

108TH CONGRESS
1ST SESSION

S. 1373

To authorize and direct the Secretary of Commerce, through an independent commission within the Department of Commerce, to protect consumers by regulating the interstate sale of insurance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 8, 2003

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

A BILL

To authorize and direct the Secretary of Commerce, through an independent commission within the Department of Commerce, to protect consumers by regulating the interstate sale of insurance, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insurance Consumer
5 Protection Act of 2003”.

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1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1)(A) COMMISSION.—The term “Commission”
 4 means the Insurance Regulatory Commission estab-
 5 lished by section 101.

6 (B) INTERSTATE INSURER.—

7 (i) IN GENERAL.—The term “interstate in-
 8 surer” means an insurer that offers contracts of
 9 insurance or reinsurance for sale in or affecting
 10 interstate commerce.

11 (ii) EXCLUSIVELY INTRASTATE INSUR-
 12 ERS.—The term “interstate insurer” does not
 13 include an insurer that does not offer contracts
 14 of insurance or reinsurance for sale in or affect-
 15 ing interstate commerce.

1 (C) TRANSITION PERIOD.—The term “transi-
2 tion period” means the period beginning on January
3 31, 2004, and ending on January 31, 2007.

4 (D) TRANSITION TERMINATION DATE.—The
5 term “termination transition date” means January
6 31, 2007.

7 (E) ASSUMING INSURER.—The term “assuming
8 insurer” means a national insurer that is the assum-
9 ing insurer in an acquisition of assets or an assump-
10 tion of liabilities pursuant to subsection (a) of sec-
11 tion 382.

12 (2) AFFILIATE.—Except as specifically provided
13 otherwise in this Act, the term “affiliate” means any
14 person that controls, is controlled by, or is under
15 common control with, a national insurer.

16 (3) BUSINESS ENTITY.—The term “business
17 entity” means a corporation, association, partner-
18 ship, limited liability company, limited liability part-
19 nership, or other legal entity.

20 (4) CONDUCT.—The term “conduct” includes
21 acts, action, omissions, and inaction.

22 (5) CONTROL.—The terms “control”, “control-
23 ling”, “controlled by”, and “under common control
24 with”, means the possession, direct or indirect, of
25 the power to direct or cause the direction of the

1 management and policies of a business entity,
2 whether through the ownership of voting securities,
3 by contract or otherwise, unless the power is the re-
4 sult of an official position with or corporate office
5 held by a person. For purposes of section 381 and
6 title VI, control shall be presumed to exist if any
7 person, directly or indirectly, owns, controls, holds
8 with the power to vote, or holds proxies rep-
9 resenting, 10 percent or more of the voting securi-
10 ties of any other person.

11 (6) FEDERAL LICENSE.—The term “Federal li-
12 cense” means a license issued under section 303.

13 (7) FOREIGN GOVERNMENTAL AUTHORITY.—
14 The term “foreign governmental authority” means a
15 governmental authority of a foreign jurisdiction.

16 (8) FOREIGN JURISDICTION.—The term “for-
17 eign jurisdiction” means any jurisdiction other than
18 the United States or a State.

19 (9) INSURANCE.—Except as specifically pro-
20 vided otherwise in this Act, the term “insurance” in-
21 cludes life insurance and property and casualty in-
22 surance. Such term does not include health insur-
23 ance.

1 (10) INSURANCE OPERATIONS.—The term “in-
2 surance operations” includes the business of insur-
3 ance.

4 (11) INSURANCE PRODUCER.—The term “in-
5 surance producer” means any person that sells, so-
6 licits or negotiates policies of insurance, except that
7 none of the following is an insurance producer:

8 (A) A national insurer.

9 (B) An officer, director or employee of a
10 national insurer or of an insurance producer,
11 if—

12 (i) the officer, director or employee
13 does not receive any commission or other
14 compensation on insurance policies written
15 or sold by the national insurer which com-
16 mission or other compensation is directly
17 dependent upon the amount of insurance
18 policies written or sold; and

19 (ii)(I) the officer, director or employ-
20 ee’s activities are executive, administrative,
21 managerial, clerical or a combination of
22 these, and are only indirectly related to the
23 sale, solicitation or negotiation of insur-
24 ance;

1 (II) the officer, director or employee's
2 function relates to underwriting, loss con-
3 trol, inspection or the processing, adjust-
4 ing, investigating or settling of a claim on
5 a policy of insurance; or

6 (III) the officer, director or employee
7 is acting in the capacity of a special agent
8 or agency supervisor assisting insurance
9 producers where the person's activities are
10 limited to providing technical advice and
11 assistance to State licensed insurance pro-
12 ducers and do not include the sale, sollicita-
13 tion or negotiation of insurance.

14 (C) A person who secures and furnishes in-
15 formation for the purpose of group insurance
16 policies; or for the purpose of enrolling individ-
17 uals under plans, or issuing certificates under
18 plans or otherwise assisting in administering
19 plans, where no commission or other compensa-
20 tion directly dependent upon the amount of in-
21 surance policies written or sold is paid to the
22 person for the service.

23 (D) An employer or association or its offi-
24 cers, directors, employees, or the trustees of an
25 employee trust plan, to the extent that the em-

1 ployer, officer, employee, director or trustee is
2 engaged in the administration or operation of a
3 program of employee benefits for the employer's
4 or association's own employees or the employees
5 of its subsidiaries or affiliates, which program
6 involves the use of insurance written by the na-
7 tional insurer, as long as the employers, asso-
8 ciations, officers, directors, employees or trust-
9 ees are not in any manner compensated, di-
10 rectly or indirectly, by the national insurer.

11 (E) An employee of a national insurer or
12 an organization employed by a national insurer
13 that is engaging in the inspection, rating or
14 classification of risks, or in the supervision of
15 the training of insurance producers and that is
16 not individually engaged in the sale, solicitation
17 or negotiation of insurance.

18 (F) A person whose activities are limited
19 to advertising without the intent to solicit in-
20 surance through communications in printed
21 publications or other forms of electronic mass
22 media, provided that the person does not sell,
23 solicit or negotiate insurance.

24 (G) A salaried full-time employee who
25 counsels or advises his or her employer relative

1 to the insurance interests of the employer or of
2 the subsidiaries or business affiliates of the em-
3 ployer provided that the employee does not sell
4 or solicit insurance or receive a commission or
5 other compensation directly dependent upon the
6 amount of insurance policies written or sold.

7 (H) A person that sells, solicits or nego-
8 tiates a funding agreement.

9 (I) Any other kind of person identified by
10 the Director, by regulation, as not being an in-
11 surance producer within the meaning of this
12 paragraph.

13 (12) INSURANCE SECURITIZATION.—The term
14 “insurance securitization” means the issuance of
15 debt instruments, the proceeds from which support
16 the exposures attributed to a protected cell, by a na-
17 tional insurer where repayment of principal or inter-
18 est, or both, to investors pursuant to the transaction
19 terms is contingent upon the occurrence or non-
20 occurrence of an event with respect to which the na-
21 tional insurer is exposed to loss under insurance
22 policies or reinsurance contracts it has written.

23 (13) INSURER-AFFILIATED PARTY.—The term
24 “insurer-affiliated party” means—

1 (A) any director, officer, employee, or con-
2 trolling shareholder (other than a holding com-
3 pany) of, or agent for, a national insurer;

4 (B) any other person who has filed or is
5 required to file a statement with the Director
6 under section 381;

7 (C) any shareholder (other than a holding
8 company), consultant, joint venture partner,
9 and any other person as determined by the Di-
10 rector (by regulation or case-by-case) who par-
11 ticipates in the conduct of the affairs of a na-
12 tional insurer; and

13 (D) any independent contractor (including
14 any attorney, actuary, or accountant) of a na-
15 tional insurer who in that capacity knowingly or
16 recklessly participates in—

17 (i) any violation of any law or regula-
18 tion;

19 (ii) any breach of fiduciary duty; or

20 (iii) any conduct that involves an
21 undue risk of loss to a national insurer's
22 policyholders as a whole, which violation,
23 breach or conduct caused or is likely to
24 cause more than a minimal financial loss
25 to, or a significant adverse effect on, a na-

1 tional insurer or the policyholders of a na-
2 tional insurer.

3 (14) LIFE INSURANCE.—

4 (A) IN GENERAL.—The term “life insur-
5 ance” means insurance for which the prob-
6 abilities of the duration of human life or the
7 rate of mortality are an element or condition of
8 insurance.

9 (B) INCLUDED INSURANCE.—Life insur-
10 ance includes the granting of—

11 (i) endowment benefits;

12 (ii) additional benefits in the event of
13 death by accident or accidental means;

14 (iii) disability income benefits;

15 (iv) additional disability benefits that
16 operate to safeguard the contract from
17 lapse or to provide a special surrender
18 value, or special benefit in the event of
19 total and permanent disability;

20 (v) benefits that provide payment or
21 reimbursement for long-term home health
22 care, or long-term care in a nursing home
23 or other related facility;

24 (vi) burial insurance; and

1 (vii) optional modes of settlement of
2 proceeds of life insurance.

3 (C) EXCLUSIONS.—Life insurance does not
4 include workers compensation insurance.

5 (15) MAIN OFFICE.—The term “main office”
6 means the office of a national insurer designated as
7 its main office in accordance with section 305.

8 (16) NAIC.—The term “NAIC” means the Na-
9 tional Association of Insurance Commissioners.

10 (17) NATIONAL INSURER.—The term “national
11 insurer” means an insurer chartered under section
12 301 and the regulations thereunder.

13 (18) NATIONAL LIFE INSURER.—The term “na-
14 tional life insurer” means a life insurer chartered
15 under section 301 and the regulations thereunder.

16 (19) NATIONAL PROPERTY AND CASUALTY IN-
17 SURER.—The term “national property and casualty
18 insurer” means a property and casualty insurer
19 chartered under section 301 and the regulations
20 thereunder.

21 (20) NEGOTIATE.—The term “negotiate”
22 means, with respect to a policy of insurance, to en-
23 gage in the act of conferring directly with or offering
24 advice directly to a purchaser or prospective pur-
25 chaser of a particular policy of insurance concerning

1 any of the substantive benefits, terms or conditions
2 of the contract, provided that the person engaged in
3 that act either sells insurance or obtains insurance
4 from insurers for purchasers.

5 (21) NON-U.S. INSURER.—The term “non-U.S.
6 insurer” means an insurer organized under the laws
7 of a foreign jurisdiction.

8 (22) OFFICE.—The term “Office” means the
9 Office of National Insurers.

10 (23) PARENT.—The term “parent” means a
11 business entity that, directly or indirectly, controls
12 another business entity.

