

In the Senate of the United States,

July 25), 2002.

Resolved, That the bill from the House of Representatives (H.R. 3210) entitled “An Act to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Terrorism Risk Insur-*

3 *ance Act of 2002”.*

1 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

2 (a) *FINDINGS.*—*The Congress finds that—*

3 (1) *property and casualty insurance firms are*
4 *important financial institutions, the products of*
5 *which allow mutualization of risk and the efficient*
6 *use of financial resources and enhance the ability of*
7 *the economy to maintain stability, while responding*
8 *to a variety of economic, political, environmental,*
9 *and other risks with a minimum of disruption;*

10 (2) *the ability of businesses and individuals to*
11 *obtain property and casualty insurance at reasonable*
12 *and predictable prices, in order to spread the risk of*
13 *both routine and catastrophic loss, is critical to eco-*
14 *nomie growth, urban development, and the construc-*
15 *tion and maintenance of public and private housing,*
16 *as well as to the promotion of United States exports*
17 *and foreign trade in an increasingly interconnected*
18 *world;*

19 (3) *the ability of the insurance industry to cover*
20 *the unprecedented financial risks presented by poten-*
21 *tial acts of terrorism in the United States can be a*
22 *major factor in the recovery from terrorist attacks,*
23 *while maintaining the stability of the economy;*

24 (4) *widespread financial market uncertainties*
25 *have arisen following the terrorist attacks of Sep-*
26 *tember 11, 2001, including the absence of information*

1 *from which financial institutions can make statis-*
2 *tically valid estimates of the probability and cost of*
3 *future terrorist events, and therefore the size, funding,*
4 *and allocation of the risk of loss caused by such acts*
5 *of terrorism;*

6 *(5) a decision by property and casualty insurers*
7 *to deal with such uncertainties, either by terminating*
8 *property and casualty coverage for losses arising from*
9 *terrorist events, or by radically escalating premium*
10 *coverage to compensate for risks of loss that are not*
11 *readily predictable, could seriously hamper ongoing*
12 *and planned construction, property acquisition, and*
13 *other business projects, generate a dramatic increase*
14 *in rents, and otherwise suppress economic activity;*
15 *and*

16 *(6) the United States Government should provide*
17 *temporary financial compensation to insured parties,*
18 *contributing to the stabilization of the United States*
19 *economy in a time of national crisis, while the finan-*
20 *cial services industry develops the systems, mecha-*
21 *nisms, products, and programs necessary to create a*
22 *viable financial services market for private terrorism*
23 *risk insurance.*

24 *(b) PURPOSE.—The purpose of this Act is to establish*
25 *a temporary Federal program that provides for a trans-*

1 *parent system of shared public and private compensation*
 2 *for insured losses resulting from acts of terrorism, in order*
 3 *to—*

4 *(1) protect consumers by addressing market dis-*
 5 *ruptions and ensure the continued widespread avail-*
 6 *ability and affordability of property and casualty in-*
 7 *surance for terrorism risk; and*

8 *(2) allow for a transitional period for the private*
 9 *markets to stabilize, resume pricing of such insurance,*
 10 *and build capacity to absorb any future losses, while*
 11 *preserving State insurance regulation and consumer*
 12 *protections.*

13 **SEC. 3. DEFINITIONS.**

14 *In this Act, the following definitions shall apply:*

15 *(1) ACT OF TERRORISM.—*

16 *(A) CERTIFICATION.—The term “act of ter-*
 17 *rorism” means any act that is certified by the*
 18 *Secretary, in concurrence with the Secretary of*
 19 *State, and the Attorney General of the United*
 20 *States—*

21 *(i) to be a violent act or an act that*
 22 *is dangerous to—*

23 *(I) human life;*

24 *(II) property; or*

25 *(III) infrastructure;*

1 (ii) to have resulted in damage within
2 the United States, or outside the United
3 States in the case of an air carrier or vessel
4 described in paragraph (3)(A)(ii); and

5 (iii) to have been committed by an in-
6 dividual or individuals acting on behalf of
7 any foreign person or foreign interest, as
8 part of an effort to coerce the civilian popu-
9 lation of the United States or to influence
10 the policy or affect the conduct of the
11 United States Government by coercion.

12 (B) *LIMITATION.*—No act or event shall be
13 certified by the Secretary as an act of terrorism
14 if—

15 (i) the act or event is committed in the
16 course of a war declared by the Congress; or

17 (ii) losses resulting from the act or
18 event, in the aggregate, do not exceed
19 \$5,000,000.

20 (C) *DETERMINATIONS FINAL.*—Any certifi-
21 cation of, or determination not to certify, an act
22 or event as an act of terrorism under this para-
23 graph shall be final, and shall not be subject to
24 judicial review.

