator” means the Corporation when
24 acting as receiver of an insurer in carrying out an

1 order that the insurer's assets, business and affairs
2 be liquidated.

3 (7) "Member Insurer" or "insurer" means an
4 insurer which has an interstate insurance license.

5 (8) "Receiver" means a person which has pos-
6 session and control, or the right to possession and
7 control, of the assets, business and affairs of an in-
8 surer pursuant to appointment by a court of com-
9 petent jurisdiction for the purpose of liquidating the
10 affairs of the insurer.

11 **SEC. 503. PETITION FOR APPOINTMENT.**

12 (a) FILING AND SERVICE OF PETITION.—A proceed-
13 ing to appoint the Corporation as liquidator of a member
14 insurer shall be commenced by the filing of a petition seek-
15 ing such appointment in a United States district court and
16 the service of a copy of the petition upon the Corporation.

17 (b) WHO MAY FILE.—A petition may be filed by a
18 State insurance regulator or a receiver acting under its
19 authority, either of which has the unconditional right to
20 possession and control of the business, assets and affairs
21 of the member insurer for purposes of conservation or re-
22 habilitation pursuant to an order of a court of competent
23 jurisdiction which has not been stayed or superseded.

24 (c) WHERE FILED.—The petition, if filed by a State
25 insurance regulator or a receiver acting under the author-

1 ity of a State insurance regulator, shall be filed in the
2 United States District Court for the district in which the
3 member insurer has its principal office of domicile or in
4 which is located the court that issued the order referred
5 to in subsection (b).

6 (d) RESPONSE TO PETITION.—Within 10 days after
7 the service upon it of a petition under subsection (a) the
8 Corporation shall file and serve a response thereto, accept-
9 ing or rejecting the proposed appointment, stating the
10 ground or grounds of such rejection. The Corporation may
11 reject the proposed appointment only if the insurer was
12 not a member of the Corporation on the date the petition
13 was filed.

14 **SEC. 504. ORDER APPOINTING CORPORATION LIQUIDATOR.**

15 (a) IN GENERAL.—The Corporation shall accept the
16 appointment as receiver for purposes of liquidation of an
17 insolvent member insurer.

18 (b) REGULAR ACCOUNTING TO COURT.—The order
19 appointing the Corporation as receiver shall require regu-
20 lar accounting of the Corporation's administration of the
21 insurer's assets to the court. Accounting shall be at such
22 intervals as the court specifies in its order or by rule, but
23 no less frequently than semiannually. Copies of the ac-
24 counting shall be served upon the State insurance regu-
25 lators of the State of the insurer's domicile and of each

1 State in which it is or was licensed or transacted an insur-
2 ance business.

3 (c) CORPORATION NOT SUBJECT TO ANY OTHER AU-
4 THORITY.—When acting as a receiver pursuant to an ap-
5 pointment described in this title, the Corporation shall not
6 be subject to the direction or supervision of any other
7 agency or department of the United States or any State
8 in the exercise of the Corporations' rights, powers, and
9 privileges.

10 **SEC. 505. EFFECT OF ORDER.**

11 (a) TITLE.—The Corporation shall hold and have
12 title to all of the assets, property, contracts and rights
13 of action, books, and records of the insurer, wherever lo-
14 cated. The State insurance regulator, the State receiver,
15 and any ancillary State receivers shall, upon demand by
16 the Corporation, promptly transfer all assets and records
17 to the insurer, or of their respective receiverships to the
18 Corporation.

19 (b) ENTRY OF ORDER.—The entry of an order ap-
20 pointing the Corporation as liquidator shall not constitute
21 an anticipatory breach of any contract of the insurer, nor
22 provide ground for revocation or cancellation of any such
23 contract other than by the Corporation as liquidator.

24 (c) RIGHTS AND LIABILITIES.—Upon issuance of the
25 order, the rights and liabilities of the insurer and of its

1 creditors, and all other persons interested in its estate,
2 shall be fixed as of the date of entry of the order of liq-
3 uidation.