13 (24) PERSON.—The term “person” means any
14 natural person and any corporation, partnership,
15 limited liability company, limited liability partner-
16 ship, trust, association, governmental body or entity,
17 voluntary organization or similar organization.

18 (25) POLICY OF INSURANCE.—The term “policy
19 of insurance” or “insurance policy” means a policy,
20 contract, or certificate or evidence of insurance, an
21 annuity contract, and a funding agreement.

22 (26) POLICYHOLDER.—The term “policyholder”
23 of an insurance policy means the person who is iden-
24 tified as the legal owner under the terms of the in-
25 surance policy or who is otherwise vested with legal

1 title to the insurance policy through an assignment,
2 absolute on its face, completed in accordance with
3 the terms of the insurance policy and properly re-
4 corded as the policyholder on the books of the in-
5 surer. Such term does not include a person with a
6 mere beneficial interest in an insurance policy or a
7 person to which an insurance policy is assigned for
8 collateral security purposes.

9 (27) PROPERTY AND CASUALTY INSURANCE.—

10 (A) IN GENERAL.—The term “property
11 and casualty insurance” means insurance for
12 persons or properties in the United States
13 against—

14 (i) loss of or damage to property;

15 (ii) loss of income or extra expense in-
16 curred because of loss of or damage to
17 property;

18 (iii) third party liability claims caused
19 by negligence or imposed by statute or con-
20 tract, including workers compensation; or

21 (iv) loss resulting from debt or default
22 of another, including sureties.

23 (B) EXCLUSIONS.—Such term does not in-
24 clude health or life insurance, including group
25 life insurance.

1 (28) PROTECTED CELL.—The term “protected
2 cell” means an identified pool of assets and liabil-
3 ities of a national insurer segregated and insulated
4 from the remainder of the national insurer’s assets
5 and liabilities. The remainder of the national insur-
6 er’s assets and liabilities includes general account
7 assets and liabilities, separate account assets and li-
8 abilities and assets and liabilities of other protected
9 cells.

10 (29) PROTECTED CELL ACCOUNT.—The term
11 “protected cell account” means a specifically identi-
12 fied bank or custodial account established by a na-
13 tional insurer for the purpose of segregating the pro-
14 tected cell assets of one protected cell from the pro-
15 tected cell assets of other protected cells and from
16 the assets of the national insurer’s general account
17 and separate accounts.

18 (30) RELEVANT STATE LAW.—The term “rel-
19 evant State law” means, with respect to a national
20 insurer, the law of the relevant State applicable to
21 an insurer that is chartered under the law of such
22 State and that is of the same corporate form as the
23 national insurer.

24 (31) SELL.—The term “sell” means, with re-
25 spect to a policy of insurance, to exchange by any

1 means, for money or its equivalent, on behalf of an
2 insurer.

3 (32) SEPARATE ACCOUNT.—The term “separate
4 account” means an account established and main-
5 tained by a national insurer under which income,
6 gains and losses, whether or not realized, from as-
7 sets allocated to such account, are, in accordance
8 with the applicable contract, credited to or charged
9 against such account without regard to other in-
10 come, gains, or losses of the national insurer.

11 (33) SOLICIT.—The term “solicit” means, with
12 respect to a policy of insurance, attempting to sell
13 insurance or asking or urging a person to apply for
14 a particular kind of insurance from a particular in-
15 surer.

16 (34) STATE.—The term “State” means any
17 State of the United States, the District of Columbia,
18 any territory of the United States, Puerto Rico,
19 Guam, American Samoa, the Trust Territory of the
20 Pacific Islands, the Virgin Islands, and the Northern
21 Mariana Islands.

22 (35) STATE INSURER.—The term “State in-
23 surer” means an insurer incorporated or organized
24 under the laws of a State.

1 (36) SUBSIDIARY.—The term “subsidiary”
2 means a business entity controlled, directly or indi-
3 rectly, by another business entity. For purposes of
4 this paragraph—

5 (A) a business entity is conclusively pre-
6 sumed to be controlled by a person that, di-
7 rectly or indirectly, with power to vote, owns,
8 controls or holds a majority of the outstanding
9 voting securities of such business entity;

10 (B) no presumption, either of control or of
11 absence of control, arises if such ownership,
12 control or holding of voting securities is less
13 than a majority but more than 5 percent;

14 (C) absence of control is presumed if such
15 ownership, control or holding of voting securi-
16 ties is 5 percent or less; and

17 (D) in determining control, voting securi-
18 ties held in separate accounts of a business en-
19 tity shall be deemed to be owned by the busi-
20 ness entity, but voting securities in an invest-
21 ment advisory account that are not owned by a
22 business entity but are held in an account as to
23 which the business entity is an investment ad-
24 viser shall not be deemed to be controlled or
25 held by such business entity.

1 (37) TRUSTEED SURPLUS.—The term “trusteed
2 surplus” means, with respect to a U.S. branch, the
3 value of the insurer’s trustee assets deposited with
4 a trustee in compliance with subsection (b) of sec-
5 tion 302, plus accrued investment income thereon
6 where such interest is collected by the States trust-
7 ees, less the aggregate net amount of all of its re-
8 serves and other liabilities in the United States as
9 determined in accordance with subsection (b) of sec-
10 tion 302.

11 (38) UNITED STATES BRANCH.—The term
12 “United States branch” means the business unit
13 through which business is transacted within the
14 United States by a non-U.S. insurer and the assets
15 and liabilities of the insurer within the United
16 States pertaining to such business.

17 (39) VIOLATION.—The term “violation” in-
18 cludes any action or inaction (alone or with another
19 or others) for or toward causing, bringing about,
20 participating in, counseling, or aiding or abetting a
21 violation.

1 **TITLE I—INSURANCE**
2 **REGULATORY COMMISSION**

3 **SEC. 101. INSURANCE REGULATORY COMMISSION ESTAB-**
4 **LISHED.**

5 (a) **ESTABLISHMENT.**—There is established within
6 the Department of Commerce an Insurance Regulatory
7 Commission to be composed of 5 commissioners to be ap-
8 pointed by the President, by and with the advice and con-
9 sent of the Senate.

10 (b) **AUTONOMY OF COMMISSION.**—Except as other-
11 wise specifically provided in this Act, the Secretary of
12 Commerce may not intervene in any matter or proceeding
13 before the Commission, including enforcement actions.

14 (c) **CHAIRMAN.**—The President shall designate 1 of
15 the members as Chairman of the Commission.

16 (d) **POLITICAL PARTIES.**—Not more than 3 of such
17 commissioners shall be members of the same political
18 party, and in making appointments members of different
19 political parties shall be appointed alternately as nearly
20 as may be practicable.

21 (e) **FULL-TIME EMPLOYMENT.**—No commissioner
22 shall engage in any other business, vocation, or employ-
23 ment than that of serving as commissioner, nor shall any
24 commissioner participate, directly or indirectly, in any in-
25 surance company operations or transactions of a character

1 subject to regulation by the Commission pursuant to this
2 title.

3 (f) TERMS.—Each commissioner shall hold office for
4 a term of 7 years and until his successor is appointed and
5 has qualified, except that—

6 (1) a commissioner shall not continue to serve
7 beyond the expiration of the next session of Con-
8 gress subsequent to the expiration of the fixed term
9 of office;

10 (2) any commissioner appointed to fill a va-
11 cancy occurring prior to the expiration of the term
12 for which his predecessor was appointed shall be ap-
13 pointed for the remainder of such term; and

14 (3) the terms of office of the commissioners
15 first taking office after the enactment of this title
16 shall expire as designated by the President at the
17 time of nomination, 1 at the end of 2 years, 1 at
18 the end of 3 years, 1 at the end of 4 years, 1 at the
19 end of 6 years, and 1 at the end of 6 years, after
20 the date of the enactment of this title.

21 **SEC. 102. POWERS OF THE COMMISSION; COMPENSATION;**

22 **PERSONNEL.**

23 (a) HEARINGS.—The Commission may hold such
24 hearings, sit and act at such times and places, take such

1 testimony, and receive such evidence as the Commission
2 considers advisable to carry out the purposes of this Act.

3 (b) INFORMATION FROM FEDERAL AGENCIES.—The
4 Commission may secure directly from any Federal depart-
5 ment or agency such information as the Commission con-
6 sidered necessary to carry out the provisions of this Act.
7 Upon request of the Chairman of the Commission, the
8 head of such department or agency shall furnish such in-
9 formation to the Commission.

10 (c) POSTAL SERVICES.—The Commission may use
11 the United States mails in the same manner and under
12 the same conditions as other departments and agencies of
13 the Federal Government.

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

18 (e) TRAVEL EXPENSES.—The members of the Com-
19 mission shall be allowed travel expenses, including per
20 diem in lieu of subsistence, at rates authorized for employ-
21 ees of agencies under subchapter I of chapter 57 of title
22 5, United States Code, while away from their homes or
23 regular places of business in the performance of services
24 for the Commission.

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

5 (g) DETAIL OF GOVERNMENT EMPLOYEES.—Any
6 Federal Government employee may be detailed to the
7 Commission without reimbursement, and such detail shall
8 be without interruption or loss of civil service status or
9 privilege.

10 (h) PROCUREMENT OF TEMPORARY AND INTERMIT-
11 TENT SERVICES.—The Chairman of the Commission may
12 procure temporary and intermittent services under section
13 3109(b) of title 5, United States Code, at rates for individ-
14 uals which do not exceed the daily equivalent of the annual
15 rate of basic pay prescribed for level V of the Executive
16 Schedule under section 5316 of such title.

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

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

1 **SEC. 104. 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, certi-
9 fying, reporting, or otherwise acting as to any work, busi-
10 ness, or matter. Nothing in this section shall be deemed
11 to supersede the provisions of section 556(b) of title 5,
12 United States Code, or to authorize the delegation of the
13 function of rule making as defined in subchapter II of
14 chapter 5 of title 5, United States Code, with reference
15 to general rules as distinguished from rules of particular
16 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 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. 105. RULES AND REGULATIONS.**

13 (a) IN GENERAL.—The Commission shall promulgate
14 rules and regulations necessary to carry out its respon-
15 sibilities under this Act.

16 (b) SCOPE OF AUTHORITY.—The Secretary of Com-
17 merce may not delay or prevent the issuance of any rule,
18 or the promulgation of any regulation, by the Commission.

19 **SEC. 106. INVESTIGATIVE POWERS OF THE COMMISSION.**

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

1 **SEC. 107. INSURANCE RATE REPORTS.**

2 (a) IN GENERAL.—Except as provided by subsection
3 (f), an interstate insurer shall report the information spec-
4 ified by the Commission that is collected by a licensed ad-
5 visory organization on an annual basis for each class of
6 insurance designated in the prior calendar year by the
7 Commission.