1 (2) *BUSINESS INTERRUPTION COVERAGE.*—The
2 term “business interruption coverage”—

3 (A) means coverage of losses for temporary
4 relocation expenses and ongoing expenses, includ-
5 ing ordinary wages, where—

6 (i) there is physical damage to the
7 business premises of such magnitude that
8 the business cannot open for business;

9 (ii) there is physical damage to other
10 property that totally prevents customers or
11 employees from gaining access to the busi-
12 ness premises; or

13 (iii) the Federal, State, or local govern-
14 ment shuts down an area due to physical or
15 environmental damage, thereby preventing
16 customers or employees from gaining access
17 to the business premises; and

18 (B) does not include lost profits, other than
19 in the case of a small business concern (as de-
20 fined in section 3 of the Small Business Act (15
21 U.S.C. 632) and applicable regulations there-
22 under) in any case described in clause (i), (ii),
23 or (iii) of subparagraph (A).

24 (3) *INSURED LOSS.*—The term “insured loss”—

1 (A) means any loss resulting from an act of
2 terrorism that is covered by primary property
3 and casualty insurance, including business
4 interruption coverage, issued by a participating
5 insurance company, if such loss—

6 (i) occurs within the United States; or

7 (ii) occurs to an air carrier (as defined
8 in section 40102 of title 49, United States
9 Code) or to a United States flag vessel (or
10 a vessel based principally in the United
11 States, on which United States income tax
12 is paid and whose insurance coverage is
13 subject to regulation in the United States),
14 regardless of where the loss occurs; and

15 (B) excludes coverage under any life or
16 health insurance.

17 (4) MARKET SHARE.—

18 (A) IN GENERAL.—The “market share” of a
19 participating insurance company shall be cal-
20 culated using the total amount of direct written
21 property and casualty insurance premiums for
22 the participating insurance company during the
23 2-year period preceding the year in which the
24 subject act of terrorism occurred (or during such
25 other period for which adequate data are avail-

1 able, as determined by the Secretary), as a per-
2 centage of the aggregate of all such property and
3 casualty insurance premiums industry-wide dur-
4 ing that period.

5 (B) *ADJUSTMENTS.*—*The Secretary may*
6 *adjust the market share of a participating insur-*
7 *ance company under subparagraph (A), as nec-*
8 *essary to reflect current market participation of*
9 *that participating insurance company.*

10 (5) *NAIC.*—*The term “NAIC” means the Na-*
11 *tional Association of Insurance Commissioners.*

12 (6) *PARTICIPATING INSURANCE COMPANY.*—*The*
13 *term “participating insurance company” means any*
14 *insurance company, including any subsidiary or af-*
15 *filiate thereof—*

16 (A) *that—*

17 (i) *is licensed or admitted to engage in*
18 *the business of providing primary insurance*
19 *in any State, and was so licensed or admit-*
20 *ted on September 11, 2001; or*

21 (ii) *is not licensed or admitted as de-*
22 *scribed in clause (i), if it is an eligible sur-*
23 *plus line carrier listed on the Quarterly*
24 *Listing of Alien Insurers of the NAIC, or*
25 *any successor thereto;*

1 (B) that receives direct premiums for any
2 type of commercial property and casualty insur-
3 ance coverage or that, not later than 21 days
4 after the date of enactment of this Act, submits
5 written notification to the Secretary of its intent
6 to participate in the Program with regard to
7 personal lines of property and casualty insur-
8 ance; and

9 (C) that meets any other criteria that the
10 Secretary may reasonably prescribe.

11 (7) *PARTICIPATING INSURANCE COMPANY DE-*
12 *DUCTIBLE.*—The term “participating insurance com-
13 pany deductible” means—

14 (A) a participating insurance company’s
15 market share, multiplied by \$10,000,000,000,
16 with respect to insured losses resulting from an
17 act of terrorism occurring during the 1-year pe-
18 riod beginning on the date of enactment of this
19 Act; and

20 (B) a participating insurance company’s
21 market share, multiplied by \$15,000,000,000,
22 with respect to insured losses resulting from an
23 act of terrorism occurring during the 1-year pe-
24 riod beginning on the day after the date of expi-
25 ration of the period described in subparagraph

1 (A), if the Program is extended in accordance
2 with section 6.

3 (8) *PERSON*.—The term “person” means any in-
4 dividual, business or nonprofit entity (including those
5 organized in the form of a partnership, limited liabil-
6 ity company, corporation, or association), trust or es-
7 tate, or a State or political subdivision of a State or
8 other governmental unit.

9 (9) *PROGRAM*.—The term “Program” means the
10 Terrorism Insured Loss Shared Compensation Pro-
11 gram established by this Act.

