

107TH CONGRESS
1ST SESSION

H. R. 3210

To ensure the continued financial capacity of insurers to provide coverage
for risks from terrorism.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2001

Mr. OXLEY (for himself, Mr. BAKER, Mrs. ROUKEMA, Mr. BACHUS, Mrs. KELLY, Mr. BENTSEN, Mr. ROYCE, Mr. MALONEY of Connecticut, Mr. LUCAS of Oklahoma, Mr. POMEROY, Mr. NEY, Mr. BARR of Georgia, Mr. GILLMOR, Mr. WELDON of Florida, Mr. RYUN of Kansas, Mr. RILEY, Mr. JONES of North Carolina, Mr. OSE, Mrs. BIGGERT, Mr. GREEN of Wisconsin, Mr. SHAYS, Mr. SHADEGG, Mr. FOSSELLA, Mr. GARY G. MILLER of California, Mr. CANTOR, Mr. GRUCCI, Mr. FERGUSON, Mr. ROGERS of Michigan, Mr. TIBERI, Mr. FOLEY, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Ways and Means, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure the continued financial capacity of insurers to
provide coverage for risks from terrorism.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Terrorism Risk Protection Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Designation of Administrators.
- Sec. 4. Submission of premium information to Administrator.
- Sec. 5. Triggering determination and covered period.
- Sec. 6. Federal cost-sharing for commercial insurers.
- Sec. 7. Assessments.
- Sec. 8. Terrorism loss repayment surcharge.
- Sec. 9. Administration of assessments and surcharges.
- Sec. 10. Reserve for terrorism coverage under commercial lines of business.
- Sec. 11. State preemption.
- Sec. 12. Consistent State guidelines for coverage for acts of terrorism.
- Sec. 13. Consultation with State insurance regulators and NAIC.
- Sec. 14. Sovereign immunity protections.
- Sec. 15. Study of potential effects of terrorism on life insurance industry.
- Sec. 16. Definitions.
- Sec. 17. Extension of program.
- Sec. 18. Regulations.

3 **SEC. 2. CONGRESSIONAL FINDINGS.**

4 The Congress finds that—

- 5 (1) the terrorist attacks on the World Trade
 6 Center and the Pentagon of September 11, 2001, re-
 7 sulted in a large number of deaths and injuries, the
 8 destruction and damage to buildings, and interrup-
 9 tion of business operations;
- 10 (2) the attacks have inflicted possibly the larg-
 11 est losses ever incurred by insurers and reinsurers;
- 12 (3) while the insurance and reinsurance indus-
 13 tries have committed to pay the losses arising from
 14 the September 11 attacks, the resulting disruption
 15 has created widespread market uncertainties with re-
 16 gard to the risk of losses arising from possible fu-
 17 ture terrorist attacks;

1 (4) such uncertainty threatens the continued
2 availability of United States commercial property
3 casualty insurance for terrorism risk at meaningful
4 coverage levels;

5 (5) the unavailability of affordable commercial
6 property and casualty insurance for terrorist acts
7 threatens the growth and stability of the United
8 States economy, including impeding the ability of fi-
9 nancial services providers to finance commercial
10 property acquisitions and new construction;

11 (6) in the past, the private insurance markets
12 have shown a remarkable resiliency in adapting to
13 changed circumstances;

14 (7) given time, the private markets will diver-
15 sify and develop risk spreading mechanisms to in-
16 crease capacity and guard against possible future
17 losses incurred by terrorist attacks;

18 (8) it is necessary to create a temporary indus-
19 try risk sharing loan program to ensure the contin-
20 ued availability of commercial property and casualty
21 insurance and reinsurance for terrorism-related
22 risks;

23 (9) such action is necessary to limit immediate
24 market disruptions, encourage economic stabiliza-

1 tion, and facilitate a transition to a viable market
2 for private terrorism risk insurance; and

3 (10) in addition, it is necessary to repeal por-
4 tions of the tax law which prohibit the insurance
5 market from developing the necessary reserves to
6 handle possible future losses due to acts of ter-
7 rorism.

8 **SEC. 3. DESIGNATION OF ADMINISTRATORS.**

9 (a) IN GENERAL.—Not later than December 1, 2001,
10 the President shall designate a Federal officer or officers
11 to act as the Administrator or Administrators responsible
12 for carrying out this Act and the responsibilities under
13 this Act to be carried out by each such officer.

14 (b) SENSE OF CONGRESS.—It is the sense of the
15 Congress that in determining the Administrator respon-
16 sible for making any determinations, for purposes of this
17 Act, as to whether a loss was caused by an act of terrorism
18 and whether such loss was caused by one or multiple such
19 events, pursuant to section 5(b), the President should con-
20 sider the appropriate role of the Assistant to the President
21 for Homeland Security.