8 (b) DESIGNATION OF UNAVAILABILITY OR
9 UNAFFORDABILITY.—No later than October 1 of each
10 year the Commission shall designate those classes of insur-
11 ance that are generally unavailable or unaffordable in the
12 United States, certain regions, or to certain groups or
13 businesses in the United States, or for which there have
14 been unusually great premium increases, or in the case
15 of any class of liability insurance, for which reinsurance
16 is generally unavailable or unaffordable in the United
17 States or for which there have been unusually great rein-
18 surance premium increases. The factors the Commission
19 shall consider in making this determination shall in-
20 clude—

- 21 (1) consumer complaints;
22 (2) rate complaints;
23 (3) surveillance by the Commission; and
24 (4) market conduct.

1 (c) RETENTION OF INFORMATION.—The Commission
2 shall retain the information reported pursuant to this sec-
3 tion for a period of no less than 3 years.

4 (d) CONSOLIDATED REPORTING.—Insurers that are
5 members of the same insurance group may aggregate the
6 information required by this section in a single report.

7 (e) EXEMPTIONS.—

8 (1) IN GENERAL.—Except as provided by para-
9 graphs (2) and (3), the reporting requirements of
10 this section do not apply to any interstate insurer
11 that—

12 (A) has been established for less than 3
13 years; or

14 (B) demonstrates to the satisfaction of the
15 Commission that its market share is less than
16 1 percent of the coverage for which the Com-
17 mission seeks information.

18 (2) DENIAL OF EXEMPTION.—The Commission
19 may deny the exemption application if it determines
20 that—

21 (A) the aggregate data, when reported, is
22 less than 60 percent of the written premium
23 volume for the class; or

1 (B) unless the aggregate data reported
2 would not be statistically credible or reasonably
3 complete and informative.

4 (3) RETROACTIVE REVOCATION OF EXEMP-
5 TION.—An interstate insurer that is exempt under
6 paragraph (1) from reporting shall, upon request of
7 the Commission, report the information required by
8 subsection (a) to cover the 3 most recent calendar
9 years in accordance with subsection (g).

10 (4) DUPLICATE REPORTING NOT REQUIRED.—
11 An interstate insurer that has reported data for a
12 calendar year pursuant to this section may not be
13 required to report that same data in a subsequent
14 year.

15 (f) REPORT FORM.—The reports required by this sec-
16 tion shall be filed on a form provided by the Commission,
17 or through electronic means established by the Commis-
18 sion, no later than May 1 of the calendar year following
19 the year for which the information is reported.

20 (g) TEMPORARY REGULATIONS.—The Commission
21 shall adopt temporary regulations implementing this sec-
22 tion without regard to the provisions of chapter 5 of title
23 5, United States Code. The temporary regulations may
24 not remain in effect for more than 180 days.

1 (h) CONFIDENTIALITY.—The information provided
2 pursuant to subsection (a) shall be confidential and not
3 revealed by the Commission, except that the Commission
4 may publish an analysis of the data in aggregate form or
5 in a manner which does not disclose confidential informa-
6 tion about identified interstate insurers or insureds.

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

8 The Commission shall have the power to require, by
9 general or special orders or by subpoena, any person en-
10 gaged in the business of insurance, to file with the Com-
11 mission in such form as the Commission may prescribe
12 annual or special, or both annual and special, reports, or
13 answers in writing to specific questions, furnishing to the
14 Commission such information as it may require as to the
15 organization, business, conduct, practices, management,
16 and relation to other corporations, partnerships, and indi-
17 viduals of the respective persons, partnerships, and cor-
18 porations filing such reports or answers in writing. Such
19 reports and answers shall be made under oath, or other-
20 wise, as the Commission may prescribe, and shall be filed
21 with the Commission within such reasonable period as the
22 Commission may prescribe, unless additional time be
23 granted in any case by the Commission.

1 **SEC. 109. EXAMINATION OF INSURANCE COMPANIES.**

2 (a) IN GENERAL.—The Commission shall examine
3 interstate insurers, including an on-site financial examina-
4 tion and an on-site market conduct examination no less
5 often than once during each 12-month period.

6 (b) EXEMPTIONS.—The Commission may exempt an
7 interstate insurer from an on-site financial examination
8 under subsection (a) in any 12-month period if the Com-
9 mission determines that the financial condition of the
10 interstate insurer warrants such an exemption. The Com-
11 mission may not grant such an exemption more than once
12 in any 24-month period.

13 (c) SPECIAL EXAMINATIONS.—The Commission may
14 order special examinations of any insurer which holds an
15 interstate insurance license. The examination shall be con-
16 ducted by examiners chosen by the Commission. The Com-
17 mission shall in all cases approve the form of the examina-
18 tion. The expenses of all examinations may, in the discre-
19 tion of the Commission, be assessed against the insurer
20 examined, and when so assessed, shall be paid by the in-
21 surer examined. Copies of the reports of such examina-
22 tions may, in the discretion of the Commission, be fur-
23 nished to the State insurance departments, to officers and
24 directors, or receivers of the insurer, and to any persons
25 as the Commission shall deem appropriate.

1 (d) STANDARDS.—The Commission shall establish
2 standards for determining when a special examination
3 should be conducted.

4 **SEC. 110. CENTRAL DEPOSITORY FOR INSURANCE DATA.**

5 (a) ANNUAL STATEMENTS; PERIODIC REPORTS.—
6 The Commission shall collect the annual statements and
7 other periodic reports of all insurers holding interstate in-
8 surance licenses. These statements and reports shall be
9 available to the public. The Commission shall compile in-
10 formation from these statements and reports in a data
11 base for the purpose of studying the insurance industry.

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

18 (c) INFORMATION TO BE MADE PUBLIC.—(1) The
19 Commission shall—

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

23 (B) make annual and special reports to the
24 Congress and submit therewith recommendations for
25 additional legislation; and

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

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

16 **TITLE II—FEDERAL LICENSING**
17 **AND STANDARDS**

18 **Subtitle A—Licensing and**
19 **Standards**

20 **SEC. 211. FEDERAL LICENSING OF INTERSTATE INSURERS.**

21 (a) IN GENERAL.—Notwithstanding any provision of
22 State law, an interstate insurer may underwrite and sell
23 in any State any line of insurance for which it holds a
24 Federal license. An interstate insurer may not underwrite

1 or sell any line of insurance for which it does not hold
2 a Federal license.

3 (b) ISSUANCE OF FEDERAL LICENSES.—The Com-
4 mission may, under such regulations as the Commission
5 shall—

6 (1) provide for licensing of interstate insurers
7 to underwrite and sell property and casualty, life,
8 and medical malpractice lines of insurance;

9 (2) issue to interstate insurers Federal licenses
10 specifying the lines of insurance they may under-
11 write and sell; and

12 (3) submit a report to Congress—

13 (A) making recommendations on whether
14 national insurers should be authorized to under-
15 write health insurance; and

16 (B) including proposed legislation to au-
17 thorize such underwriting.

18 (c) DURATION.—A Federal license issued by the
19 Commission pursuant to this section shall remain in effect
20 until surrendered by the interstate insurer or until revoked
21 or suspended by the Commission in accordance with the
22 provisions of this Act.

23 (d) REINSURANCE.—

24 (1) LIMITATION.—An interstate insurer may re-
25 insure only the lines of insurance that it is licensed

1 to underwrite and sell under its Federal license or
2 which it is otherwise permitted to reinsure by the
3 terms of its Federal license.

4 (2) AUTHORITY TO SELL ONLY REINSUR-
5 ANCE.—An interstate insurer may confine its busi-
6 ness to reinsurance.

7 **SEC. 212. UNITED STATES BRANCHES OF FOREIGN INSUR-**
8 **ERS.**

9 (a) NATIONAL TREATMENT REQUIRED.—

10 (1) FAIR TREATMENT OF SUBSIDIARIES AND
11 BRANCHES.—Except as otherwise provided in this
12 section, the Commission may not impose any condi-
13 tion to the granting of a Federal license under this
14 section to an interstate insurer or the supervision of
15 an interstate insurer granted a Federal license under
16 this section solely because the interstate insurer is a
17 subsidiary of a non-United States person, is partially
18 owned by a non-United States person, or is a United
19 States branch of a non-United States insurer.

20 (2) PERMISSIBLE CONDITIONS.—Notwith-
21 standing paragraph (1), the Commission may impose
22 conditions to the granting of a Federal license or the
23 supervision of an interstate insurer that are dif-
24 ferent from those imposed on other interstate insur-
25 ers if—

1 (A) the conditions attached are imposed on
2 the legal form in which the interstate insurer
3 chooses to operate; or

4 (B) the Commission makes a written find-
5 ing that the conditions are related to the pro-
6 tection of policyholders and are the minimum
7 necessary to achieve the purposes of this Act.

8 (b) FEDERAL INSURANCE LICENSE.—A foreign in-
9 surer may obtain a Federal license to transact insurance
10 in the United States through a United States branch by
11 qualifying that branch as an interstate insurer, subject to
12 all legal requirements applicable under regulations pre-
13 scribed by the Commission.

14 (c) TRUST ACCOUNTS REQUIRED.—

15 (1) IN GENERAL.—A United States branch of a
16 foreign insurer may not qualify as an interstate in-
17 surer unless it establishes trust accounts required by
18 this subsection.

19 (2) ASSETS.—A United States branch of a for-
20 eign insurer shall establish a trust account in the
21 United States with a bank in which it maintains as-
22 sets held in trust for the exclusive benefit, security,
23 and protection of United States policyholders and
24 creditors of that branch in such amount and under
25 such conditions as the Commission may require for

1 as long as there is any outstanding liability of that
2 branch arising out of its insurance transactions in
3 the United States.

4 (3) SURPLUS.—To the extent required by the
5 Commission, a United States branch of a foreign in-
6 surer shall maintain any surplus arising out of its
7 United States insurance transactions in a trust ac-
8 count in the United States subject to the same sol-
9 vency standards as those that apply to other inter-
10 state insurers.

11 (4) STATEMENTS.—The Commission may re-
12 quire the United States branch of a foreign insurer
13 to file such statements, at such times, and con-
14 taining such information as the Commission may re-
15 quire concerning the trust accounts required by this
16 section.

17 (d) APPLICATION OF OTHER REQUIREMENTS.—The
18 provisions of this Act applicable to interstate insurers
19 apply to the United States branch of a foreign insurer ex-
20 cept to the extent that compliance with the requirements
21 of the preceding subsections of this section, or of any re-
22 quirement of the Commission promulgated pursuant to
23 such a subsection, conflicts with such provisions.

1 **SEC. 213. MINIMUM CAPITAL AND SURPLUS REQUIRE-**
2 **MENTS.**

3 (a) **MINIMUM CAPITAL.**—The Commission shall re-
4 quire all insurers to maintain at all times minimum
5 amounts of capital and surplus necessary for insurers to
6 engage in the business of insurance.