12 (10) *PROPERTY AND CASUALTY INSURANCE*.—
13 The term “property and casualty insurance”—

14 (A) means commercial lines of property and
15 casualty insurance, including workers’ com-
16 pensation insurance;

17 (B) includes personal lines of property and
18 casualty insurance, if a notification is made in
19 accordance with paragraph (6)(B); and

20 (C) does not include—

21 (i) Federal crop insurance issued or re-
22 insured under the Federal Crop Insurance
23 Act (7 U.S.C. 1501 et seq.);

24 (ii) private mortgage insurance, as
25 that term is defined in section 2 of the

1 *Homeowners Protection Act of 1998 (12*
2 *U.S.C. 4901); or*

3 *(iii) financial guaranty insurance.*

4 (11) *SECRETARY.*—*The term “Secretary” means*
5 *the Secretary of the Treasury.*

6 (12) *STATE.*—*The term “State” means any*
7 *State of the United States, the District of Columbia,*
8 *the Commonwealth of Puerto Rico, the Commonwealth*
9 *of the Northern Mariana Islands, American Samoa,*
10 *Guam, and each of the United States Virgin Islands.*

11 (13) *UNITED STATES.*—*The term “United*
12 *States” means the several States, and includes the ter-*
13 *ritorial sea of the United States.*

14 (14) *RULE OF CONSTRUCTION FOR DATES.*—
15 *With respect to any reference to a date in this Act,*
16 *such day shall be construed—*

17 *(A) to begin at 12:01 a.m. on that date; and*

18 *(B) to end at midnight on that date.*

19 **SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSA-**
20 **TION PROGRAM.**

21 (a) *ESTABLISHMENT OF PROGRAM.*—

22 (1) *IN GENERAL.*—*There is established in the De-*
23 *partment of the Treasury the Terrorism Insured Loss*
24 *Shared Compensation Program.*

1 (2) *AUTHORITY OF THE SECRETARY.*—*Notwith-*
2 *standing any other provision of State or Federal law,*
3 *the Secretary shall administer the Program, and shall*
4 *pay the Federal share of compensation for insured*
5 *losses in accordance with subsection (e).*

6 (b) *CONDITIONS FOR FEDERAL PAYMENTS.*—*No pay-*
7 *ment may be made by the Secretary under subsection (e),*
8 *unless—*

9 (1) *a person that suffers an insured loss, or a*
10 *person acting on behalf of that person, files a claim*
11 *with a participating insurance company;*

12 (2) *the participating insurance company pro-*
13 *vides clear and conspicuous disclosure to the policy-*
14 *holder of the premium charged for insured losses cov-*
15 *ered by the Program and the Federal share of com-*
16 *penetration for insured losses under the Program—*

17 (A) *in the case of any policy covering an*
18 *insured loss that is issued on or after the date*
19 *of enactment of this Act, on a separate line item*
20 *in the policy, at the time of offer, purchase, and*
21 *renewal of the policy; and*

22 (B) *in the case of any policy that is issued*
23 *before the date of enactment of this Act, as a line*
24 *item described in subparagraph (A), not later*
25 *than 90 days after that date of enactment;*

1 (3) *the participating insurance company proc-*
 2 *esses the claim for the insured loss in accordance with*
 3 *its standard business practices, and any reasonable*
 4 *procedures that the Secretary may prescribe; and*

5 (4) *the participating insurance company sub-*
 6 *mits to the Secretary, in accordance with such reason-*
 7 *able procedures as the Secretary may establish—*

8 (A) *a claim for payment of the Federal*
 9 *share of compensation for insured losses under*
 10 *the Program;*

11 (B) *written verification and certification—*

12 (i) *of the underlying claim; and*

13 (ii) *of all payments made for insured*
 14 *losses; and*

15 (C) *certification of its compliance with the*
 16 *provisions of this subsection.*

17 (c) *MANDATORY PARTICIPATION; MANDATORY AVAIL-*
 18 *ABILITY.—Each insurance company that meets the defini-*
 19 *tion of a participating insurance company under section*
 20 *3—*

21 (1) *shall participate in the Program;*

22 (2) *shall make available in all of its property*
 23 *and casualty insurance policies (in all of its partici-*
 24 *parting lines), coverage for insured losses; and*

1 (3) shall make available property and casualty
2 insurance coverage for insured losses that does not
3 differ materially from the terms, amounts, and other
4 coverage limitations applicable to losses arising from
5 events other than acts of terrorism.

6 (d) *PARTICIPATION BY SELF INSURED ENTITIES.*—

7 (1) *DETERMINATION BY THE SECRETARY.*—The
8 Secretary may, in consultation with the NAIC, estab-
9 lish procedures to allow participation in the Program
10 by municipalities and other governmental or quasi-
11 governmental entities (and by any other entity, as the
12 Secretary deems appropriate) operating through self
13 insurance arrangements that were in existence on
14 September 11, 2001, but only if the Secretary makes
15 a determination with regard to participation by any
16 such entity before the occurrence of an act of ter-
17 rorism in which the entity incurs an insured loss.

18 (2) *PARTICIPATION.*—If the Secretary makes a
19 determination to allow an entity described in para-
20 graph (1) to participate in the Program, all reports,
21 conditions, requirements, and standards established
22 by this Act for participating insurance companies
23 shall apply to any such entity, as determined to be
24 appropriate by the Secretary.