4 **SEC. 506. JURISDICTION OVER PROPERTY OF INSURER.**

5 The filing of a petition under section 503 shall imme-
6 diately vest the district court with exclusive jurisdiction
7 over the insurer and its property wherever located, and
8 over all parties to the proceedings by which the State in-
9 surance regulator or the receiver acting under its author-
10 ity, acquired the right to possession and control of the
11 business, assets and affairs of the insurer and shall sus-
12 pend the further jurisdiction of other courts and adminis-
13 trative bodies with respect to any such proceedings.

14 **SEC. 507. STAY OF ACTIONS.**

15 (a) IN GENERAL.—The entry of an order appointing
16 the Corporation as liquidator shall operate as a stay of
17 the commencement or continuation of any action or pro-
18 ceeding in any State or Federal court, or any administra-
19 tive or other proceeding, against the insolvent insurer or
20 against an insured of the insurer on a claim for which
21 the insurer may be liable, or against the Corporation as
22 liquidator, except as provided in subsection (b).

23 (b) JUDICIAL RELIEF FROM STAY.—The district
24 court shall have power to grant relief from the stay pro-
25 vided in subsection (a) in such cases, and upon such

1 terms, as the court determines to be consistent with the
2 preservation of assets and the efficient administration of
3 the estate of the insurer. Such relief may be granted upon
4 the application of any party in interest, and may be grant-
5 ed as to particular cases or as to classes of cases as may
6 be prescribed by the court's order.

7 (c) ACTIONS BY THE LIQUIDATORS.—Upon issuance
8 of an order appointing the Corporation as liquidator, the
9 Corporation may within 2 years from such order, or such
10 other longer time as applicable law may permit, institute
11 an action or proceeding on behalf of the estate of the in-
12 surer upon any cause of action against which the period
13 of limitation fixed by applicable law has not expired at
14 the time of the filing of the petition upon which such order
15 is entered.

16 (d) STATUTE OF LIMITATIONS.—No statute of limi-
17 tations or defense of laches shall run with respect to any
18 cause of action against an insurer between the filing of
19 a petition for liquidation and the denial of the petition.
20 Any action against the insurer that might have been com-
21 menced when the petition was filed may be commenced
22 within 60 days after the petition is denied.

1 **SEC. 508. COOPERATION OF OFFICERS, OWNERS AND**
2 **EMPLOYEES.**

3 Any officer, manager, director, trustee, owner, em-
4 ployee or agent of any insurer, or any other person with
5 authority over or in charge of any segment of the insurer's
6 affairs including any person who exercises control directly
7 or indirectly over activities of the insurer through any
8 holding company or other affiliate of the insurer, shall co-
9 operate with the Corporation. "Cooperate" shall include,
10 but shall not be limited to the following:

11 (1) To reply promptly in writing to any inquiry
12 from the Corporation requesting such a reply.

13 (2) To make available to the Corporation any
14 books, accounts, documents, or other records or in-
15 formation or property of or pertaining to the insurer
16 and in the possession, custody or control of such
17 persons.

18 **SEC. 509. EVIDENCE OF WRONGDOING.**

19 If there is reason to believe that there has been crimi-
20 nal or tortious conduct, or breach of any contractual or
21 fiduciary obligation detrimental to the insurer by any offi-
22 cer, manager, agent, broker, employee or other person, the
23 Corporation shall refer such matter to the Insurance Reg-
24 ulatory Commission and the appropriate State regulator
25 for handling.

1 **SEC. 510. CONTINUANCE OF COVERAGE.**

2 The Corporation shall issue rules and regulations re-
3 garding the continuance of insurance coverage once an in-
4 surer has been ordered liquidated.