22 **SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO AD-**
23 **MINISTRATOR.**

24 To the extent such information is not otherwise avail-
25 able to the Administrators, the appropriate Administrator

1 may require each insurer to submit, to the appropriate Ad-
2 ministrator or to the NAIC, a statement specifying the
3 aggregate premium amount of coverage written by such
4 insurer for properties and persons in the United States
5 under each line of commercial property and casualty insur-
6 ance sold by such insurer during such periods as the ap-
7 propriate Administrator may provide.

8 **SEC. 5. TRIGGERING DETERMINATION AND COVERED PE-**
9 **RIOD.**

10 (a) IN GENERAL.—For purposes of this Act, a “trig-
11 gering determination” is a determination by the appro-
12 priate Administrator that the insured losses resulting from
13 the event of an act of terrorism occurring during the cov-
14 ered period (as such term is defined in subsection (b)),
15 or the aggregate insured losses resulting from multiple
16 events of acts of terrorism all occurring during the covered
17 period, meet the requirements under either of the fol-
18 lowing paragraphs:

19 (1) INDUSTRY-WIDE LOSS TEST.—Such indus-
20 try-wide losses exceed \$1,000,000,000.

21 (2) CAPITAL SURPLUS AND INDUSTRY AGGRE-
22 GATE TEST.—Such industry-wide losses exceed
23 \$100,000,000 and some portion of such losses for
24 any single commercial insurer exceed—

1 (A) 10 percent of the capital surplus of
2 such commercial insurer (as such term is de-
3 fined by the appropriate Administrator); and

4 (B) 10 percent of the commercial property
5 and casualty premiums written by such com-
6 mercial insurer;

7 except that this paragraph shall not apply to any
8 commercial insurer that has been making commer-
9 cial property and casualty insurance coverage avail-
10 able for less than 4 years as of the date of the deter-
11 mination under this subsection.

12 (b) COVERED PERIOD.—For purposes of this Act, the
13 “covered period” is the period beginning on the date of
14 the enactment of this Act and ending on January 1, 2003.

15 (c) DETERMINATIONS REGARDING EVENTS.—For
16 purposes of subsection (a), the appropriate Administrator
17 shall have the sole authority for determining whether—

18 (1) an occurrence or event was caused by an act
19 of terrorism;

20 (2) insured losses from acts of terrorism were
21 caused by one or multiple events or occurrences; and

22 (3) whether an act of terrorism occurred during
23 the covered period.

1 **SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSUR-**
2 **ERS.**

3 (a) IN GENERAL.—Pursuant to a triggering deter-
4 mination, the appropriate Administrator shall provide fi-
5 nancial assistance to commercial insurers in accordance
6 with this section to cover insured losses resulting from
7 acts of terrorism, which shall be repaid in accordance with
8 subsection (e).

9 (b) AMOUNT.—Subject to subsection (e), with respect
10 to a triggering determination, the amount of financial as-
11 sistance made available under this section to each com-
12 mercial insurer shall be equal to 90 percent of the amount
13 of the insured losses of the insurer as a result of the trig-
14 gering event involved.

15 (c) AGGREGATE LIMITATION.—The aggregate
16 amount of financial assistance provided pursuant to this
17 section may not exceed \$100,000,000,000.

18 (d) LIMITATIONS.—The appropriate Administrator
19 may establish such limitations as may be necessary to en-
20 sure that payments under this section in connection with
21 a triggering determination are made only to commercial
22 insurers that are not in default of any obligation under
23 section 7 to pay assessments or under section 8 to collect
24 surcharges.

25 (e) REPAYMENT.—Financial assistance made avail-
26 able under this section shall be repaid through assess-

1 ments under section 7 collected by the appropriate Admin-
2 istrator and surcharges remitted to the appropriate Ad-
3 ministrator under section 8. Any such amounts collected
4 or remitted shall be deposited into the general fund of the
5 Treasury.

6 (f) EMERGENCY DESIGNATION.—Congress des-
7 ignates the amount of new budget authority and outlays
8 in all fiscal years resulting from this section as an emer-
9 gency requirement pursuant to section 252(e) of the Bal-
10 anced Budget and Emergency Deficit Control Act of 1985
11 (2 U.S.C. 901(e)). Such amount shall be available only
12 to the extent that a request, that includes designation of
13 such amount as an emergency requirement as defined in
14 such Act, is transmitted by the President to Congress.

15 **SEC. 7. ASSESSMENTS.**

16 (a) IN GENERAL.—In the case of a triggering deter-
17 mination, each commercial insurer shall be subject to as-
18 sessments under this section for the purpose of repaying
19 financial assistance made available under section 6 in con-
20 nection with such determination.

21 (b) AGGREGATE ASSESSMENT.—Pursuant to a trig-
22 gering determination, the appropriate Administrator shall
23 determine the aggregate amount to be assessed among all
24 commercial insurers, which shall be equal to 90 percent
25 of the lesser of—

1 (1) the amount of industry-wide losses resulting
2 from the triggering event involved; and

3 (2) \$20,000,000,000.