25 (e) *SHARED INSURANCE LOSS COVERAGE.*—

1 (1) *FEDERAL SHARE.*—

2 (A) *IN GENERAL.*—Subject to the cap on li-
3 ability under paragraph (2) and the limitation
4 under paragraph (6), the Federal share of com-
5 pensation under the Program to be paid by the
6 Secretary for insured losses resulting from an act
7 of terrorism occurring during the 1-year period
8 beginning on the date of enactment of this Act—

9 (i) shall be equal to 80 percent of that
10 portion of the amount of aggregate insured
11 losses that—

12 (I) exceeds the participating in-
13 surance company deductibles required
14 to be paid for those insured losses; and

15 (II) does not exceed
16 \$10,000,000,000; and

17 (ii) shall be equal to 90 percent of that
18 portion of the amount of aggregate insured
19 losses that—

20 (I) exceeds the participating in-
21 surance company deductibles required
22 to be paid for those insured losses; and

23 (II) exceeds \$10,000,000,000.

24 (B) *EXTENSION PERIOD.*—If the Program is
25 extended in accordance with section 6, the Fed-

1 *eral share of compensation under the Program to*
2 *be paid by the Secretary for insured losses result-*
3 *ing from an act of terrorism occurring during*
4 *the 1-year period beginning on the day after the*
5 *date of expiration of the period described in sub-*
6 *paragraph (A), shall be calculated in accordance*
7 *with clauses (i) and (ii) of subparagraph (A),*
8 *subject to the cap on liability in paragraph (2)*
9 *and the limitation under paragraph (6).*

10 *(C) PRO RATA SHARE.—If, during the pe-*
11 *riod described in subparagraph (A) (or during*
12 *the period described in subparagraph (B), if the*
13 *Program is extended in accordance with section*
14 *6), the aggregate insured losses for that period*
15 *exceed \$10,000,000,000, the Secretary shall deter-*
16 *mine the pro rata share for each participating*
17 *insurance company of the Federal share of com-*
18 *penetration for insured losses calculated under*
19 *subparagraph (A).*

20 *(D) PROHIBITION ON DUPLICATIVE COM-*
21 *PENSATION.—The Federal share of compensation*
22 *for insured losses under the Program shall be re-*
23 *duced by the amount of compensation provided*
24 *by the Federal Government for those insured*

1 *losses under any other Federal insurance or rein-*
2 *surance program.*

3 (2) *CAP ON ANNUAL LIABILITY.*—*Notwith-*
4 *standing paragraph (1), or any other provision of*
5 *Federal or State law, if the aggregate insured losses*
6 *exceed \$100,000,000,000 during any period referred to*
7 *in subparagraph (A) or (B) of paragraph (1)—*

8 *(A) the Secretary shall not make any pay-*
9 *ment under this Act for any portion of the*
10 *amount of such losses that exceeds*
11 *\$100,000,000,000; and*

12 *(B) participating insurance companies*
13 *shall not be liable for the payment of any por-*
14 *tion of the amount that exceeds*
15 *\$100,000,000,000.*

16 (3) *NOTICE TO CONGRESS.*—*The Secretary shall*
17 *notify the Congress if estimated or actual aggregate*
18 *insured losses exceed \$100,000,000,000 in any period*
19 *described in paragraph (1), and the Congress shall de-*
20 *termine the procedures for and the source of any such*
21 *excess payments.*

22 (4) *FINAL NETTING.*—*The Secretary shall have*
23 *sole discretion to determine the time at which claims*
24 *relating to any insured loss or act of terrorism shall*
25 *become final.*

1 (5) *DETERMINATIONS FINAL.*—Any determina-
2 tion of the Secretary under this subsection shall be
3 final, and shall not be subject to judicial review.

4 (6) *IN-FORCE REINSURANCE AGREEMENTS.*—For
5 policies covered by reinsurance contracts in force on
6 the date of enactment of this Act, until the in-force re-
7 insurance contract is renewed, amended, or has
8 reached its 1-year anniversary date, any Federal
9 share of compensation due to a participating insur-
10 ance company for insured losses during the effective
11 period of the Program shall be shared—

12 (A) with all reinsurance companies to
13 which the participating insurance company has
14 ceded some share of the insured loss pursuant to
15 an in-force reinsurance contract; and

16 (B) in a manner that distributes the Fed-
17 eral share of compensation for insured losses be-
18 tween the participating insurance company and
19 the reinsurance company or companies in the
20 same proportion as the insured losses would have
21 been distributed if the Program did not exist.