5 **SEC. 511. POWERS OF THE CORPORATION AS LIQUIDATOR.**

6 (a) **POWERS.**—The Corporation as liquidator shall
7 have the power—

8 (1) to employ employees, agent, attorney, actu-
9 aries, accountant, appraisers, consultants and such
10 other personnel as it may deem necessary to conduct
11 the liquidation;

12 (2) to appoint, with the approval of the court,
13 an advisory committee of representatives of policy
14 holders, claimants, creditors, and other persons or
15 groups with substantial interest in the liquidation
16 proceeding, if such committee be deemed necessary;

17 (3) to audit the books and records of all agents
18 of the insurer insofar as those records relate to the
19 business activities of the insurer;

20 (4) to collect all debts and moneys due and
21 claims belonging to the insurer, wherever located;

22 (5) to conduct public and private sales of the
23 property of the insurer;

24 (6) to continue to prosecute and to institute in
25 the name of the insurer or in its own name any and
26 all suits and other legal proceedings, and to abandon

1 the prosecution of claims it deems unprofitable to
2 pursue further;

3 (7) to assert all defenses available to the in-
4 surer as against third persons, including statutes of
5 limitation and statutes of fraud; and

6 (8) to promulgate rules and regulations regard-
7 ing the allowance or disallowance of claims and pro-
8 viding for administrative determination of claims
9 and review of such determination.

10 (b) **ADDITIONAL POWERS.**—In addition to and not
11 in derogation of the powers conferred and duties imposed
12 by this title on the Corporation as receiver for purposes
13 of liquidation, the Corporation, to the extent not inconsis-
14 tent with such powers and duties shall have any other
15 power conferred on or any duty (which is related to the
16 exercise of such power) imposed on a receiver for any in-
17 solvent insurer under any other provision of law.

18 **SEC. 512. NOTICE TO CREDITORS AND OTHERS.**

19 (a) **NOTICE OF LIQUIDATION.**—The Corporation
20 shall give or cause to be given notice of the liquidation
21 order as soon as possible—

22 (1) by first class mail and either by telegram or
23 telephone to the Department of Insurance of each
24 jurisdiction in which the insurer is doing business;

1 (2) by first class mail to all insurance agents of
2 the insurer;

3 (3) by first class mail to all persons known or
4 reasonably expected to have claims against the in-
5 surer including all policyholders, at their last known
6 address as indicated by the records of the insurer;
7 and

8 (4) by publication in a newspaper of general
9 circulation in the county in which the insurer has its
10 principal place of business and in such other loca-
11 tions as the Corporation deems appropriate.

12 (b) FILING CLAIMS.—Except as otherwise established
13 by the liquidator with approval of the Court, notice to po-
14 tential claimants under this title shall require claimants
15 to file with the liquidator their claims together with proper
16 proof, by a date specified in the notice which shall be not
17 less than 90 days after the publication of such notice. All
18 claimants shall have a duty to keep the liquidator in-
19 formed of any changes of address.

20 **SEC. 513. PROOF OF CLAIMS.**

21 (a) RULES AND REGULATIONS.—The Corporation
22 shall promulgate rules and regulations regarding—

23 (1) the filing of claims;

24 (2) information that must be contained in a
25 proof of claim;

- 1 (3) third-party claims;
- 2 (4) secured Creditor's claims;
- 3 (5) claims of surety; and
- 4 (6) disputed claims.

5 (b) ADDITIONAL RULES AND REGULATIONS.—The
6 Corporation shall promulgate any other such rules and
7 regulations it deems necessary regarding claims.

8 **SEC. 514. PAYMENT OF CLAIMS.**

9 (a) PAYMENT OF CLAIMS BY CORPORATION.—In the
10 case of a liquidation of any insolvent member insurer, pay-
11 ment of claims against the insolvent insurer shall be made
12 by the Corporation as soon as possible, either by cash or
13 by transferring the policy to a new insurer, or any other
14 means determined by the rules and regulations promul-
15 gated by the Corporation.

16 (b) DISPUTED CLAIMS.—In the case of any disputed
17 claim relating to an insolvent insurer, the Corporation
18 may resolve such disputed claims in accordance with regu-
19 lations promulgated by the Corporation. If the Corpora-
20 tion has not promulgated procedures for resolving dis-
21 puted claims, the Corporation may require the final deter-
22 mination of a court of competent jurisdiction before pay-
23 ing any such claims.