4 (c) ALLOCATION OF ASSESSMENT.—

5 (1) IN GENERAL.—The appropriate Adminis-
6 trator shall allocate the aggregate assessment
7 amount determined under subsection (b) among all
8 commercial insurers. The portion of the aggregate
9 assessment amount that is allocated as an assess-
10 ment on each commercial insurer shall be based on
11 the percentage, written by that insurer, of the aggre-
12 gate written premium, for all commercial insurers,
13 for the calendar year preceding the assessment.

14 (2) PAYMENT REQUIREMENT.—Upon notifica-
15 tion by the appropriate Administrator of an assess-
16 ment under this section, each commercial insurer
17 shall be required to pay to the appropriate Adminis-
18 trator, in the manner provided under section 9 by
19 the appropriate Administrator, the amount equal to
20 the assessment on such commercial insurer (subject
21 to the limitation under paragraph (3)).

22 (3) ANNUAL LIMITATION ON AMOUNT ALLO-
23 CATED TO EACH COMMERCIAL INSURER.—

24 (A) IN GENERAL.—Of any assessments
25 under this section on a commercial insurer, the

1 portion required to be paid by any commercial
2 insurer during a calendar year shall not exceed
3 the amount that is equal to 3 percent of the ag-
4 gregate written premium for such insurer for
5 the preceding calendar year.

6 (B) MULTIPLE PAYMENTS.—If any
7 amounts required to be repaid under this sec-
8 tion for a calendar year are limited by operation
9 of subparagraph (A), the appropriate Adminis-
10 trator shall provide that all such remaining
11 amounts shall be reallocated among all commer-
12 cial insurers (in the manner provided in para-
13 graph (1)) over such immediately succeeding
14 calendar years, and repaid over such years, as
15 may be necessary to provide for full payment of
16 such remaining amounts, except that the limita-
17 tion under subparagraph (A) shall apply to the
18 amounts paid in any such successive calendar
19 years.

20 (C) ADMINISTRATIVE FLEXIBILITY.—

21 (i) TIMING OF ASSESSMENTS.—As-
22 sessments under this section in connection
23 with a triggering demonstration shall be
24 made, to the extent that the appropriate
25 Administrator considers practicable and

1 appropriate, at the beginning of the cal-
2 endar year immediately following the trig-
3 gering determination.

4 (ii) ESTIMATES AND CORRECTIONS.—

5 If the appropriate Administrator makes an
6 assessment at a time other than provided
7 under clause (i), the appropriate Adminis-
8 trator may—

9 (I) require commercial insurers
10 to estimate their aggregate written
11 premiums for the year in which the
12 assessment is made; and

13 (II) make a subsequent refund or
14 require additional payments to correct
15 such estimation at the end of the cal-
16 endar year.

17 (4) DEFERRAL OF CONTRIBUTIONS.—The ap-
18 propriate Administrator may defer the payment of
19 part or all of the assessment required under para-
20 graph (2) to be paid by a commercial insurer, but
21 only to the extent that the appropriate Adminis-
22 trator determines that such deferral is necessary to
23 avoid the likely insolvency of the commercial insurer.

1 **SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.**

2 (a) IMPOSITION AND COLLECTION.—If, pursuant to
3 a triggering determination, the appropriate Administrator
4 determines that the aggregate amount of industry-wide
5 losses resulting from the triggering event involved exceeds
6 \$20,000,000,000, the appropriate Administrator shall—

7 (1) establish and impose a policyholder pre-
8 mium surcharge, as provided under this section, on
9 commercial property and casualty insurance written
10 after such determination, for the purpose of repay-
11 ing financial assistance made available under section
12 6 in connection with such triggering determination;
13 and

14 (2) provide for commercial insurers to collect
15 such surcharge and remit amounts collected to the
16 appropriate Administrator.

17 (b) AMOUNT AND DURATION.—The surcharge under
18 this section shall be established in such amount, and shall
19 apply to commercial property and casualty insurance writ-
20 ten during such period, as the appropriate Administrator
21 determines is necessary to recover the aggregate amount
22 of financial assistance provided under section 6 to cover
23 insured losses resulting from the triggering event that ex-
24 ceed \$20,000,000,000.

25 (c) OTHER TERMS.—The surcharge under this sec-
26 tion shall—

1 (1) be based on a percentage of the amount of
 2 commercial property and casualty insurance cov-
 3 erage that a policy provides; and

4 (2) be imposed with respect to all commercial
 5 property and casualty insurance coverage written
 6 during the period referred to in subsection (b).

7 **SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SUR-**
 8 **CHARGES.**

9 (a) **MANNER AND METHOD.**—The appropriate Ad-
 10 ministrator shall provide for the manner and method of
 11 carrying out assessments under section 7 and surcharges
 12 under section 8, including the timing and procedures of
 13 making assessments and surcharges, notifying commercial
 14 insurers of assessments or surcharge requirements, col-
 15 lecting payments from and surcharges through commercial
 16 insurers, and refunding of any excess amounts paid or
 17 crediting such amounts against future assessments.

18 (b) **TIMING OF COVERAGES AND ASSESSMENTS.**—
 19 The appropriate Administrator may adjust the timing of
 20 coverages and assessments provided under this Act to pro-
 21 vide for equivalent application of the provisions of this Act
 22 to commercial insurers and policies that are not based on
 23 a calendar year.