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

12 (c) **RISK.**—The Commission shall determine the ap-
13 propriateness of requiring each insurer to maintain
14 amounts of capital and surplus depending upon the risk
15 associated with that insurer.

16 (d) **REGULATIONS DURING TRANSITION PERIOD.**—

17 (1) **IN GENERAL.**—The initial regulations under
18 subsections (a), (b) and (c) shall be promulgated on
19 or before the transition commencement date and
20 shall provide that the standards be based on NAIC
21 risk-based capital calculations and remedies in the
22 form adopted by the NAIC, each as in effect as of
23 January 1, 2001, and as amended by the NAIC and
24 in effect thereafter from time to time prior to the
25 transition termination date, except that the Commis-
26 sion may by regulation specify that any such amend-

1 ment by the NAIC shall, in whole or in part, be in-
2 applicable to interstate insurers.

3 (2) REGULATIONS AFTER TRANSITION PE-
4 RIOD.—The risk-based capital standards for national
5 insurers and the remedies for failure to meet such
6 standards in effect on the transition termination
7 date may thereafter be amended by regulations pro-
8 mulgated pursuant to subsection (a), (b), or (c).

9 **SEC. 214. CORPORATE GOVERNANCE.**

10 (a) IN GENERAL.—With respect to corporate govern-
11 ance procedures, an interstate insurer shall comply with
12 applicable provisions of this Act and applicable regulations
13 issued by the Commission under this Act.

14 (b) OTHER PROCEDURES.—To the extent not incon-
15 sistent with provisions of this Act or regulations issued
16 by the Commission under this Act, an interstate insurer
17 shall adhere to corporate governance procedures of the rel-
18 evant State law of either the State in which its main office
19 is located or the State in which its holding company is
20 incorporated, except that the Commission may determine
21 that any provision of such State law is discriminatory as
22 applied to interstate insurers (in which event an interstate
23 insurer shall not be obligated to follow such a provision
24 of the relevant State law and may follow such other provi-
25 sion of law as the Commission deems appropriate). An

1 interstate insurer shall designate in its bylaws the body
2 of relevant State law selected for its corporate governance
3 procedures.

4 **SEC. 215. POWERS OF INTERSTATE INSURERS.**

5 Upon issuance of its license, an interstate insurer
6 shall have the power, subject to the provisions of this Act
7 and in accordance with such regulations as the Commis-
8 sion may prescribe—

9 (1) to have a corporate seal, which may be al-
10 tered at will, and to use it, or a facsimile of it, im-
11 pressing or affixing it or in any other manner repro-
12 ducing it;

13 (2) to have perpetual succession until such time
14 as it is liquidated, dissolved, merged or otherwise
15 wound up in accordance with applicable law and reg-
16 ulation;

17 (3) to sue or be sued, complain and defend, and
18 otherwise litigate in any court and participate, as a
19 party or otherwise, in any judicial, administrative,
20 arbitral or other proceeding, in its corporate name;

21 (4) to make contracts and guarantees, incur li-
22 abilities, borrow money, issue notes, bonds, and
23 other obligations (which may be convertible into or
24 include the option to purchase other securities of the
25 interstate insurer), and secure any of its obligations

1 by mortgage or pledge of any of its property, fran-
2 chises or income;

3 (5) to purchase, receive, subscribe for or other-
4 wise acquire, own, hold, vote, improve, employ, use,
5 and otherwise deal in and with real and personal
6 property or other assets, or any interest therein, and
7 to sell, convey, mortgage, lease, exchange, transfer
8 or otherwise dispose of, or mortgage or pledge, all
9 or any of its property and assets, or any interest
10 therein;

11 (6) to lend money, invest and reinvest its funds
12 and receive and hold real and personal property as
13 security for repayment;

14 (7) to be a promoter, partner, member, asso-
15 ciate or manager of any partnership, joint venture,
16 trust or other entity;

17 (8) to participate with others in any corpora-
18 tion, partnership, limited partnership, joint venture,
19 or other association of any kind, or in any trans-
20 action, undertaking, or arrangement which the par-
21 ticipating interstate insurer would have power to
22 conduct by itself, whether or not such participation
23 involves sharing or delegation of control with or to
24 others;

1 (9) to elect or appoint directors, officers, em-
2 ployees, and agents of the interstate insurer, define
3 their duties, fix their compensation and lend them
4 money and credit;

5 (10) to pay pensions and establish pension
6 plans, pension trusts, profit sharing plans, share
7 bonus plans, share option plans, and other benefit or
8 incentive plans for any or all current or former di-
9 rectors, officers, employees, and agents of the inter-
10 state insurer, its subsidiaries, or its affiliates;

11 (11) to provide insurance for its benefit on the
12 life of any of its directors, officers, or employees, or
13 on the life of any shareholder for the purpose of ac-
14 quiring at such shareholder's death shares of its
15 stock owned by such shareholder;

16 (12) to adopt, amend and repeal bylaws;

17 (13) to engage in the underwriting and sale of
18 insurance; to establish and maintain one or more
19 separate accounts and to allocate amounts to such
20 accounts (including, without limitation, proceeds ap-
21 plied under optional modes of settlement or under
22 dividend options) to provide for insurance; to estab-
23 lish and maintain one or more protected cells in con-
24 nection with an insurance securitization and at-
25 tribute to such cells insurance and reinsurance obli-

1 gations with respect to its general account, obliga-
2 tions relating to the insurance securitization and as-
3 sets to fund such obligations; to hold and accumu-
4 late funds pursuant to funding agreements; to pro-
5 vide investment advice and investment management
6 services; to engage in all other insurance operations;
7 and to exercise all such incidental powers as shall be
8 necessary to carry on insurance operations;

9 (14) to provide benefits or payments to direc-
10 tors, officers, and employees of the interstate in-
11 surer, its subsidiaries, or its affiliates, and to their
12 estates, families, dependents, or beneficiaries, in rec-
13 ognition of the past services of the directors, offi-
14 cers, and employees to the interstate insurer, its
15 subsidiaries, or its affiliates;

16 (15) to make donations and otherwise devote its
17 resources for the public welfare or for charitable, sci-
18 entific, educational, humanitarian, philanthropic, or
19 religious purposes;

20 (16) to be a promoter, partner, member, asso-
21 ciate, or manager of any business entity;

22 (17) to do all such other things necessary or
23 convenient to further its activities and affairs; and

24 (18) to exercise the powers granted by this Act
25 in any State and in any foreign jurisdiction.

1 **SEC. 216. INTERNATIONAL REGULATORY SUPPORT.**

2 (a) IN GENERAL.—To ensure the effectiveness of the
3 Commission’s licensing and supervision of interstate insur-
4 ers, the Commission may engage in international efforts
5 to secure improved bilateral and multilateral cooperation,
6 as appropriate, with respect to improved insurance regula-
7 tion in global markets that promotes competition and al-
8 lows foreign participation. Such authority includes provi-
9 sion of appropriate technical assistance to and cooperation
10 with individual overseas interstate regulators and regional
11 and global regulatory organizations in matters, including
12 development and implementation of international regu-
13 latory standards, and development of bilateral and multi-
14 lateral mutual recognition agreements on licensing, reg-
15 istration, and professional standards with the objective of
16 improving the quality and uniformity of insurance regula-
17 tion in all countries.

18 (b) COOPERATION WITH STATE INSURANCE REGU-
19 LATORS.—Whenever possible, subsection (a) shall be im-
20 plemented in cooperation with State insurance regulators.
21 In matters of representation, the Commission and any in-
22 terested State insurance regulators shall jointly represent
23 the United States market.

24 (c) NEGOTIATION OF INTERNATIONAL TRADE
25 AGREEMENTS.—With respect to bilateral and multilateral
26 trade negotiations related to the provision of insurance

1 services, the United States Trade Representative shall
2 have responsibility for the negotiation of international
3 trade agreements associated with trade in insurance. The
4 United States Trade Representative shall develop relevant
5 negotiating strategies and appropriate concessions in close
6 consultation with the Commission and State insurance
7 regulators.

8 **Subtitle B—Regulation of Rates**
9 **and Policies**

10 **SEC. 221. APPROVAL OF INSURANCE RATES.**

11 (a) IN GENERAL.—The Federal Insurance Commis-
12 sion shall regulate interstate insurance rates. An inter-
13 state insurer may not charge a rate for insurance unless
14 the rate has been approved by the Commission.

15 (b) PROHIBITED RATES.—A rate may not be ap-
16 proved by the Commission, or remain in effect after the
17 date of enactment of this Act, if that rate is excessive,
18 inadequate, unfairly discriminatory, or otherwise in viola-
19 tion of this Act. In considering whether a rate is prohib-
20 ited by this subsection, the Commission—

21 (1) may not consider the degree of competition
22 among or between insurers; but

23 (2) shall consider whether the rate mathemati-
24 cally reflects the insurer’s investment income.

1 **SEC. 222. APPLICATIONS.**

2 (a) IN GENERAL.—Before establishing or changing
3 an insurance rate, an insurer shall file a complete rate
4 application with the Commission containing such informa-
5 tion as the Commission may require.

6 (b) BURDEN.—An insurer has the burden of estab-
7 lishing to the satisfaction of the Commission that a pro-
8 posed rate or proposed change of rate is justified and
9 meets the Commission’s requirements.

10 **SEC. 223. APPROVAL PROCEDURE.**

11 (a) PUBLIC NOTICE.—Upon receiving an application
12 from an insurer for a proposed rate or proposed rate
13 change, the Commission shall provide public notice by
14 publication and an opportunity to comment on the request
15 to the public.

16 (b) DEEMED APPROVALS.—

17 (1) 60-DAY RULE.—A proposed rate or pro-
18 posed rate change shall be deemed approved 60 days
19 after the date on which the application was received
20 by the Commission unless—

21 (A) a person requests a hearing on the ap-
22 plication within 45 days after such date and the
23 Commission—

24 (i) grants the request; or

25 (ii) denies the request and issues writ-
26 ten findings in support of the denial;

1 (B) the Commission holds a hearing before
2 that date; or

3 (C) in the case of a proposed rate change,
4 the proposed rate exceeds—

5 (i) 7 percent of the existing rate, with
6 respect to consumer insurance; or

7 (ii) 15 percent of the existing rate,
8 with respect to commercial insurance,
9 in which case a hearing is mandatory.

10 (2) 180-DAY RULE.—Except as provided in
11 paragraph (3), an application for a proposed rate or
12 rate change not deemed approved under paragraph
13 (1) shall be deemed approved 180 days after the
14 date on which the application was received by the
15 Commission unless the application has been dis-
16 approved by a final order of the Commission.