24 (c) JUDICIAL REVIEW OF FINAL DETERMINATION.—
25 Final determination made by the Corporation shall be

1 reviewable in accordance with chapter 7 of title 5, United
2 States Code (5 U.S.C. 701 et seq.), the United States
3 Court of Appeals for the District of Columbia or the Court
4 of Appeals for the Federal Judicial Circuit where the dis-
5 trict court that ordered the liquidation is located. Any re-
6 quest for review of a final determination by the Corpora-
7 tion shall be filed with the appropriate Circuit Court of
8 Appeals not later than 60 days after such determination
9 is ordered.

10 **SEC. 515. DUTIES OF AGENTS.**

11 (a) **IN GENERAL.**—Every person who receives notice
12 that an insurer which the person represents as an agent
13 is the subject of a liquidation order shall within 30 days
14 of such notice provide to the Corporation the information
15 in the agency's records related to any policy issued by the
16 insurer through the agent, and, if the agent is a general
17 agent, the information in the general agent's records relat-
18 ed to any policy issued by the insurer through an agent
19 under contract to the general agent, including the name
20 and address of such subagent.

21 (b) **REGULATIONS BY CORPORATION.**—The Corpora-
22 tion shall promulgate rules and regulations defining an
23 agent and any other rule or regulation regarding the du-
24 ties of an agent as deemed necessary by the Board of Di-
25 rectors.

1 **SEC. 516. FRAUDULENT TRANSFERS.**

2 (a) IN GENERAL.—Every transfer made and every
3 obligation incurred by an insurer within 3 years prior to
4 the filing of a successful petition for liquidation under this
5 title is fraudulent as to then existing and future creditors
6 if made or incurred without fair consideration, or with ac-
7 tual intent to hinder, delay, or defraud either existing or
8 future creditors. A transfer made or an obligation incurred
9 by an insurer ordered to be liquidated under this title,
10 which is fraudulent under this section, may be avoided by
11 the liquidator, except as to a person who in good faith
12 is a purchaser, lienor, or obligee for a present fair equiva-
13 lent value, and except that any purchaser, lienor or obli-
14 gee, who in good faith has given a consideration less than
15 fair for such transfer, lien or obligation, may retain the
16 property, lien or obligation as security for repayment. The
17 Court may, on due notice, order any such transfer or obli-
18 gation to be preserved for the benefit of the estate, and
19 in that event, the receiver shall succeed to and may enforce
20 the rights of the purchaser, lienor, or obligee.

21 (b) PERSONAL LIABILITY.—Every person receiving
22 any property from the insurer or any benefit thereof which
23 is a fraudulent transfer under this title shall be personally
24 liable and shall be bound to account to the liquidator.

1 (c) REGULATIONS BY CORPORATION.—The Corpora-
2 tion shall promulgate such rules and regulations that are
3 necessary to implement this section.

4 **SEC. 517. VOIDABLE PREFERENCES AND LIENS.**

5 (a) IN GENERAL.—A preference is a transfer of any
6 of the property of an insurer to or for the benefit of a
7 creditor, for or on account of an antecedent debt, made
8 by the insurer within 1 year before the filing of a success-
9 ful petition for liquidation under this Act, the effect of
10 which transfer may be to enable the creditor to obtain a
11 greater percentage of his debt than another creditor of the
12 same class would receive. If a liquidation order is entered
13 while the insurer is already subject to a rehabilitation
14 order, then such transfers shall be deemed preferences if
15 made within 1 year before the filing of the successful peti-
16 tion for rehabilitation, or within 2 years before the filing
17 of the successful petition for liquidation, whichever time
18 is shorter.

19 (b) RECOVERY OF PROPERTY.—Where the preference
20 is voidable, the liquidator may recover the property or, if
21 it has been converted, its value, from any person who has
22 received or converted the property; except where a bona
23 fide purchaser or lienor has given less than fair value, he
24 shall have a lien upon the property to the extent of the
25 consideration actually given by him. Where a preference

1 by way of lien or security title is voidable, the court may
2 on due notice order the lien or title to be preserved for
3 the benefit of the estate, in which even the lien or title
4 shall pass to the liquidator.