24 (c) **APPLICATION TO SELF-INSURANCE ARRANGE-**
 25 **MENTS.**—The appropriate Administrator may, in con-

1 sultation with the NAIC, apply the provisions of this Act,
 2 as appropriate, to self-insurance arrangements by munici-
 3 palities and other entities, but only if such application is
 4 determined before the occurrence of a triggering event and
 5 all of the provisions of this Act are applied uniformly to
 6 such entities.

7 (d) ADJUSTMENT.—The appropriate Administrator
 8 may adjust the assessments charged under section 7 or
 9 the percentage imposed under the surcharge under section
 10 8 at any time, as the appropriate Administrator considers
 11 appropriate to protect the national interest, which may in-
 12 clude avoiding unreasonable economic disruption or exces-
 13 sive market instability.

14 **SEC. 10. RESERVE FOR TERRORISM COVERAGE UNDER**
 15 **COMMERCIAL LINES OF BUSINESS.**

16 (a) IN GENERAL.—Section 832 of the Internal Rev-
 17 enue Code of 1986 (relating to insurance company taxable
 18 income) is amended by adding at the end the following
 19 new subsection:

20 “(h) TERRORISM RESERVE FOR COMMERCIAL LINES
 21 OF BUSINESS.—In the case of an insurance company sub-
 22 ject to tax under section 831(a)—

23 “(1) INCLUSION FOR DECREASES, AND DEDUC-
 24 TION FOR INCREASES, IN BALANCE OF RESERVE.—

1 “(A) DECREASE TREATED AS GROSS IN-
2 COME.—If for any taxable year—

3 “(i) the opening balance for the ter-
4 rorism commercial business reserve exceeds

5 “(ii) the closing balance for such re-
6 serve,

7 such excess shall be included in gross income
8 under subsection (b)(1)(F).

9 “(B) INCREASE TREATED AS DEDUC-
10 TION.—If for any taxable year—

11 “(i) the closing balance for the ter-
12 rorism commercial business reserve exceeds

13 “(ii) the opening balance for such re-
14 serve,

15 such excess shall be taken into account as a de-
16 duction under subsection (c)(14).

17 “(2) TERRORISM COMMERCIAL BUSINESS RE-
18 SERVE.—For purposes of this section, the term ‘ter-
19 rorism commercial business reserve’ means amounts
20 held in a segregated account (or other separately
21 identifiable arrangement or account) which are set
22 aside exclusively—

23 “(A) to mature or liquidate, either by pay-
24 ment or reinsurance, future unaccrued claims

arising from declared terrorism losses under commercial lines of business, and

“(B) if so directed by the insurance commissioner of any State, to pay other claims as part of a plan of the company to avoid insolvency.

“(3) LIMITATION ON AMOUNT OF RESERVE.—

“(A) IN GENERAL.—If the closing balance of any terrorism commercial business reserve for any taxable year exceeds such reserve’s limit for such year—

“(i) such excess shall be included in gross income under subsection (b)(1)(F) for the following taxable year, and

“(ii) if such excess is distributed during such following taxable year, the opening balance of such reserve for such following taxable year shall be determined without regard to such excess.

“(B) RESERVE LIMIT.—

“(i) IN GENERAL.—For purposes of subparagraph (A), a reserve’s limit for any taxable year is such reserve’s allocable share of the national limit for the calendar year in which such taxable year begins.

1 “(ii) NATIONAL LIMIT.—The national
2 limit is \$40,000,000,000 (\$13,340,000,000
3 for 2002).

4 “(iii) ALLOCATION OF LIMIT.—

5 “(I) IN GENERAL.—A reserve’s
6 allocable share of the national limit
7 for any calendar year is the amount
8 which bears the same ratio to the na-
9 tional limit for such year as the com-
10 pany’s net written premiums for com-
11 mercial lines of business bears to such
12 net written premiums for all compa-
13 nies for commercial line of business.

14 “(II) EXCLUSION OF PREMIUMS
15 FOR INSURANCE NOT COVERING DE-
16 CLARED TERRORISM LOSSES AND FOR
17 REINSURANCE.—Subclause (I) shall
18 be applied without regard to pre-
19 miums for insurance which does not
20 cover declared terrorism losses and
21 premiums for reinsurance.

22 “(III) DETERMINATION OF NET
23 WRITTEN PREMIUMS.—Except as oth-
24 erwise provided in this section, all de-
25 terminations under this subsection

1 shall be made on the basis of the
2 amounts required to be set forth on
3 the annual statement approved by the
4 National Association of Insurance
5 Commissioners.

6 “(iv) INFLATION ADJUSTMENT OF
7 LIMIT.—In the case of any calendar year
8 after 2002, the \$40,000,000,000 amount
9 in clause (ii) shall be increased by an
10 amount equal to the product of—

11 “(I) such dollar amount, and
12 “(II) the cost-of-living adjust-
13 ment determined under subsection
14 (f)(3) for such calendar year, deter-
15 mined by substituting ‘calendar year
16 2001’ for ‘calendar year 1992’ in sub-
17 paragraph (B) thereof.