17 (3) HEARINGS; JUDICIAL PROCEEDINGS.—

18 (A) HEARINGS.—If a hearing is com-
19 menced under paragraph (1) or (2), an applica-
20 tion for a proposed rate or rate change that is
21 not disapproved shall be deemed to be approved
22 on the date that is 60 days after the later of—

23 (i) the last day of the 60-day period,
24 or the 180-day period, respectively; or

1 (ii) the date on which the hearing
2 record is closed.

3 (B) JUDICIAL PROCEEDINGS.—If an appli-
4 cation for a proposed rate or rate change is the
5 subject of a judicial proceeding directly involv-
6 ing the application that was initiated by the ap-
7 plicant or an intervenor, then the 60-day period
8 under paragraph (1) or the 180-day period
9 under paragraph (2), is tolled during the pro-
10 ceeding. Notwithstanding the number of days
11 remaining in the period when it was tolled, such
12 an application shall not be deemed approved
13 less than 30 days after conclusion of the judi-
14 cial proceeding.

15 **Subtitle C—Market Conduct**

16 **SEC. 231. PURPOSES AND REGULATIONS.**

17 (a) PURPOSE.—The purpose of this subtitle is to en-
18 sure appropriate Federal regulation of sales and mar-
19 keting practices of interstate insurers and insurance pro-
20 ducers selling the products of interstate insurers to pre-
21 vent—

22 (1) unfair methods of competition and unfair
23 and deceptive acts and practices in the advertising,
24 marketing, solicitation, sale, issuance, distribution,

1 and administration of insurance policies and other
2 products of interstate insurers;

3 (2) unfair claims practices related to insurance
4 underwritten and sold by such insurers and pro-
5 ducers;

6 (3) discrimination in the underwriting of insur-
7 ance by such insurers and producers; and

8 (4) insurance fraud.

9 (b) RULEMAKING AUTHORITY.—The Commission
10 shall promulgate such rules and regulations, applicable to
11 interstate insurers and insurance producers that sell prod-
12 ucts of interstate insurers, as the Commission deems nec-
13 essary to carry out the purposes of this subtitle.

14 (c) ANNUAL EXAMINATIONS.—The Commission shall
15 conduct annual examinations of the market conduct of
16 interstate insurers and insurance producers that sell prod-
17 ucts of interstate insurers.

18 (d) SAFE HARBOR.—An immaterial clerical error or
19 mathematical error made in connection with the adver-
20 tising, solicitation, sale, issuance, distribution, or adminis-
21 tration of insurance policies and other products of inter-
22 state insurers and insurance producers that sell products
23 of interstate insurers shall not constitute a violation of this
24 subtitle.

1 **SEC. 232. INSURANCE FRAUD.**

2 (a) FRAUD WARNING REQUIRED.—Claim forms and
3 applications for insurance operations, regardless of the
4 form of transmission, shall contain a fraud warning as
5 prescribed, by regulation, by the Commission.

6 (b) INVESTIGATIVE AUTHORITY OF COMMISSION.—
7 The Commission may investigate suspected fraudulent in-
8 surance acts and insurance persons engaged in insurance
9 operations.

10 (c) MANDATORY REPORTING OF FRAUDULENT IN-
11 SURANCE ACTS.—An interstate insurer or an insurance
12 person engaged in insurance operations having knowledge
13 or a reasonable belief that a fraudulent insurance act is
14 being, will be, or has been committed, shall provide to the
15 Commission the information required by, and in a manner
16 prescribed by, the Commission.

17 (d) IMMUNITY FROM LIABILITY.—

18 (1) IN GENERAL.—There shall be no civil liabil-
19 ity imposed on, and no cause of action shall arise
20 from, a person's furnishing information concerning
21 suspected, anticipated, or completed fraudulent in-
22 surance acts, if the information is provided to or re-
23 ceived from—

24 (A) the Commission or the Commission's
25 employees, agents, or representatives;

1 (B) Federal, State, or local law enforce-
2 ment or regulatory officials or their employees,
3 agents, or representatives;

4 (C) a person involved in the prevention and
5 detection of fraudulent insurance acts or that
6 person's agents, employees, or representatives;
7 or

8 (D) the NAIC or its employees, agents, or
9 representatives.

10 (2) EXCEPTION FOR FALSE STATEMENTS.—

11 Paragraph (1) shall not apply to false statements
12 made with actual malice. In an action brought
13 against a person for filing a report or furnishing
14 other information concerning a fraudulent insurance
15 act, the party bringing the action shall plead specifi-
16 cally any allegation that paragraph (1) does not
17 apply because the person filing the report or fur-
18 nishing the information did so with actual malice.

19 (3) SAVINGS PROVISION.—This subsection does
20 not abrogate or modify common law or statutory
21 privileges or immunities enjoyed by a person de-
22 scribed in paragraph (1).

23 (e) CONFIDENTIALITY.—

24 (1) IN GENERAL.—Documents, materials or
25 other information in the possession or control of the

1 Commission that is provided pursuant to subsection
2 (c) or obtained by the Commission in an investiga-
3 tion of suspected or actual fraudulent insurance acts
4 shall be confidential by law and privileged, shall not
5 be made available to the public, shall not be subject
6 to subpoena, and shall not be subject to discovery or
7 admissible in evidence in any private civil action.
8 However, the Commission may use the documents,
9 materials, or other information in the furtherance of
10 any regulatory or legal action brought as a part of
11 the Commission's official duties.

12 (2) RESTRICTIONS ON TESTIMONY.—Neither
13 the Commission nor any person who received docu-
14 ments, materials or other information while acting
15 under the authority of the Commission shall be per-
16 mitted or required to testify in any private civil ac-
17 tion concerning any documents, materials, or infor-
18 mation that are confidential pursuant to paragraph
19 (1).

20 (3) AUTHORIZED DISCLOSURE.—In order to as-
21 sist in the performance of the Commission's duties,
22 the Commission may—

23 (A) share documents, materials, or other
24 information, including the confidential and priv-
25 ileged documents, materials, or information

1 subject to paragraph (1) with other State, Fed-
2 eral, and international regulatory agencies, with
3 the NAIC and its affiliates and subsidiaries,
4 and with local, State, Federal, and international
5 law enforcement authorities, but only if the re-
6 cipient agrees to and has the authority to main-
7 tain the confidentiality and privileged status of
8 the document, material, or other information;

9 (B) receive documents, materials, or infor-
10 mation, including otherwise confidential and
11 privileged documents, materials, or information,
12 from the NAIC and its affiliates and subsidi-
13 aries, and from regulatory and law enforcement
14 officials of State or other foreign or domestic
15 jurisdictions, and shall maintain as confidential
16 or privileged any document, material, or infor-
17 mation received with notice or the under-
18 standing that it is confidential or privileged
19 under the laws of the jurisdiction that is the
20 source of the document, material, or informa-
21 tion; and

22 (C) enter into agreements governing shar-
23 ing and use of information, including the fur-
24 therance of any regulatory or legal action
25 brought as part of the recipient's official duties.

1 (4) NO WAIVER.—No waiver of any applicable
2 privilege or claim of confidentiality in the docu-
3 ments, materials, or information shall occur as a re-
4 sult of disclosure to the Commission under this sub-
5 section or as a result of sharing as authorized in
6 paragraph (3).

7 (f) PENALTIES.—If the person committing an offense
8 under subsection (a) or (c) of section 1036(a) of title 18,
9 United States Code, is an interstate insurer or an insurer-
10 affiliated party, the Commission may, in addition to the
11 punishment set forth in such section 1036—

12 (1) revoke, suspend or restrict the Federal li-
13 cense of such interstate insurer pursuant to section
14 204 of this Act; and

15 (2) order such interstate insurer, insurer-affili-
16 ated party, or State licensed insurance producer to
17 make restitution to persons aggrieved by such of-
18 fenses.

19 (g) DEFINITIONS.—In this section:

20 (1) FRAUDULENT INSURANCE ACT.—The term
21 “fraudulent insurance act” has the meaning given
22 that term in section 1036(d) of title 18, United
23 States Code.

1 (2) INSURANCE PERSON.—The term “insurance
2 person” has the meaning given that term in section
3 1036(d) of title 18, United States Code.

4 **SEC. 233. UNFAIR OR DECEPTIVE PRACTICES.**

5 (a) GENERAL PROHIBITION.—No person shall en-
6 gage in any act or practice in or affecting the advertising,
7 marketing, solicitation, sale, issuance, distribution, or ad-
8 ministration of insurance or other products of interstate
9 insurers, including such products sold by insurance pro-
10 ducers, if such act or practice constitutes an unfair or de-
11 ceptive act or practice in or affecting the advertising, solie-
12 itation, sale, issuance, distribution, or administration of
13 insurance or other products of interstate insurers.

14 (b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES DE-
15 FINED.—For purposes of this subtitle, the following acts
16 or practices constitute unfair or deceptive acts or practices
17 in or affecting the advertising, solicitation, sale, issuance,
18 distribution, or administration of insurance or other prod-
19 ucts of interstate insurers, including such products sold
20 by insurance producers:

21 (1) MISREPRESENTATIONS AND FALSE ADVER-
22 TISING OF INSURANCE OR ANNUITY CONTRACTS.—
23 Making, issuing, circulating, or causing to be made,
24 issued or circulated, any estimate, illustration, cir-

1 cular or statement, sales presentation or comparison
2 that—

3 (A) misrepresents the benefits, advantages,
4 conditions or terms of any insurance or annuity
5 contract issued by an interstate insurer;

6 (B) misrepresents the dividends to be re-
7 ceived on any insurance or annuity contract
8 issued by an interstate insurer;

9 (C) makes a false or misleading statement
10 as to the dividends previously paid on any in-
11 surance or annuity contract issued by an inter-
12 state insurer;

13 (D) is misleading or is a misrepresentation
14 as to the financial condition of any interstate
15 insurer, or as to the reserves required for an
16 interstate insurer;

17 (E) uses any name or title of any insur-
18 ance or annuity contract issued by an interstate
19 insurer that misrepresents the true nature of
20 such insurance or annuity contract;

21 (F) is a misrepresentation, including any
22 intentional misquote of a premium rate, for the
23 purpose of inducing or intending to induce the
24 purchase, lapse, forfeiture, exchange, conversion

1 or surrender of any insurance or annuity con-
2 tract issued by an interstate insurer;

3 (G) is a misrepresentation for the purpose
4 of effecting a pledge or assignment of or effect-
5 ing a loan against any insurance or annuity
6 contract issued by an interstate insurer; or

7 (H) misrepresents any insurance policy
8 issued by an interstate insurer as stock.