5 (c) REGULATIONS BY THE CORPORATION.—The Cor-
6 poration shall promulgate rules and regulations specifying
7 the circumstances under which a preference may be
8 avoided.

9 **SEC. 518. SETOFFS AND COUNTERCLAIMS.**

10 Mutual debts or mutual credits, whether arising out
11 of one or more contracts between the insurer and another
12 person in connection with any action or proceeding under
13 this title shall be set off and the balance only shall be al-
14 lowed or paid, except as otherwise provided by the rules
15 and regulations promulgated by the Corporation.

16 **SEC. 519. RECOVERY OF PREMIUMS OWED.**

17 The Corporation shall promulgate the rules and regu-
18 lations regarding the recovery of premiums owed to an in-
19 solvent member insurer that is being liquidated by the
20 Corporation.

21 **SEC. 520. PRIORITY OF DISTRIBUTION.**

22 The priority of distribution of claims from the insur-
23 er's estate shall be in accordance with the order in which
24 each class of claims is herein set forth. Every claim in
25 each class shall be paid in full or adequate funds retained

1 for such payment before the members of the next class
2 receive any payment. No subclasses shall be established
3 within any class. The order of distribution of claims shall
4 be:

5 (1) CLASS 1.—The costs and expenses of ad-
6 ministration during liquidation, including but not
7 limited to—

8 (A) the actual and necessary costs of pre-
9 serving or recovering the assets of the insurer;

10 (B) compensation for all authorized serv-
11 ices rendered in the liquidation, including rea-
12 sonable compensation to the Corporation as ap-
13 proved by the court to cover the portion of the
14 total expenses of the Corporation which are rea-
15 sonably related to the conduct by it of the reha-
16 bilitation or liquidation of the insurer, without
17 provision for any profit to the Corporation;

18 (C) any necessary filing fees;

19 (D) the fees and mileage payable to wit-
20 nesses; and

21 (E) authorized reasonable attorney's fees
22 and other professional services rendered in the
23 rehabilitation and liquidation.

24 (2) CLASS 2.—Reasonable compensation to em-
25 ployees for services performed to the extent that

1 they do not exceed 2 months of monetary compensa-
2 tion and represent payment for services performed
3 within 1 year before the filing of the petition for liq-
4 uidation. Principal officers and directors shall not be
5 entitled to the benefit of this priority except as oth-
6 erwise approved by the Liquidator and the court.
7 Such priority shall be in lieu of any similar priority
8 which may be authorized by law as to wages or com-
9 pensation of employees.

10 (3) CLASS 3.—All claims under policies, includ-
11 ing such claims of the Federal or any State or local
12 government, for losses incurred (“loss claims”) and
13 including third party claims and such claims of the
14 Corporation for claims paid by it except the first
15 \$300 of any claim, other than claims for workers’
16 compensation, where the obligation of the insurer is
17 direct to the insured (or “first party”). That portion
18 of any loss, indemnification for which is provided by
19 other benefits or advantages recovered or recoverable
20 in discharge of familial obligation of support or by
21 way of succession at death or as proceeds of life in-
22 surance, or as gratuities. No payment by an em-
23 ployer to its employee shall be treated as a gratuity.

24 (4) CLASS 4.—Claims under nonassessable poli-
25 cies for unearned premium or other premium re-

1 funds, claims of general creditors including claims of
2 ceding and assuming insurers and reinsurers in their
3 capacity as such, claims for the first \$300 of any
4 claim excepted from payment by the deduction in
5 subsection (c) above, and claims of the Federal or
6 any State or local government except those under
7 class 3 above. Claims, including those of any govern-
8 mental body for a penalty or forfeiture, shall be al-
9 lowed in this class only to the extent of the pecu-
10 niary loss sustained from the act, transaction, or
11 proceeding out of which the penalty or forfeiture
12 arose, with reasonable and actual costs occasioned
13 thereby. The remainder of such claims shall be post-
14 poned to class of claims under subsection (g).

15 (5) CLASS 5.—Claims filed late and all other
16 claims other than claims under classes 6 and 7.