18 If any amount after adjustment under the
19 preceding sentence is not a multiple of
20 \$1,000,000, such amount shall be rounded
21 to the nearest multiple of \$1,000,000.

22 “(4) DECLARED TERRORISM LOSSES.—For pur-
23 poses of this subsection—

1 “(A) IN GENERAL.—The term ‘declared
2 terrorism losses’ means, with respect to a tax-
3 able year—

4 “(i) the amount of losses and loss ad-
5 justment expenses incurred in commercial
6 lines of business that are attributable to 1
7 or more declared terrorism events, plus

8 “(ii) any nonrecoverable assessments,
9 surcharges, or other liabilities that are
10 borne by the company and are attributable
11 to such events.

12 “(B) DECLARED TERRORISM EVENT.—The
13 term ‘declared terrorism event’ means any event
14 declared by the President to be an act of ter-
15 rorism against the United States for purposes
16 of this section.

17 “(5) REGULATIONS.—The Secretary shall pre-
18 scribe such regulations as may be appropriate to
19 carry out this subsection, and shall prescribe such
20 regulations after consultation with the National As-
21 sociation of Insurance Commissioners.”

22 (b) CONFORMING AMENDMENTS.—

23 (1) Paragraph (1) of section 832(b) of such
24 Code is amended by striking “and” at the end of
25 subparagraph (D), by striking the period at the end

1 of subparagraph (E) and inserting in lieu thereof “,
2 and”, and by adding at the end the following new
3 subparagraph:

4 “(F) each net decrease in reserves which is
5 required by paragraph (1) or (3) of subsection
6 (h) to be taken into account under this sub-
7 paragraph.”

8 (2) Subsection (c) of section 832 of such Code
9 is amended by striking “and” at the end of para-
10 graph (12), by striking the period at the end of
11 paragraph (13) and inserting in lieu thereof “; and”,
12 and by adding at the end the following new para-
13 graph:

14 “(14) each net increase in reserves which is re-
15 quired by subsection (h)(1) to be taken into account
16 under this paragraph.”

17 (c) EFFECTIVE DATE.—The amendments made by
18 this subsection shall apply to taxable years beginning after
19 December 31, 2001.

20 **SEC. 11. STATE PREEMPTION.**

21 (a) COVERED PERILS.—A commercial insurer shall
22 be considered to have complied with any State law that
23 requires or regulates the provision of insurance coverage
24 for acts of terrorism if the insurer provides coverage in

1 accordance with the definitions regarding acts of terrorism
2 under the regulations issued by the Administrators.

3 (b) RATE LAWS.—If any provision of any State law
4 prevents an insurer from increasing its premium rates in
5 an amount necessary to recover any assessments pursuant
6 to section 7, such provision is preempted only to the extent
7 necessary to provide for such insurer to recover such
8 losses.

9 (c) FILE AND USE.—With respect only to commercial
10 property and casualty insurance covering acts of ter-
11 rorism, any provision of State law that requires, as a con-
12 dition precedent to the effectiveness of rates or policies
13 for such insurance that is made available by an insurer
14 licensed to transact such business in the State, any action
15 (including prior approval by the State insurance regulator
16 for such State) other than filing of such rates and policies
17 and related information with such State insurance regu-
18 lator is preempted to the extent such law requires such
19 additional actions for such insurance coverage. This sub-
20 section shall not be considered to preempt a provision of
21 State law solely because the law provides that rates and
22 policies for such insurance coverage are, upon such filing,
23 subject to subsequent review and action, which may in-
24 clude actions to disapprove or discontinue use of such
25 rates or policies, by the State insurance regulator.

1 **SEC. 12. CONSISTENT STATE GUIDELINES FOR COVERAGE**
2 **FOR ACTS OF TERRORISM.**

3 (a) SENSE OF CONGRESS REGARDING COVERED
4 PERILS.—It is the sense of the Congress that—

5 (1) the NAIC, in consultation with the appro-
6 priate Administrator, should develop appropriate
7 definitions for acts of terrorism and appropriate
8 standards for making determinations regarding
9 events or occurrences of acts of terrorism;

10 (2) each State should adopt the definitions and
11 standards developed by the NAIC for purposes of
12 regulating insurance coverage made available in that
13 State;

14 (3) in consulting with the NAIC, the appro-
15 priate Administrator should advocate and promote
16 the development of definitions and standards that
17 are appropriate for purposes of this Act; and

18 (4) after consultation with the NAIC, the ap-
19 propriate Administrator should adopt definitions for
20 acts of terrorism and standards for determinations
21 that are appropriate for this Act.