1 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**
2 **CLAIMS.**

3 (a) *GENERAL AUTHORITY.*—*The Secretary shall have*
4 *the powers and authorities necessary to carry out the Pro-*
5 *gram, including authority—*

6 (1) *to investigate and audit all claims under the*
7 *Program; and*

8 (2) *to prescribe regulations and procedures to*
9 *implement the Program.*

10 (b) *INTERIM RULES AND PROCEDURES.*—*The Sec-*
11 *retary shall issue interim final rules or procedures speci-*
12 *fying the manner in which—*

13 (1) *participating insurance companies may file,*
14 *verify, and certify claims under the Program;*

15 (2) *the Secretary shall publish or otherwise pub-*
16 *licly announce the applicable percentage of insured*
17 *losses that is the responsibility of participating insur-*
18 *ance companies and the percentage that is the respon-*
19 *sibility of the Federal Government under the Pro-*
20 *gram;*

21 (3) *the Federal share of compensation for insured*
22 *losses will be paid under the Program, including pay-*
23 *ments based on estimates of or actual aggregate in-*
24 *sured losses;*

25 (4) *the Secretary may, at any time, seek repay-*
26 *ment from or reimburse any participating insurance*

1 *company, based on estimates of insured losses under*
2 *the Program, to effectuate the insured loss sharing*
3 *provisions contained in section 4;*

4 *(5) each participating insurance company that*
5 *incurs insured losses shall pay its pro rata share of*
6 *insured losses, in accordance with section 4; and*

7 *(6) the Secretary will determine any final net-*
8 *ting of payments for actual insured losses under the*
9 *Program, including payments owed to the Federal*
10 *Government from any participating insurance com-*
11 *pany and any Federal share of compensation for in-*
12 *sured losses owed to any participating insurance com-*
13 *pany, to effectuate the insured loss sharing provisions*
14 *contained in section 4.*

15 *(c) SUBROGATION RIGHTS.—The United States shall*
16 *have the right of subrogation with respect to any payment*
17 *made by the United States under the Program.*

18 *(d) CONTRACTS FOR SERVICES.—The Secretary may*
19 *employ persons or contract for services as may be necessary*
20 *to implement the Program.*

21 *(e) CIVIL PENALTIES.—The Secretary may assess civil*
22 *money penalties for violations of this Act or any rule, regu-*
23 *lation, or order issued by the Secretary under this Act relat-*
24 *ing to the submission of false or misleading information*
25 *for purposes of the Program, or any failure to repay any*

1 amount required to be reimbursed under regulations or pro-
2 cedures described in section 5(b). The authority granted
3 under this subsection shall continue during any period in
4 which the Secretary's authority under section 6(d) is in ef-
5 fect.

6 **SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EX-**
7 **TENSION.**

8 (a) *TERMINATION OF PROGRAM.*—

9 (1) *IN GENERAL.*—*The Program shall terminate*
10 *1 year after the date of enactment of this Act, unless*
11 *the Secretary—*

12 (A) *determines, after considering the report*
13 *and finding required by this section, that the*
14 *Program should be extended for one additional*
15 *year, beginning on the day after the date of expi-*
16 *ration of the initial 1-year period of the Pro-*
17 *gram; and*

18 (B) *promptly notifies the Congress of such*
19 *determination and the reasons therefor.*

20 (2) *DETERMINATION FINAL.*—*The determination*
21 *of the Secretary under paragraph (1) shall be final,*
22 *and shall not be subject to judicial review.*

23 (3) *TERMINATION AFTER EXTENSION.*—*If the*
24 *Program is extended under paragraph (1), the Pro-*

1 *gram shall terminate 1 year after the date of com-*
2 *mencement of such extension period.*

3 *(b) REPORT TO CONGRESS.—Not later than 9 months*
4 *after the date of enactment of this Act, the Secretary shall*
5 *submit a report to Congress—*

6 *(1) regarding—*

7 *(A) the availability of insurance coverage*
8 *for acts of terrorism;*

9 *(B) the affordability of such coverage, in-*
10 *cluding the effect of such coverage on premiums;*
11 *and*

12 *(C) the capacity of the insurance industry*
13 *to absorb future losses resulting from acts of ter-*
14 *rorism, taking into account the profitability of*
15 *the insurance industry; and*

16 *(2) that considers—*

17 *(A) the impact of the Program on each of*
18 *the factors described in paragraph (1); and*

19 *(B) the probable impact on such factors and*
20 *on the United States economy if the Program*
21 *terminates 1 year after the date of enactment of*
22 *this Act.*

23 *(c) FINDING REQUIRED.—A determination under sub-*
24 *section (a) to extend the Program shall be based on a find-*
25 *ing by the Secretary that—*

1 (1) *widespread market uncertainties con-*
2 *tinue to disrupt the ability of insurance compa-*
3 *nies to price insurance coverage for losses result-*
4 *ing from acts of terrorism, thereby resulting in*
5 *the continuing unavailability of affordable in-*
6 *surance for consumers; and*

7 (2) *extending the Program for an addi-*
8 *tional year would likely encourage economic sta-*
9 *bilization and facilitate a transition to a viable*
10 *market for private terrorism risk insurance.*

11 (d) *CONTINUING AUTHORITY TO PAY OR ADJUST COM-*
12 *PENSATION.—Following the termination of the Program*
13 *under subsection (a), the Secretary may take such actions*
14 *as may be necessary to ensure payment, reimbursement, or*
15 *adjustment of compensation for insured losses arising out*
16 *of any act of terrorism occurring during the period in*
17 *which the Program was in effect under this Act, in accord-*
18 *ance with the provisions of section 4 and regulations pro-*
19 *mulgated thereunder.*