17 (6) CLASS 6.—Surplus or contribution notes, or
18 similar obligations, and premium refunds on assess-
19 able policies. Payments to members of domestic mu-
20 tual insurance companies shall be limited in accord-
21 ance with applicable State law.

22 (7) CLASS 7.—The claims of stockholders or
23 other owners in their capacity as shareholders.

1 **SEC. 521. UNCLAIMED AND WITHHELD FUNDS.**

2 The Corporation shall promulgate rules and regula-
3 tions for the handling of unclaimed and withheld funds.

4 **SEC. 522. TERMINATION OF PROCEEDINGS.**

5 (a) BUSINESS CONCLUDED.—When all business re-
6 garding the liquidation of a member insurer has been con-
7 cluded, the Corporation as liquidator shall apply to the
8 court for discharge.

9 (b) PETITION TO REOPEN.—After the liquidation
10 proceeding has been terminated and the Liquidator dis-
11 charged, the Corporation or other interested party may
12 at any time petition the district court to reopen the pro-
13 ceedings for good cause, including the discovery of addi-
14 tional assets. If the court is satisfied that there is justifica-
15 tion for reopening, it shall so order.

16 **SEC. 523. STUDY BY THE BOARD.**

17 The Board of Directors for the Corporation shall
18 make recommendations, including proposing legislation to
19 the Congress, not later than 12 months after the date of
20 enactment of this Act, on how to better achieve a uniform
21 system of liquidation of insolvent insurers to be handled
22 exclusively by the Corporation.

23 **SEC. 524. PREEMPTION.**

24 Effective 2 years after enactment of this Act, the
25 Corporation shall be the exclusive liquidator of insolvent
26 member insurers.

1 **TITLE VI—CRIMINAL AND CIVIL**
2 **PENALTIES**

3 **SEC. 601. SHORT TITLE.**

4 This title may be cited as the “Insurance Fraud Pre-
5 vention Act of 1993”.

6 **SEC. 602. CRIMES BY OR AFFECTING PERSONS ENGAGED IN**
7 **THE BUSINESS OF INSURANCE WHOSE AC-**
8 **TIVITIES AFFECT INTERSTATE COMMERCE.**

9 (a) IN GENERAL.—Chapter 47 of title 18, United
10 States Code, is amended by adding at the end thereof the
11 following new sections:

12 **“§1033. Crimes by or affecting persons engaged in**
13 **the business of insurance whose activi-**
14 **ties affect interstate commerce**

15 “(a)(1) Whoever is engaged in the business of insur-
16 ance whose activities affect interstate commerce and
17 knowingly, with the intent to deceive, makes any false ma-
18 terial statement or report or willfully and materially
19 overvalues any land, property or security—

20 “(A) in connection with any reports or docu-
21 ments presented to any insurance regulatory official
22 or agency or an agent or examiner appointed by
23 such official or agency to examine the affairs of such
24 person, and

1 “(B) for the purpose of influencing the actions
2 of such official or agency or such an appointed agent
3 or examiner,
4 shall be punished as provided in paragraph (2).

5 “(2) The punishment for an offense under paragraph
6 (1) is a fine of not more than \$1,000,000 or imprisonment
7 for not more than 10 years, or both, except that the term
8 of imprisonment shall be not more than 15 years if the
9 statement or report or overvaluing of land, property, or
10 security jeopardized the safety and soundness of an in-
11 surer.

12 “(b)(1) Whoever—

13 “(A) acting as, or being an officer, director,
14 agent, or employee of, any person engaged in the
15 business of insurance whose activities affect inter-
16 state commerce, or

17 “(B) is engaged in the business of insurance
18 whose activities affect interstate commerce or is in-
19 volved (other than as an insured or beneficiary
20 under a policy of insurance) in a transaction relating
21 to the conduct of affairs of such a business,

22 willfully embezzles, abstracts, purloins, or misappropriates
23 any of the moneys, funds, premiums, credits, or other
24 property of such person so engaged shall be punished as
25 provided in paragraph (2).