22 (b) INSURANCE RESERVE GUIDELINES.—

23 (1) SENSE OF CONGRESS REGARDING ADOPTION
24 BY STATES.—It is the sense of the Congress that—

25 (A) the NAIC should develop appropriate
26 guidelines for commercial insurers and pools re-

1 garding maintenance of reserves against the
2 risks of acts of terrorism; and

3 (B) each State should adopt such guide-
4 lines for purposes of regulating commercial in-
5 surers doing business in that State.

6 (2) CONSIDERATION OF ADOPTION OF NA-
7 TIONAL GUIDELINES.—Upon the expiration of the 6-
8 month period beginning on the date of the enact-
9 ment of this Act, the appropriate Administrator
10 shall make a determination of whether the guidelines
11 referred to in paragraph (1) have, by such time,
12 been developed and adopted by nearly all States in
13 a uniform manner. If the appropriate Administrator
14 determines that such guidelines have not been so de-
15 veloped and adopted, the appropriate Administrator
16 shall consider adopting, and may adopt, such guide-
17 lines on a national basis in a manner that would
18 supercede any State law regarding maintenance of
19 reserves against such risks.

20 (c) GUIDELINES REGARDING DISCLOSURE OF PRIC-
21 ING AND TERMS OF COVERAGE.—

22 (1) SENSE OF CONGRESS.—It is the sense of
23 the Congress that the States should require, by laws
24 or regulations governing the provision of commercial
25 property and casualty insurance that includes cov-

1 erage for acts of terrorism, that the price of any
2 such terrorism coverage, including the costs of any
3 terrorism related assessments or surcharges under
4 this Act, be separately disclosed.

5 (2) ADOPTION OF NATIONAL GUIDELINES.—If
6 the appropriate Administrator determines that the
7 States have not enacted laws or adopted regulations
8 adequately providing for the disclosures described in
9 paragraph (1) within a reasonable period of time
10 after the date of the enactment of this Act, the ap-
11 propriate Administrator shall, after consultation
12 with the NAIC, adopt guidelines on a national basis
13 requiring such disclosure in a manner that
14 supercedes any State law regarding such disclosure.

15 **SEC. 13. CONSULTATION WITH STATE INSURANCE REGU-**
16 **LATORS AND NAIC.**

17 The Administrators shall consult with the State in-
18 surance regulators and the NAIC in carrying out this Act.
19 The Administrators may take such actions, including en-
20 tering into such agreements and providing such technical
21 and organizational assistance to insurers and State insur-
22 ance regulators, as may be necessary to provide for the
23 distribution of financial assistance under section 6 and the
24 collection of assessments under section 7 and surcharges
25 under section 8.

1 **SEC. 14. SOVEREIGN IMMUNITY PROTECTIONS.**

2 (a) FEDERAL CAUSE OF ACTION FOR DAMAGES
3 FROM TERRORIST ACTS RESULTING IN TRIGGERING DE-
4 TERMINATION.—

5 (1) IN GENERAL.—If a triggering determination
6 occurs requiring an assessment under section 7 or a
7 surcharge under section 8, there shall exist a Fed-
8 eral cause of action, which shall be the exclusive
9 remedy, for damages claimed pursuant to, or in con-
10 nection with, any acts of terrorism that caused the
11 insured losses resulting in such triggering deter-
12 mination.

13 (2) SUBSTANTIVE LAW.—The substantive law
14 for decision in any such action shall be derived from
15 the law, including choice of law principles, of the
16 State in which such act of terrorism occurred, unless
17 such law is inconsistent with or preempted by Fed-
18 eral law.

19 (3) JURISDICTION.—Pursuant to each trig-
20 gering determination, the Judicial Panel on Multi-
21 district Litigation shall designate one or more dis-
22 trict courts of the United States which shall have
23 original and exclusive jurisdiction over all actions
24 brought pursuant to this subsection that arise out of
25 the triggering event involved.

1 (4) OFFSET FOR RELIEF PAYMENTS.—Any re-
2 covery by a plaintiff in an action under this sub-
3 section shall be offset by the amount, if any, re-
4 ceived by the plaintiff from the United States pursu-
5 ant to any emergency or disaster relief program, or
6 from any other collateral source, for compensation of
7 losses related to the act of terrorism involved.

8 (b) DAMAGES IN ACTIONS REGARDING INSURANCE
9 CLAIMS.—In an action brought under this section for
10 damages claimed by an insured pursuant to, or in connec-
11 tion with, any commercial property and casualty insurance
12 providing coverage for acts of terrorism that resulted in
13 a triggering determination:

14 (1) PROHIBITION OF PUNITIVE DAMAGES.—No
15 punitive damages intended to punish or deter may
16 be awarded.

17 (2) NONECONOMIC DAMAGES.—

18 (A) IN GENERAL.—Each defendant in such
19 an action shall be liable only for the amount of
20 noneconomic damages allocated to the defend-
21 ant in direct proportion to the percentage of re-
22 sponsibility of the defendant for the harm to
23 the claimant.