20 (e) *REPEAL; SAVINGS CLAUSE.—This Act is repealed*
21 *at midnight on the final termination date of the Program*
22 *under subsection (a), except that such repeal shall not be*
23 *construed—*

24 (1) *to prevent the Secretary from taking, or*
25 *causing to be taken, such actions under subsection (d)*

1 of this section and sections 4(e)(4), 4(e)(5), 5(a)(1),
2 5(c), 5(d), and 5(e) (as in effect on the day before the
3 date of such repeal), and applicable regulations pro-
4 mulgated thereunder, during any period in which the
5 authority of the Secretary under subsection (d) of this
6 section is in effect; or

7 (2) to prevent the availability of funding under
8 section 9(b) during any period in which the authority
9 of the Secretary under subsection (d) of this section
10 is in effect.

11 (f) *SENSE OF THE CONGRESS.*—It is the sense of the
12 Congress that the Secretary should make any determination
13 under subsection (a) in sufficient time to enable partici-
14 pating insurance companies to include coverage for acts of
15 terrorism in their policies for the second year of the Pro-
16 gram, if the Program is extended in accordance with this
17 section.

18 (g) *STUDY AND REPORT ON SCOPE OF THE PRO-*
19 *GRAM.*—

20 (1) *STUDY.*—The Secretary, after consultation
21 with the NAIC, representatives of the insurance in-
22 dustry, and other experts in the insurance field, shall
23 conduct a study of the potential effects of acts of ter-
24 rorism on the availability of life insurance and other
25 lines of insurance coverage.

1 (2) *REPORT.*—Not later than 9 months after the
2 date of enactment of this Act, the Secretary shall sub-
3 mit a report to the Congress on the results of the
4 study conducted under paragraph (1).

5 (h) *REPORTS REGARDING TERRORISM RISK INSUR-*
6 *ANCE PREMIUMS.*—

7 (1) *REPORT TO THE NAIC.*—Beginning 6 months
8 after the date of enactment of this Act, and every 6
9 months thereafter, each participating insurance com-
10 pany shall submit a report to the NAIC that states
11 the premium rates charged by that participating in-
12 surance company during the preceding 6-month pe-
13 riod for insured losses covered by the Program, and
14 includes an explanation of and justification for those
15 rates.

16 (2) *REPORTS FORWARDED.*—The NAIC shall
17 promptly forward copies of each report submitted
18 under paragraph (1) to the Secretary, the Secretary
19 of Commerce, the Chairman of the Federal Trade
20 Commission, and the Comptroller General of the
21 United States.

22 (3) *AGENCY REPORTS TO CONGRESS.*—

23 (A) *IN GENERAL.*—The Secretary, the Sec-
24 retary of Commerce, and the Chairman of the
25 Federal Trade Commission shall submit joint re-

1 ports to Congress and the Comptroller General of
2 the United States summarizing and evaluating
3 the reports forwarded under paragraph (2).

4 (B) *TIMING.*—The reports required under
5 subparagraph (A) shall be submitted—

6 (i) 9 months after the date of enact-
7 ment of this Act; and

8 (ii) 12 months after the date of submis-
9 sion of the first report under clause (i).

10 (4) *GAO EVALUATION AND REPORT.*—

11 (A) *EVALUATION.*—The Comptroller Gen-
12 eral of the United States shall evaluate each re-
13 port submitted under paragraph (3), and upon
14 request, the Secretary, the Secretary of Com-
15 merce, the Chairman of the Federal Trade Com-
16 mission, and the NAIC shall provide to the
17 Comptroller all documents, records, and any
18 other information that the Comptroller deems
19 necessary to carry out such evaluation.

20 (B) *REPORT TO CONGRESS.*—Not later than
21 90 days after receipt of each report submitted
22 under paragraph (3), the Comptroller General of
23 the United States shall submit to Congress a re-
24 port of the evaluation required by subparagraph
25 (A).

1 **SEC. 7. PRESERVATION OF STATE LAW.**

2 *Nothing in this Act shall affect the jurisdiction or regu-*
3 *latory authority of the insurance commissioner (or any*
4 *agency or office performing like functions) of any State over*
5 *any participating insurance company or other person—*

6 *(1) except as specifically provided in this Act;*

7 *and*

8 *(2) except that—*

9 *(A) the definition of the term “act of ter-*
10 *rorism” in section 3 shall be the exclusive defini-*
11 *tion of that term for purposes of compensation*
12 *for insured losses under this Act, and shall pre-*
13 *empt any provision of State law that is incon-*
14 *sistent with that definition, to the extent that*
15 *such provision of law would otherwise apply to*
16 *any type of insurance covered by this Act;*

17 *(B) during the period beginning on the date*
18 *of enactment of this Act and ending at midnight*
19 *on December 31, 2002, rates for terrorism risk*
20 *insurance covered by this Act and filed with any*
21 *State shall not be subject to prior approval or a*
22 *waiting period, under any law of a State that*
23 *would otherwise be applicable, except that noth-*
24 *ing in this Act affects the ability of any State*
25 *to invalidate a rate as excessive, inadequate, or*
26 *unfairly discriminatory; and*

1 (C) during the period beginning on the date
2 of enactment of this Act and for so long as the
3 Program is in effect, as provided in section 6
4 (including any period during which the author-
5 ity of the Secretary under section 6(d) is in ef-
6 fect), books and records of any participating in-
7 surance company that are relevant to the Pro-
8 gram shall be provided, or caused to be provided,
9 to the Secretary or the designee of the Secretary,
10 upon request by the Secretary or such designee,
11 notwithstanding any provision of the laws of
12 any State prohibiting or limiting such access.