9 (2) FALSE, DECEPTIVE, OR MISLEADING AD-
10 VERTISING.—Making, publishing, disseminating, cir-
11 culating, or placing before the public, directly or in-
12 directly, in a newspaper, magazine or other publica-
13 tion, or in the form of a notice, circular, pamphlet,
14 letter or poster, or over the Internet or any radio or
15 television station, or in any other way, any advertise-
16 ment, announcement, or statement that contains any
17 assertion or representation with respect to any inter-
18 state insurer or insurance producer selling products
19 of an interstate insurer which is untrue, deceptive,
20 or misleading.

21 (3) DEFAMATION.—Making, publishing, dis-
22 seminating, or circulating, directly or indirectly, or
23 aiding, abetting, or encouraging the making, pub-
24 lishing, disseminating, or circulating of any oral or
25 written statement or any pamphlet, circular, pam-

1 phlet, letter, or poster, which is false or maliciously
2 critical of the financial condition of an interstate in-
3 surer or insurance producer selling products of an
4 interstate insurer, and which is calculated to injure
5 such insurer or producer.

6 (4) FALSE STATEMENTS.—Filing with the
7 Commission, or any other public official, or making,
8 publishing, disseminating, circulating, or delivering
9 to any person, or causing, directly or indirectly, to
10 be made, published, disseminated, circulated, or de-
11 livered to any person, or placed before the public,
12 any material statement as to the financial condition
13 of an interstate insurer or insurance producer selling
14 products of an interstate insurer that is false.

15 (5) TWISTING.—Making, issuing, or causing to
16 be made or issued an oral or written statement that
17 misrepresents or makes incomplete comparisons
18 about the terms, conditions or benefits contained in
19 an insurance or annuity contract issued by an inter-
20 state insurer, including such contracts sold by insur-
21 ance producers, for the purpose of inducing or at-
22 tempting to or intending to induce the policyholder
23 to forfeit, surrender, retain, exchange, or convert an
24 insurance or annuity contract or allow an insurance
25 or annuity contract to lapse.

1 (6) OTHER ACTS AND PRACTICES.—Engaging
2 in any other act or practice that the Commission de-
3 termines, by regulation or order, to be an unfair or
4 deceptive act or practice in or affecting the adver-
5 tising, solicitation, sale, issuance, distribution, or ad-
6 ministration of insurance and other products of
7 interstate insurers, including such products sold by
8 insurance producers.

9 (c) TIE-IN TRANSACTIONS.—

10 (1) REAL OR PERSONAL PROPERTY TRANS-
11 ACTION.—No person engaged in the business of fi-
12 nancing the purchase of real or personal property,
13 lending money on the security thereof, or servicing
14 a mortgage thereon, and none of its trustees, direc-
15 tors, officers, agents, or other employees, shall re-
16 quire, as a condition precedent to financing any such
17 purchase or making any such loan or renewing or
18 extending any such loan or mortgage or performing
19 any other act in connection therewith, that the per-
20 son, firm or corporation for whom the transaction is
21 undertaken negotiate any policy of insurance or re-
22 newal thereof covering such property through a par-
23 ticular insurance company, agent, or broker.

24 (2) RIGHT TO APPROVE INSURANCE COMPANY;
25 NON-DISCRIMINATION.—This section shall not pre-

1 vent the exercise of any right to approve or dis-
2 approve the insurer selected to underwrite the insur-
3 ance, except that in exercising such right, whether
4 pursuant to this section or any other law, no person
5 engaged in any such financing, lending or servicing
6 business and none of its trustees, directors, officers,
7 agents, or other employees shall—

8 (A) discriminate against an insurance com-
9 pany which issues a policy of insurance that is
10 non-assessable as to any designated mortgages
11 or any secured creditor designated as a loss
12 payee because of the insurer's type of organiza-
13 tion; or

14 (B) refuse to accept an insurance policy
15 because it was not negotiated through a par-
16 ticular insurance company, agent, or broker.

17 (3) NO FEE TO CHANGE INSURANCE COMPA-
18 NIES.—No person engaged in any such financing,
19 lending, or servicing business, and none of its trust-
20 ees, directors, officers, agents, or other employees
21 shall, in connection with compliance with a covenant
22 to insure, require that the person, firm, or corpora-
23 tion for whom the purchase of the property is fi-
24 nanced or to whom a mortgage loan is made or who
25 owns the property shall pay a fee or other charges

1 as a condition to accepting, during the unexpired
2 term of a policy then held, another policy of insur-
3 ance in substitution therefore.

4 (4) BANKING SERVICES.—A depository institu-
5 tion (as such term is defined in section 3 of the Fed-
6 eral Deposit Insurance Act (12 U.S.C. 1813)) en-
7 gaged, directly or indirectly, in the sale of insurance
8 products shall comply with the anti-coercion, disclo-
9 sure, and other consumer protections provided for in
10 section 47 of the Federal Deposit Insurance Act (12
11 U.S.C. 1831x).

12 **SEC. 234. REPLACEMENT OF LIFE INSURANCE POLICIES.**

13 (a) IN GENERAL.—Any replacement of individual life
14 insurance policies or individual annuity contracts of an
15 interstate insurer by an agent or representative of such
16 insurer shall conform to standards set forth in regulations
17 promulgated by the Commission.

18 (b) REGULATIONS.—The regulation required by sub-
19 section (a) shall—

20 (1) specify what constitutes replacement and
21 the disclosure and notification required in order to
22 replace a policy or contract;

23 (2) require notification to the interstate insurer
24 whose policies or contracts are intended to be re-
25 placed;

1 (3) require the timely exchange of illustrative
2 and cost information necessary for completion of a
3 comparison of the proposed and replaced coverage;
4 and

5 (4) provide for a period following issuance of
6 the replacement policies or contracts during which
7 the policyholder or contract owner may reinstate the
8 replaced policies or contracts.

9 **SEC. 235. UNFAIR DISCRIMINATION, UNFAIR CLAIMS SET-**
10 **TLEMENT PRACTICES, AND UNLAWFUL IN-**
11 **DUCEMENTS.**

12 (a) UNFAIR DISCRIMINATION.—In underwriting in-
13 surance, no interstate insurer shall commit any of the fol-
14 lowing acts:

15 (1) RATES, DIVIDENDS AND OTHER BENEFITS
16 ASSOCIATED WITH LIFE INSURANCE AND ANNU-
17 ITIES.—Engage in or allow any unfair discrimina-
18 tion between individuals of the same class and equal
19 expectation of life in the rates charged for any life
20 insurance or annuity contract issued by such inter-
21 state insurer or in the dividends or other benefits
22 payable thereon, or in any other terms and condi-
23 tions of such insurance or annuity contract.

24 (2) RATES AND BENEFITS ASSOCIATED WITH
25 ACCIDENT AND HEALTH INSURANCE.—Engage in or

1 allow any unfair discrimination between individuals
2 or risks of the same class and of essentially the
3 same hazard in the rates charged for any accident
4 or health insurance issued by an interstate insurer
5 or in the benefits payable thereunder, or in any of
6 the terms or conditions of such insurance, or in any
7 other manner.

8 (3) GEOGRAPHIC LOCATION OF PROPERTY OR
9 CASUALTY RISK; AGE OF PROPERTY.—Engage in or
10 allow unfair discrimination between individuals or
11 risks of the same class and essentially the same haz-
12 ard by refusing to insure, refusing to renew, can-
13 celing, or limiting the amount of insurance cov-
14 erage—

15 (A) on a property or casualty risk solely
16 because of the geographic location of the risk;
17 or

18 (B) on the residential property risk, or the
19 personal property contained therein solely be-
20 cause of the age of the residential property;
21 except that it is not unfairly discriminatory if such
22 action is based on sound actuarial principles or re-
23 lated to actual or reasonably anticipated experience.

24 (4) TERMINATION OF AGENT OR BROKER.—
25 Refuse to appoint, or terminate the appointment of,

1 an agent or broker solely because such agent or
2 broker submitted applications for property or cas-
3 ualty risks located in a particular geographical area.

4 (5) GENDER, MARTIAL STATUS, RACE, RELI-
5 GION OR NATIONAL ORIGIN.—Refuse to insure,
6 refuse to continue to insure, or limit the amount of
7 coverage available to, an individual because of the
8 gender, marital status, race, religion or national ori-
9 gin of the individual; except that nothing in this
10 paragraph shall prohibit an interstate insurer from
11 taking marital status into account for the purpose of
12 defining persons eligible for dependent benefits.

13 (6) MENTAL OR PHYSICAL IMPAIRMENT.—Ter-
14 minate or modify coverage under, or refuse to issue
15 or refuse to renew, any insurance, or charge a dif-
16 ferent rate for the same coverage, solely because the
17 applicant or insured or any employee or dependent
18 of an employee of either is mentally or physically im-
19 paired; except that—

20 (A) this paragraph shall not apply to acci-
21 dent and health insurance sold by an interstate
22 insurer that is chartered to issue property and
23 casualty insurance;

24 (B) this paragraph shall not preclude any
25 such action that is based on sound actuarial

1 principles or is related to actual or reasonable
2 anticipated experience, in which case the inter-
3 state insurer shall notify the insured or appli-
4 cant of the right to receive, or designate a med-
5 ical professional to receive, the specific reason
6 or reasons for such refusal, limitation or dif-
7 ferential; and

8 (C) this paragraph shall not be interpreted
9 to modify any other provision of law related to
10 the termination, modification, issuance, or re-
11 newal of, or rates charged with respect to, any
12 contract issued by an interstate insurer.

13 (7) REFUSAL BY ANOTHER INSURER.—Refuse
14 to insure solely because another interstate insurer or
15 State insurer has refused to write an insurance or
16 annuity contract, or has canceled or has refused to
17 renew an existing insurance or annuity contract in
18 which that person was the named insured. Nothing
19 in this paragraph shall prevent the termination of an
20 excess insurance contract on the account of the fail-
21 ure of the insured to maintain any required under-
22 lying insurance.

23 (b) UNFAIR CLAIMS SETTLEMENT PRACTICES.—No
24 interstate insurer shall engage in any of the following un-
25 fair claims settlement practices if such practice is com-

1 mitted without just cause and with such frequency as to
2 indicate a general practice:

3 (1) Knowingly misrepresent material facts or
4 provisions that relate to the claim or coverage at
5 issue.

6 (2) Refuse to pay a claim for an arbitrary or
7 capricious reason based on all available information.

8 (3) Attempt to settle a claim based on an appli-
9 cation that is altered without notice to, or the knowl-
10 edge or consent of, the insured.

11 (4) Fail to include with each claim paid to an
12 insured or beneficiary a statement of the coverage
13 under which payment is being made.

14 (5) Fail to settle a claim promptly whenever li-
15 ability is reasonably clear under one part of an in-
16 surance or annuity contract, in order to influence
17 settlements under other parts of the contract.