24 (B) DEFINITION.—For purposes of sub-
25 paragraph (A), the term “noneconomic dam-

1 ages’’ means damages for losses for physical
2 and emotional pain, suffering, inconvenience,
3 physical impairment, mental anguish, disfigure-
4 ment, loss of enjoyment of life, loss of society
5 and companionship, loss of consortium, hedonic
6 damages, injury to reputation, and any other
7 nonpecuniary losses of any kind or nature.

8 (c) RIGHT OF SUBROGATION.—The United States
9 shall have the right of subrogation with respect to any
10 claim paid by the United States under this Act.

11 (d) PROTECTIVE ORDERS.—The United States or
12 any appropriate Administrator carrying out responsibil-
13 ities under this Act may seek protective orders or assert
14 privileges ordinarily available to the United States to pro-
15 tect against the disclosure of classified information, in-
16 cluding the invocation of the military and State secrets
17 privilege

18 **SEC. 15. STUDY OF POTENTIAL EFFECTS OF TERRORISM**
19 **ON LIFE INSURANCE INDUSTRY.**

20 (a) ESTABLISHMENT.—Not later than 30 days after
21 the date of enactment of this Act, the President shall es-
22 tablish a commission (in this section referred to as the
23 “Commission”) to study and report on the potential ef-
24 fects of an act or acts of terrorism on the life insurance

1 industry in the United States and the markets served by
2 such industry.

3 (b) MEMBERSHIP AND OPERATIONS.—

4 (1) APPOINTMENT.—The Commission shall con-
5 sist of 5 members, as follows:

6 (A) The appropriate Administrator, as des-
7 ignated by the President.

8 (C) 4 members appointed by the President,
9 who shall be—

10 (i) a representative of direct under-
11 writers of life insurance within the United
12 States;

13 (ii) a representative of reinsurers of
14 life insurance within the United States;

15 (iii) an officer of the NAIC; and

16 (iv) a representative of insurance
17 agents for life underwriters.

18 (2) OPERATIONS.—The chairperson of the
19 Commission shall determine the manner in which
20 the Commission shall operate, including funding,
21 staffing, and coordination with other governmental
22 entities.

23 (c) STUDY.—The Commission shall conduct a study
24 of the life insurance industry in the United States, which
25 shall identify and make recommendations regarding—

1 (1) possible actions to encourage, facilitate, and
2 sustain provision by the life insurance industry in
3 the United States of coverage for losses due to death
4 or disability resulting from an act or acts of ter-
5 rorism, including in the face of threats of such acts;
6 and

7 (2) possible actions or mechanisms to sustain or
8 supplement the ability of the life insurance industry
9 in the United States to cover losses due to death or
10 disability resulting from an act or acts of terrorism
11 in the event that—

12 (A) such acts significantly affect mortality
13 experience of the population of the United
14 States over any period of time;

15 (B) such losses jeopardize the capital and
16 surplus of the life insurance industry in the
17 United States as a whole; or

18 (C) other consequences from such acts
19 occur, as determined by the Commission, that
20 may significantly affect the ability of the life in-
21 surance industry in the United States to inde-
22 pendently cover such losses.

23 (d) RECOMMENDATIONS.—The Commission may
24 make a recommendation pursuant to subsection (c) only

1 upon the concurrence of a majority of the members of the
2 Commission.

3 (e) REPORT.—Not later than 120 days after the date
4 of enactment of this Act, the Commission shall submit to
5 the House of Representatives and the Senate a report de-
6 scribing the results of the study and any recommendations
7 developed under subsection (c).

8 (f) TERMINATION.—The Commission shall terminate
9 60 days after submission of the report as provided for in
10 subsection (e).

11 **SEC. 16. DEFINITIONS.**

12 For purposes of this Act, the following definitions
13 shall apply:

14 (1) ACT OF TERRORISM.—

15 (A) IN GENERAL.—The term “act of ter-
16 rorism” means any act that the appropriate Ad-
17 ministrator determines meets the requirements
18 under subparagraph (B), as such requirements
19 are further defined and specified by the appro-
20 priate Administrator in consultation with the
21 NAIC.

22 (B) REQUIREMENTS.—An act meets the
23 requirements of this subparagraph if the act—
24 (i) is unlawful;

1 (ii) causes harm to a person, property,
2 or entity, in the United States;

3 (iii) is committed by a group of per-
4 sons or associations who—

5 (I) are not a government of a
6 foreign country or the de facto gov-
7 ernment of a foreign country; and

8 (II) are recognized by the De-
9 partment of State or the appropriate
10 Administrator as a terrorist group or
11 have conspired with such a group or
12 the group's agents or surrogates; and

13 (iv) has as its purpose to overthrow or
14 destabilize the government of any country
15 or to influence the policy or affect the con-
16 duct of the government of the United
17 States by coercion.

18 (2) APPROPRIATE ADMINISTRATORS.—The term
19 “appropriate Administrator” means, with respect to
20 any function or responsibility of the Federal Govern-
21 ment under this Act, the Federal officer designated
22 by the President pursuant to section 3 as respon-
23 sible for carrying out such function or responsibility.

24 (3) AFFILIATE.—The term “affiliate” means,
25 with respect to an insurer, any company that con-

1 trols, is controlled by, or is under common control
2 with the insurer.