13 **SEC. 8. SENSE OF THE CONGRESS REGARDING CAPACITY**
14 **BUILDING.**

15 It is the sense of the Congress that the insurance indus-
16 try should build capacity and aggregate risk to provide af-
17 fordable property and casualty insurance coverage for ter-
18 rorism risk.

19 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS; PAYMENT**
20 **AUTHORITY.**

21 (a) *ADMINISTRATIVE EXPENSES.*—There are author-
22 ized to be appropriated to the Secretary, out of funds in
23 the Treasury not otherwise appropriated, such sums as may
24 be necessary for administrative expenses of the Program,
25 to remain available until expended.

1 (b) *PAYMENT AUTHORITY.*—*This Act constitutes pay-*
2 *ment authority in advance of appropriation Acts, and rep-*
3 *resents the obligation of the Federal Government to provide*
4 *for the Federal share of compensation for insured losses*
5 *under the Program.*

6 **SEC. 10. PROCEDURES FOR CIVIL ACTIONS.**

7 (a) *FEDERAL CAUSE OF ACTION.*—

8 (1) *IN GENERAL.*—*There shall exist a Federal*
9 *cause of action for property damage, personal injury,*
10 *or death arising out of or resulting from an act of ter-*
11 *rorism, which shall be the exclusive cause of action*
12 *and remedy for claims for such property damage, per-*
13 *sonal injury, or death, except as provided in sub-*
14 *section (d).*

15 (2) *PREEMPTION OF STATE ACTIONS.*—*All State*
16 *causes of action of any kind for property damage,*
17 *personal injury, or death arising out of or resulting*
18 *from an act of terrorism that are otherwise available*
19 *under State law, are hereby preempted, except as pro-*
20 *vided in subsection (d).*

21 (b) *GOVERNING LAW.*—*The substantive law for deci-*
22 *sion in an action described in subsection (a)(1) shall be de-*
23 *ived from the law, including applicable choice of law prin-*
24 *ciples, of the State in which the act of terrorism giving rise*
25 *to the action occurred, except to the extent that—*

1 (1) *the law, including choice of law principles,*
2 *of another State is determined to be applicable to the*
3 *action by the district court hearing the action; or*

4 (2) *otherwise applicable State law (including*
5 *that determined pursuant to paragraph (1), is incon-*
6 *sistent with or otherwise preempted by Federal law.*

7 (c) *PUNITIVE DAMAGES.—Any amounts awarded in a*
8 *civil action described in subsection (a)(1) that are attrib-*
9 *utable to punitive damages shall not count as insured losses*
10 *for purposes of this Act.*

11 (d) *CLAIMS AGAINST TERRORISTS.—Nothing in this*
12 *section shall in any way be construed to limit the ability*
13 *of any plaintiff to seek any form of recovery from any per-*
14 *son, government, or other entity that was a participant in,*
15 *or aider and abettor of, any act of terrorism.*

16 (e) *EFFECTIVE PERIOD.—This section shall apply only*
17 *to actions described in subsection (a)(1) arising out of or*
18 *resulting from acts of terrorism that occur during the effec-*
19 *tive period of the Program, including, if applicable, any*
20 *extension period provided for under section 6.*

1 **SEC. 11. SATISFACTION OF JUDGMENTS FROM FROZEN AS-**
2 **SETS OF TERRORISTS, TERRORIST ORGANIZA-**
3 **TIONS, AND STATE SPONSORS OF TER-**
4 **RORISM.**

5 (a) *IN GENERAL.*—Notwithstanding any other provi-
6 sion of law, and except as provided in subsection (b), in
7 every case in which a person has obtained a judgment
8 against a terrorist party on a claim based upon an act
9 of terrorism or for which a terrorist party is not immune
10 under section 1605(a)(7) of title 28, United States Code,
11 the blocked assets of that terrorist party (including the
12 blocked assets of any agency or instrumentality of that ter-
13 rorist party) shall be subject to execution or attachment in
14 aid of execution in order to satisfy such judgment to the
15 extent of any compensatory damages for which such ter-
16 rorist party has been adjudged liable.