18 (6) Fail to provide promptly on request a rea-
19 sonable explanation of the basis for a denial of a
20 claim.

21 (7) Engage in any other practice that the Com-
22 mission determines, pursuant to a rule or order, to
23 be an unfair claims settlement practice.

24 (c) UNLAWFUL INDUCEMENTS.—

1 (1) IN GENERAL.—No interstate insurer, nor
2 anyone acting on behalf of an interstate insurer, nor
3 any insurance producer, shall pay, allow, or give, or
4 offer to pay, allow, or give, directly or indirectly, as
5 an inducement to any person to insure, or shall give,
6 sell, or purchase, or offer to give, sell, or purchase,
7 as such inducement, or interdependent with any in-
8 surance policy or annuity contract, any stocks,
9 bonds, or other securities, or any dividends or profits
10 accruing or to accrue thereon, any rebate of pre-
11 mium, or any other valuable consideration or induce-
12 ment whatever having a nominal value in excess of
13 \$20, not specified in such policy or contract.

14 (2) AFFILIATES OF CORPORATE INSUREDS.—
15 Within the meaning of paragraph (1), the sharing of
16 a commission with the insured shall be deemed to in-
17 clude any case in which an insurance agent or
18 broker which is an affiliate of any corporate insured,
19 received commissions for the negotiation or procure-
20 ment of any policy or contract of insurance for the
21 insured.

22 (3) DIVIDENDS PERMITTED.—This subsection
23 shall not prohibit any interstate insurer from equi-
24 tably distributing to its policyholders, at any time
25 during the term or at the termination of the con-

1 tract of insurance, dividends payable from such in-
 2 surer's surplus, nor prohibit any interstate insurer
 3 or insurance agent from paying commissions to a li-
 4 censed insurance broker for negotiating a policy or
 5 contract of insurance, nor prohibit any licensed in-
 6 surance broker from sharing or dividing a commis-
 7 sion earned or received by him with any other li-
 8 censed insurance broker or brokers who shall have
 9 aided him in respect to the insurance for the nego-
 10 tiation of which the commission has been earned or
 11 paid.

12 (4) TEMPORARY CONTRACTS PERMITTED.—
 13 This subsection shall not prohibit the making of
 14 temporary contracts of insurance, either by tem-
 15 porary binders or other memoranda, if the premium
 16 applicable to the insurance shall be due and shall be
 17 paid for the time during which the insurance is in
 18 force by virtue of the temporary contract.

19 **SEC. 236. HIV WRITTEN INFORMED CONSENT, DISCRIMINA-**
 20 **TION AGAINST ABUSE VICTIMS, AND HOLO-**
 21 **CAUST VICTIMS CLAIMS.**

22 (a) HIV WRITTEN INFORMED CONSENT.—

23 (1) IN GENERAL.—No interstate insurer or its
 24 designee shall request or require an individual pro-
 25 posed for insurance coverage to be the subject of an

1 HIV related test without receiving the written in-
2 formed consent of such individual prior to such test-
3 ing and without providing general information about
4 AIDS and the transmission of HIV infection.

5 (2) WRITTEN CONSENT.—Written informed
6 consent to an HIV related test shall consist of a
7 written authorization that is dated and includes at
8 least the following:

9 (A) A general description of the test.

10 (B) A statement of the purpose of the test.

11 (C) A statement that a positive test result
12 is an indication that the individual may develop
13 AIDS and may wish to consider further inde-
14 pendent testing.

15 (D) A statement that the individual may
16 identify on the authorization form the person to
17 whom the specific test results may be disclosed
18 in the event of an adverse underwriting deci-
19 sion, which person may be the individual or a
20 physician or other designee at the discretion of
21 the individual proposed for insurance.

22 (E) The signature of the applicant or indi-
23 vidual proposed for insurance, or if such indi-
24 vidual lacks capacity to consent, the signature

1 of such other person authorized to consent for
2 such individual.

3 (3) NOTICE TO INDIVIDUAL.—In the event that
4 an interstate insurer’s adverse underwriting decision
5 is based in whole or in part on the result of an HIV
6 related test, the interstate insurer shall notify the in-
7 dividual of the adverse underwriting decision and
8 ask the individual to elect in writing, unless the indi-
9 vidual has already done so, whether to have the spe-
10 cific HIV related test results disclosed directly to the
11 individual or to such other person as the individual
12 may designate.

13 (4) DEFINITIONS.—For purposes of this sub-
14 section:

15 (A) ADVERSE UNDERWRITING DECISION.—
16 The term “adverse underwriting decision”
17 means—

18 (i) a declination of insurance coverage
19 as applied for; or

20 (ii) an offer to issue insurance cov-
21 erage at a higher than standard rate.

22 (B) AIDS.—The term “AIDS” means ac-
23 quired immune deficiency syndrome, as may be
24 defined from time to time by the Centers for

1 Disease Control of the United States Public
2 Health Service.

3 (C) HIV INFECTION.—The term “HIV in-
4 fection” means infection with the human im-
5 munodeficiency virus or any other related virus
6 identified as a probable causative agent of
7 AIDS.

8 (D) HIV RELATED TEST.—The term
9 “HIV related test” means any laboratory test
10 or series of tests for any virus, antibody, anti-
11 gen, or etiologic agent whatsoever thought to
12 cause or to indicate the presence of AIDS.

13 (5) AUTHORITY OF DIRECTOR.—Nothing in this
14 subsection shall be construed to create, impair, alter,
15 limit, modify, enlarge, abrogate, or restrict the spe-
16 cific authority of the Commission to allow or pro-
17 hibit the use of HIV related tests or the consider-
18 ation of HIV related test results for insurance cov-
19 erage purposes.

20 (b) DISCRIMINATION BASED ON BEING A VICTIM OF
21 ABUSE.—

22 (1) IN GENERAL.—It is unfairly discriminatory
23 on the part of an interstate insurer to—

24 (A) deny, refuse to issue, renew or reissue,
25 cancel, or otherwise terminate, restrict, or ex-

1 clude insurance coverage on or add a premium
2 differential to a policy for an applicant or in-
3 sured on the basis of the applicant's or in-
4 sured's abuse status; or

5 (B) exclude, limit, or deny benefits on a
6 life insurance policy on the basis of an insured's
7 abuse status except as otherwise permitted or
8 required by law;

9 except that the prohibitions contained in this para-
10 graph shall not preclude an interstate insurer from
11 taking any of the actions described in this paragraph
12 so long as the interstate insurer relies on under-
13 writing criteria reasonably related to the physical or
14 mental condition of a person, their property or claim
15 history and the decision was based on sound under-
16 writing and actuarial principles reasonably related to
17 actual or anticipated loss experience. In such case
18 the selection criteria permitted must be based on
19 such principles. The interstate insurer shall notify
20 the insured or applicant of its specific reason or rea-
21 sons for such decision.

22 (2) DISCLOSURE OF CONFIDENTIAL ABUSE IN-
23 FORMATION.—When an interstate insurer, agency,
24 or agent has confidential abuse information in its
25 possession, the disclosure or transfer of such infor-

1 mation by a person employed by or contracting with
2 an interstate insurer, agency, or agent for any pur-
3 pose or to any person is unfairly discriminatory, ex-
4 cept—

5 (A) to the subject of abuse or an individual
6 specifically designated in writing by the subject
7 of abuse;

8 (B) to a health care provider for the direct
9 provision of health care services;

10 (C) to a licensed physician identified and
11 designated by the subject of abuse;

12 (D) when ordered by the Commission or a
13 court of competent jurisdiction or otherwise re-
14 quired by law;

15 (E) when necessary for a valid business
16 purpose to transfer information that includes
17 confidential abuse information that cannot rea-
18 sonably be segregated without undue hardship;
19 confidential abuse information may be disclosed
20 only if the recipient has executed a written
21 agreement to be bound by the prohibitions of
22 this subsection in all respects and to be subject
23 to the enforcement of this subsection by a court
24 of competent jurisdiction for the benefit of the
25 applicant or the insured, and only to—

1 (i) a reinsurer that seeks to indemnify
2 or indemnifies all or any part of a policy
3 covering a subject of abuse and that can-
4 not underwrite or satisfy its obligations
5 under the reinsurance agreement without
6 that disclosure;

7 (ii) a party to a proposed or con-
8 summated sale, transfer, merger, or con-
9 solidation of all or part of the business of
10 the interstate insurer, agency, or agent;

11 (iii) medical or claims personnel (in-
12 cluding affiliates of the interstate insurer,
13 agency, or agent) contracting with the
14 interstate insurer, agency, or agent, only
15 where necessary to process an application
16 or perform the duties of such interstate in-
17 surer, agency, or agent under the policy or
18 to protect the safety or privacy of a subject
19 of abuse; or

20 (iv) with respect to address and tele-
21 phone number, to entities with whom the
22 interstate insurer, agency, or agent trans-
23 acts business when the business cannot be
24 transacted without the address and tele-
25 phone number;

1 (F) to an attorney who needs the informa-
2 tion to represent the interstate insurer, agency,
3 or agent effectively, provided, that the inter-
4 state insurer, agency, or agent notifies the at-
5 torney of its obligations under this subsection
6 and requests that the attorney exercise due dili-
7 gence to protect the confidential abuse informa-
8 tion consistent with the attorney's obligation to
9 represent the interstate insurer, agency, or
10 agent;

11 (G) to the policyholder or assignee, in the
12 course of delivery of the policy, if the policy
13 contains information about abuse status; or

14 (H) to any other entities deemed appro-
15 priate by the Commission.

16 (3) REQUESTS PROHIBITED.—It is unfairly dis-
17 criminatory on the part of an interstate insurer to
18 request information about acts of abuse or abuse
19 status, or make use of that information, however ob-
20 tained.

21 (4) EXCEPTIONS.—Nothing in this subsection
22 shall—

23 (A) preclude a subject of abuse from ob-
24 taining his or her insurance records;

1 (B) prohibit an interstate insurer, agency,
2 or agent from declining to issue a life insurance
3 policy if the applicant or prospective owner of
4 the policy is or would be designated as a bene-
5 ficiary of the policy, and if—

6 (i) the applicant or prospective owner
7 of the policy lacks an insurable interest in
8 the insured;

9 (ii) the applicant or prospective owner
10 of the policy is known, on the basis of
11 medical, police, or court records, to have
12 committed an act of abuse against the pro-
13 posed insured; or

14 (iii) the insurance or prospective in-
15 sured is a subject of abuse, and that per-
16 son, or a person who has assumed the care
17 of that person if a minor or incapacitated,
18 has objected to the issuance of the policy
19 on the ground that the policy would be
20 issued to or for the direct or indirect ben-
21 efit of the abuser; or

22 (C) prohibit an interstate insurer, agency,
23 or agent from asking about a medical condition
24 or from using medical information to under-
25 write or to carry out its duties under the policy,

1 even if the medical information is related to a
2 medical condition that the interstate insurer,
3 agency, or agent knows or has reason to know
4 is abuse-related, to the extent otherwise per-
5 mitted under this subsection and other applica-
6 ble law.