3 (4) AGGREGATE WRITTEN PREMIUM.—The
4 term “aggregate written premium” means, with re-
5 spect to a year, the aggregate premium amount of
6 all commercial property and casualty insurance cov-
7 erage written during such year for persons or prop-
8 erties in the United States under all lines of com-
9 mercial property and casualty insurance.

10 (5) COMMERCIAL INSURANCE.—The term
11 “commercial insurance” means property and cas-
12 ualty insurance that is not insurance for home-
13 owners, tenants, private passenger nonfleet auto-
14 mobiles, mobile homes, or other insurance for per-
15 sonal, family, or household needs.

16 (6) COMMERCIAL INSURER.—The term “com-
17 mercial insurer” means any corporation, association,
18 society, order, firm, company, mutual, partnership,
19 individual, aggregation of individuals, or any other
20 legal entity that is engaged in the business of pro-
21 viding commercial property and casualty insurance
22 for persons or properties in the United States. Such
23 term includes any affiliates of a commercial insurer.

24 (7) COMMERCIAL PROPERTY AND CASUALTY IN-
25 SURANCE.—The term “commercial property and cas-

1 ualty insurance” means property and casualty insur-
2 ance that is commercial insurance.

3 (8) CONTROL.—A company has control over an-
4 other company if—

5 (A) the company directly or indirectly or
6 acting through one or more other persons owns,
7 controls, or has power to vote 25 percent or
8 more of any class of voting securities of the
9 other company;

10 (B) the company controls in any manner
11 the election of a majority of the directors or
12 trustees of the other company; or

13 (C) the appropriate Administrator deter-
14 mines, after notice and opportunity for hearing,
15 that the company directly or indirectly exercises
16 a controlling influence over the management or
17 policies of the other company.

18 (9) COVERED PERIOD.—The term “covered pe-
19 riod” has the meaning given such term in section
20 5(b).

21 (10) INDUSTRY-WIDE LOSSES.—The term “in-
22 dustry-wide losses” means the aggregate insured
23 losses sustained by all insurers, from coverage writ-
24 ten for persons or properties in the United States,

1 under all lines of commercial property and casualty
2 insurance.

3 (11) INSURED LOSS.—The term “insured loss”
4 means any loss in the United States covered by com-
5 mercial property and casualty insurance.

6 (12) INSURER.—The term “insurer” means any
7 corporation, association, society, order, firm, com-
8 pany, mutual, partnership, individual, aggregation of
9 individuals, or any other legal entity that is engaged
10 in the business of providing property and casualty
11 insurance for persons or properties in the United
12 States. Such term includes any affiliates of an in-
13 surer.

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

16 (14) PROPERTY AND CASUALTY INSURANCE.—
17 The term “property and casualty insurance” means
18 insurance against—

19 (A) loss of or damage to property;

20 (B) loss of income or extra expense in-
21 curred because of loss of or damage to prop-
22 erty; and

23 (C) third party liability claims caused by
24 negligence or imposed by statute or contract.

25 Such term does not include health or life insurance.

1 (15) STATE.—The term “State” means the
2 States of the United States, the District of Colum-
3 bia, the Commonwealth of Puerto Rico, the Com-
4 monwealth of the Northern Mariana Islands, Guam,
5 the Virgin Islands, American Samoa, and any other
6 territory or possession of the United States.

7 (16) STATE INSURANCE REGULATOR.—The
8 term “State insurance regulator” means, with re-
9 spect to a State, the principal insurance regulatory
10 authority of the State.

11 (17) TRIGGERING DETERMINATION.—The term
12 “triggering determination” has the meaning given
13 such term in section 5(a).

14 (18) TRIGGERING EVENT.—The term “trig-
15 gering event” means, with respect to a triggering de-
16 termination, the event of an act of terrorism, or the
17 events of such acts, that caused the insured losses
18 resulting in such triggering determination.

19 (19) UNITED STATES.—The term “United
20 States” means, collectively, the States (as such term
21 is defined in this section).

22 **SEC. 17. EXTENSION OF PROGRAM.**

23 (a) AUTHORITY.—If the appropriate Administrator
24 determines that action under this section is necessary to
25 ensure the adequate availability in the United States of

1 commercial property and casualty insurance coverage for
2 acts of terrorism, the appropriate Administrator may pro-
3 vide that the provisions of this Act shall continue to apply
4 with respect to a period or periods, as established by the
5 Administrator, that begin after the expiration of the cov-
6 ered period specified in section 5(b) and end before Janu-
7 ary 1, 2005.

8 (b) COVERED PERIOD.—If the appropriate Adminis-
9 trator exercises the authority under subsection (a), not-
10 withstanding section 5(b) and section 16(9), the period or
11 periods established by the appropriate Administrator shall
12 be considered to be the covered period for purposes of this
13 Act.

14 **SEC. 18. REGULATIONS.**

15 The appropriate Administrators shall issue any regu-
16 lations necessary to carry out this Act.

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