17 (b) *PRESIDENTIAL WAIVER.*—

18 (1) *IN GENERAL.*—Subject to paragraph (2),
19 upon determining on an asset-by-asset basis that a
20 waiver is necessary in the national security interest,
21 the President may waive the requirements of sub-
22 section (a) in connection with (and prior to the en-
23 forcement of) any judicial order directing attachment
24 in aid of execution or execution against any property
25 subject to the Vienna Convention on Diplomatic Rela-

1 *tions or the Vienna Convention on Consular Rela-*
2 *tions.*

3 (2) *EXCEPTION.—A waiver under this subsection*
4 *shall not apply to—*

5 (A) *property subject to the Vienna Conven-*
6 *tion on Diplomatic Relations or the Vienna Con-*
7 *vention on Consular Relations that has been used*
8 *by the United States for any nondiplomatic pur-*
9 *pose (including use as rental property), or the*
10 *proceeds of such use; or*

11 (B) *the proceeds of any sale or transfer for*
12 *value to a third party of any asset subject to the*
13 *Vienna Convention on Diplomatic Relations or*
14 *the Vienna Convention on Consular Relations.*

15 (c) *SPECIAL RULE FOR CASES AGAINST IRAN.—Sec-*
16 *tion 2002 of the Victims of Trafficking and Violence Protec-*
17 *tion Act of 2000 (Public Law 106–386; 114 Stat. 1542) is*
18 *amended—*

19 (1) *in subsection (a)(2)(A)(ii), by inserting after*
20 *“July 27, 2000” the following: “or before October 28,*
21 *2000,”;*

22 (2) *in subsection (b)(2)(B), by inserting after*
23 *“the date of enactment of this Act” the following:*
24 *“(less amounts therein as to which the United States*
25 *has an interest in subrogation pursuant to subsection*

1 (c) arising prior to the date of entry of the judgment
2 or judgments to be satisfied in whole or in part here-
3 under).”;

4 (3) by redesignating subsections (d), (e), and (f)
5 as subsections (e), (f), and (g), respectively; and

6 (4) by inserting after subsection (c) the following
7 new subsection (d):

8 “(d) *DISTRIBUTION OF FOREIGN MILITARY SALES*
9 *FUNDS INADEQUATE TO SATISFY FULL AMOUNT OF COM-*
10 *PENSATORY AWARDS AGAINST IRAN.—*

11 “(1)(A) *In the event that the Secretary deter-*
12 *mines that the amounts available to be paid under*
13 *subsection (b)(2) are inadequate to pay the entire*
14 *amount of compensatory damages awarded in judg-*
15 *ments issued as of the date of the enactment of this*
16 *subsection in cases identified in subsection (a)(2)(A),*
17 *the Secretary shall, not later than 60 days after such*
18 *date, make payment from the account specified in*
19 *subsection (b)(2) to each party to which such judg-*
20 *ment has been issued a share of the amounts in that*
21 *account which are not subject to subrogation to the*
22 *United States under this Act.*

23 “(B) *The amount so paid to each such person*
24 *shall be calculated by the proportion that the amount*
25 *of compensatory damages awarded in a judgment*

1 *issued to that particular person bears to the total*
2 *amount of all compensatory damages awarded to all*
3 *persons to whom judgments have been issued in cases*
4 *identified in subsection (a)(2)(A) as of the date re-*
5 *ferred to in subparagraph (A).*

6 *“(2) Nothing herein shall bar, or require delay*
7 *in, enforcement of any judgment to which this sub-*
8 *section applies under any procedure or against assets*
9 *otherwise available under this section or under any*
10 *other provision of law.*

11 *“(3) Any person receiving less than the full*
12 *amount of compensatory damages awarded to that*
13 *party in judgments to which this subsection applies*
14 *shall not be required to make the election set forth in*
15 *subsection (a)(2)(C) in order to qualify for payment*
16 *hereunder.”.*

17 *(d) DEFINITIONS.—In this section:*

18 *(1) The term “terrorist party” means a terrorist,*
19 *a terrorist organization, or a foreign state designated*
20 *as a state sponsor of terrorism under section 6(j) of*
21 *the Export Administration Act of 1979 (50 U.S.C.*
22 *App. 2405(j)) or section 620A of the Foreign Assist-*
23 *ance Act of 1961 (22 U.S.C. 2371).*

24 *(2) The term “blocked asset” means any asset*
25 *seized or frozen by the United States in accordance*

1 *with law, or otherwise held by the United States with-*
2 *out claim of ownership by the United States.*

3 (3) *The term “property subject to the Vienna*
4 *Convention on Diplomatic Relations or the Vienna*
5 *Convention on Consular Relations” and the term*
6 *“asset subject to the Vienna Convention on Diplo-*
7 *matic Relations or the Vienna Convention on Con-*
8 *sular Relations” mean any property or asset, respec-*
9 *tively, the attachment in aid of execution or execution*
10 *of which would result in a violation of an obligation*
11 *of the United States under the Vienna Convention on*
12 *Diplomatic Relations or the Vienna Convention on*
13 *Consular Relations, as the case may be.*

Attest:

Secretary.

107TH CONGRESS
2D SESSION

H. R. 3210

AMENDMENT