1 “(2) The punishment for an offense under paragraph
2 (1) is a fine of not more than \$1,000,000 or imprisonment
3 for not more than 10 years, or both, except that if such
4 embezzlement, abstraction, purloining, or misappropria-
5 tion described in paragraph (1) jeopardized the safety and
6 soundness of an insurer, such imprisonment shall be not
7 more than 15 years. If the amount or value so embezzled,
8 abstracted, purloined, or misappropriated does not exceed
9 \$5,000, whoever violates paragraph (1) shall be fined as
10 provided in this title or imprisoned not more than 1 year,
11 or both.

12 “(c)(1) Whoever is engaged in the business of insur-
13 ance and whose activities affect interstate commerce or is
14 involved (other than as an insured or beneficiary under
15 a policy of insurance) in a transaction relating to the con-
16 duct of affairs of such a business, knowingly makes any
17 false entry of material fact in any book, report, or state-
18 ment of such person engaged in the business of insurance
19 with intent to deceive any person, including any officer,
20 employee, or agent of such person engaged in the business
21 of insurance, any insurance regulatory official or agency,
22 or any agent or examiner appointed by such official or
23 agency to examine the affairs of such person, about the
24 financial condition or solvency of such business shall be
25 punished as provided in paragraph (2).

1 “(2) The punishment for an offense under paragraph
2 (1) is a fine of not more than \$1,000,000 or imprisonment
3 for not more than 10 years, or both, except that if the
4 false entry in any book, report, or statement of such per-
5 son jeopardized the safety and soundness of an insurer,
6 such imprisonment shall be not more than 15 years.

7 “(d) Whoever, by threats or force or by any threaten-
8 ing letter or communication, corruptly influences, ob-
9 structs, or impedes or endeavors corruptly to influence, ob-
10 struct, or impede the due and proper administration of
11 the law under which any proceeding involving the business
12 of insurance whose activities affect interstate commerce
13 is pending before any insurance regulatory official or
14 agency or any agent or examiner appointed by such official
15 or agency to examine the affairs of a person engaged in
16 the business of insurance whose activities affect interstate
17 commerce, shall be fined as provided in this title or impris-
18 oned not more than 10 years, or both.

19 “(e)(1)(A) Any individual who has been convicted of
20 any criminal felony involving dishonesty or a breach of
21 trust, or who has been convicted of an offense under this
22 section, and who willfully engages in the business of insur-
23 ance whose activities affect interstate commerce or partici-
24 pates in such business, shall be fined as provided in this
25 title or imprisoned not more than 5 years, or both.

1 “(B) Any individual who is engaged in the business
2 of insurance whose activities affect interstate commerce
3 and who willfully permits the participation described in
4 subparagraph (A) shall be fined as provided in this title
5 or imprisoned not more than 5 years, or both.

6 “(2) A person described in paragraph (1)(A) may en-
7 gage in the business of insurance or participate in such
8 business if such person has the written consent of any in-
9 surance regulatory official authorized to regulate the in-
10 surer, which consent specifically refers to this subsection.

11 “(f) As used in this section—

12 “(1) the term ‘business of insurance’ means—

13 “(A) the writing of insurance, or

14 “(B) the reinsuring of risks,

15 by an insurer, including all acts necessary or inci-
16 dental to such writing or reinsuring and the activi-
17 ties of persons who act as, or are, officers, directors,
18 agents, or employees of insurers or who are other
19 persons authorized to act on behalf of such persons;

20 “(2) the term ‘insurer’ means any entity the
21 business activity of which is the writing of insurance
22 or the reinsuring of risks, and includes any person
23 who acts as, or is, an officer, director, agent, or em-
24 ployee of that business;

25 “(3) the term ‘interstate commerce’ means—

1 “(A) commerce within the District of Co-
2 lumbia, or any territory or possession of the
3 United States;

4 “(B) all commerce between any point in
5 the State, territory, possession, or the District
6 of Columbia and any point outside thereof;

7 “(C) all commerce between points within
8 the same State through any place outside such
9 State; or

10 “(D) all other commerce over which the
11 United States has jurisdiction; and

12 “(4) the term ‘State’ includes any State, the
13 District of Columbia, the Commonwealth of Puerto
14 Rico, the Northern Mariana Islands, the Virgin Is-
15 lands, American Samoa, and the Trust Territory of
16 the Pacific Islands.

17 **“§ 1034. Civil penalties and injunctions for violations**
18 **of section 1033**

19 “(a) The Attorney General may bring a civil action
20 in the appropriate United States district court against any
21 person who engages in conduct constituting an offense
22 under section 1033 and, upon proof of such conduct by
23 a preponderance of the evidence, such person shall be sub-
24 ject to a civil penalty of not more than \$50,000 for each
25 violation or the amount of compensation which the person

1 received or offered for the prohibited conduct, whichever
2 amount is greater. If the offense has contributed to the
3 decision of a court of appropriate jurisdiction to issue an
4 order directing the conservation, rehabilitation, or liquida-
5 tion of an insurer, such penalty shall be remitted to the
6 appropriate regulatory official for the benefit of the policy-
7 holders, claimants, and creditors of such insurer. The im-
8 position of a civil penalty under this subsection does not
9 preclude any other criminal or civil statutory, common
10 law, or administrative remedy, which is available by law
11 to the United States or any other person.

12 “(b) If the Attorney General has reason to believe
13 that a person is engaged in conduct constituting an of-
14 fense under section 1033, the Attorney General may peti-
15 tion an appropriate United States district court for an
16 order prohibiting that person from engaging in such con-
17 duct. The court may issue an order prohibiting that person
18 from engaging in such conduct if the court finds that the
19 conduct constitutes such an offense. The filing of a peti-
20 tion under this section does not preclude any other remedy
21 which is available by law to the United States or any other
22 person.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 47 of such title is amended by adding at the
25 end the following new items:

“1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.

“1034. Civil penalties and injunctions for violations of section 1033.”.

1 **SEC. 603. MISCELLANEOUS AMENDMENTS TO TITLE 18,**

2 **UNITED STATES CODE.**

3 (a) TAMPERING WITH INSURANCE REGULATORY

4 PROCEEDINGS.—Section 1515(a)(1) of title 18, United

5 States Code, is amended—

6 (1) by striking “or” at the end of subparagraph

7 (B);

8 (2) by inserting “or” at the end of subpara-

9 graph (C); and

10 (3) by adding at the end thereof the following

11 new subparagraph:

12 “(D) a proceeding involving the business of

13 insurance whose activities affect interstate com-

14 merce before any insurance regulatory official

15 or agency or any agent or examiner appointed

16 by such official or agency to examine the affairs

17 of any person engaged in the business of insur-

18 ance whose activities affect interstate com-

19 merce; or”.

20 (b) LIMITATIONS.—Section 3293 of such title is

21 amended by inserting “1033,” after “1014,”.

22 (c) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.—

23 Section 1510 of title 18, United States Code, is amended

24 by adding at the end the following new subsection:

1 “(d)(1) Whoever—

2 “(A) acting as, or being, an officer, director,
3 agent or employee of a person engaged in the busi-
4 ness of insurance whose activities affect interstate
5 commerce, or

6 “(B) is engaged in the business of insurance
7 whose activities affect interstate commerce or is in-
8 volved (other than as an insured or beneficiary
9 under a policy of insurance) in a transaction relating
10 to the conduct of affairs of such a business,

11 with intent to obstruct a judicial proceeding, directly or
12 indirectly notifies any other person about the existence or
13 contents of a subpoena for records of that person engaged
14 in such business or information that has been furnished
15 to a Federal grand jury in response to that subpoena, shall
16 be fined as provided by this title or imprisoned not more
17 than 5 years, or both.

18 “(2) As used in paragraph (1), the term ‘subpoena
19 for records’ means a Federal grand jury subpoena for
20 records that has been served relating to a violation of, or
21 a conspiracy to violate, section 1033 of this title.”.

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S 1619 IS—2

S 1619 IS—3

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S 1619 IS—5

S 1619 IS—6

S 1619 IS—7

S 1619 IS—8

S 1619 IS—9

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