7 (5) ACTIONS TAKEN IN GOOD FAITH.—A inter-
8 state insurer, agency, or agent shall not be held civ-
9 ily or criminally liable for the death of or injury to
10 an insured resulting from any action taken in a good
11 faith effort to comply with the requirements of this
12 subsection; except that this paragraph does not pre-
13 vent an action to investigate or enforce a violation
14 of this subsection or to assert any other claims au-
15 thorized by law.

16 (6) DEFINITIONS.—For purposes of this sub-
17 section:

18 (A) ABUSE.—The term “abuse” means an
19 act that—

20 (i) would constitute a crime in the
21 State in which the insured or applicant re-
22 sides, including acts constituting disorderly
23 conduct, harassment, menacing, reckless
24 endangerment, kidnapping, assault, at-
25 tempted assault, or attempted murder;

1 (ii) has resulted (or multiple acts that
2 have resulted) in actual physical or emo-
3 tional injury or have created a substantial
4 risk of physical or emotional harm to such
5 person or such person's child; and

6 (iii) is alleged (or multiple acts that
7 are alleged) to have been committed by a
8 family or household member.

9 (B) CONFIDENTIAL ABUSE INFORMA-
10 TION.—The term “confidential abuse informa-
11 tion” means information that clearly indicates
12 that the insured or applicant is a subject of
13 abuse.

14 (c) HOLOCAUST VICTIMS' CLAIMS.—Any interstate
15 insurer in receipt of a claim against it arising from an
16 occurrence during the period between January 1, 1929,
17 and December 31, 1945, from an individual that such
18 interstate insurer knows, or reasonably should have
19 known, is a Holocaust victim shall—

20 (1) diligently and expeditiously investigate such
21 claim;

22 (2) allow claimants to provide alternative docu-
23 mentation which does not meet the usual standards
24 of proof required by an insurer to substantiate the
25 particular claim, subject to standards established for

1 such documentation as prescribed by regulations
2 promulgated by the Commission; and

3 (3) attempt to resolve, settle and, if appro-
4 priate, make payments on claims irrespective of any
5 statute of limitations or notice requirements imposed
6 by any law or such insurance policy issued to or cov-
7 ering the life of a Holocaust victim, provided that
8 the claim is submitted to the insurer within 10 years
9 from the effective date of this Act.

10 **SEC. 237. MINIMUM NATIONAL STANDARDS.**

11 (a) **APPLICABILITY TO INSURERS.**—The provisions of
12 this subtitle and any regulations implementing this sub-
13 title shall apply to each insurance company (other than
14 an interstate insurer) enforceable against each such com-
15 pany by the appropriate State insurance regulator of the
16 State that would otherwise have jurisdiction over the
17 transaction or activity that is alleged to constitute a viola-
18 tion of this subtitle. Each such insurance company shall
19 be subject to the same penalties and sanctions that the
20 Commission may impose against an interstate insurer for
21 violations of this subtitle.

22 (b) **ENFORCEMENT OF MORE PROTECTIVE STATE**
23 **LAWS.**—Nothing in this section shall be construed to di-
24 minish the authority of any State insurance regulator to
25 enforce a State statute, order, or regulation upon an intra-

1 state insurer that provides greater protection to the policy-
2 holder, applicant, or claimant alleging a violation of this
3 subtitle.

4 **SEC. 238. ENFORCEMENT.**

5 (a) FEDERAL LICENSE REVOCATION, SUSPENSION,
6 OR RESTRICTION.—

7 (1) INVOLUNTARY REVOCATION OR RESTRIC-
8 TION.—

9 (A) DETERMINATION REQUIRED.—The
10 Commission shall take an action described in
11 subparagraph (B) if it determines that an inter-
12 state insurer's license requires revocation or re-
13 striction (including restrictions on the lines of
14 insurance covered by) because—

15 (i) the interstate insurer or its board
16 of directors has engaged or are engaging in
17 conduct involving an undue risk of loss to
18 the interstate insurer's policyholders as a
19 whole;

20 (ii) the interstate insurer is in a fi-
21 nancial or other condition that is not con-
22 sistent with the continuation of its oper-
23 ations as presently conducted by the in-
24 surer; or

1 (iii) the interstate insurer or its board
2 of directors has violated any applicable
3 law, regulation, order, condition imposed in
4 writing by the Commission in connection
5 with the approval of an application, filing,
6 statement, notice or other request by the
7 interstate insurer, or written agreement
8 entered into between the interstate insurer
9 and the Commission,

10 (B) NOTICE TO THE INTERSTATE IN-
11 SURER.—If the Commission makes a deter-
12 mination described subparagraph (A) with re-
13 spect to an interstate insurer, then the Commis-
14 sion shall—

15 (i) serve written notice on the inter-
16 state insurer of the Commission’s intention
17 to revoke the license of such interstate in-
18 surer;

19 (ii) provide the interstate insurer with
20 a statement of the basis for the determina-
21 tion to revoke or restrict the insurer’s Fed-
22 eral license; and

23 (iii) notify the interstate insurer of
24 the date (not less than 30 days after notice
25 under this subparagraph) and place for a

1 hearing before the Commission (or any
2 person designated by the Commission) with
3 respect to the revocation or restriction of
4 the interstate insurer's Federal license.

5 (2) HEARING; REVOCATION OR RESTRICTION.—

6 If, on the basis of the evidence presented at a hear-
7 ing before the Commission (or any person des-
8 ignated by the Commission for such purpose), in
9 which all issues shall be determined on the record
10 pursuant to section 554 of title 5, United States
11 Code, and the written findings of the Commission
12 (or such designated person) with respect to such evi-
13 dence (which shall be conclusive), the Commission
14 finds that the conduct, condition, or violation speci-
15 fied in the notice under paragraph (1)(B) has been
16 established, the Commission may issue an order re-
17 voking or restricting the Federal license of the inter-
18 state insurer effective as of a date subsequent to
19 such finding.

20 (3) APPEARANCE; CONSENT TO REVOCATION OR
21 RESTRICTION.—Unless the interstate insurer ap-
22 pears at the hearing by a duly authorized represent-
23 ative, it shall be deemed to have consented to the
24 revocation or restriction of its Federal license, and

1 revocation or restriction of its Federal license may
2 be ordered by the Commission.

3 (4) JUDICIAL REVIEW.—Any interstate insurer
4 whose Federal license has been revoked or restricted
5 by order of the Commission under this subsection
6 shall have the right of judicial review of such order
7 only to the extent provided for the review of orders
8 under subsection (g).

9 (5) PUBLICATION OF NOTICE OF REVOCATION
10 OR RESTRICTION.—The Commission may publish no-
11 tice of such revocation or restriction and the inter-
12 state insurer shall give notice of such revocation or
13 restriction to each of its policyholders at the policy-
14 holder's last address of record on the books of the
15 interstate insurer, in such manner and at such time
16 as the Commission may find to be necessary for the
17 protection of policyholders.

18 (6) TEMPORARY SUSPENSION OR RESTRIC-
19 TION.—

20 (A) IN GENERAL.—If the Commission ini-
21 tiates a revocation or restriction proceeding
22 under paragraph (1) with respect to an inter-
23 state insurer, and the Commission finds that
24 the interstate insurer poses an immediate
25 threat to its policyholders or the public, the

1 Commission may issue a temporary order sus-
2 pending or restricting the interstate insurer's
3 Federal license.

4 (B) EFFECTIVE PERIOD OF TEMPORARY
5 ORDER.—A temporary order issued under sub-
6 paragraph (A) shall become effective not earlier
7 than 10 days from the date of service upon the
8 interstate insurer and, unless set aside, limited,
9 or suspended by a court in proceedings author-
10 ized hereunder, such temporary order shall re-
11 main effective and enforceable until an order of
12 the Commission under paragraph (2) or (3) be-
13 comes final or until the Commission dismisses
14 the proceedings under paragraph (2).

15 (C) JUDICIAL REVIEW.—Before the close
16 of the 10-day period beginning on the date any
17 temporary order has been served upon an inter-
18 state insurer under subparagraph (A), such
19 interstate insurer may apply to the United
20 States District Court for the District of Colum-
21 bia, or the United States district court for the
22 judicial district in which the main office of the
23 insurer is located, for an injunction setting
24 aside, limiting, or suspending the enforcement,
25 operation, or effectiveness of such order, and

1 such court shall have jurisdiction to issue such
2 injunction.

3 (D) PUBLICATION OF ORDER.—The inter-
4 state insurer shall give notice of a temporary
5 order issued under this paragraph in such man-
6 ner and at such times as the Commission may
7 find to be necessary and may order for the pro-
8 tection of policyholders and the public.

9 (7) NOTICE BY THE COMMISSION.—If the Com-
10 mission shall determine that an interstate insurer
11 has not given notice of an order under this sub-
12 section substantially in the manner and at the times
13 ordered by the Commission, the Commission may
14 provide such notice in such manner as the Commis-
15 sion may find to be necessary and proper.

16 (8) DECISION TO REVOKE, SUSPEND, OR RE-
17 STRICT.—Any decision by the Commission to—

18 (A) issue a temporary order suspending or
19 restricting an interstate insurer's Federal li-
20 cense, or

21 (B) issue a final order revoking or restrict-
22 ing an interstate insurer's Federal license,
23 shall be made by the Commission and may not be
24 delegated, except that the Commission may, by
25 order, designate an employee of the Office that may

1 make such decision in the event that the Commis-
2 sion is not able to act by reason of recusal or is oth-
3 erwise disqualified from acting.

4 (b) CEASE-AND-DESIST PROCEEDINGS.—

5 (1) IN GENERAL.—If, in the opinion of the
6 Commission, any interstate insurer, or any insurer-
7 affiliated party is engaging or has engaged, or the
8 Commission has reasonable cause to believe that any
9 interstate insurer, or any insurer-affiliated party is
10 about to engage, in conduct involving an undue risk
11 of loss to such interstate insurer's policyholders as
12 a whole, or is violating or has violated, or the Com-
13 mission has reasonable cause to believe that any
14 interstate insurer, or any insurer-affiliated party is
15 about to violate, a law, rule, or regulation, or any
16 condition imposed in writing by the Commission in
17 connection with the granting of any application, fil-
18 ing, statement, notice or other request by the inter-
19 state insurer any written agreement entered into
20 with the Commission, the Commission may issue and
21 serve upon such interstate insurer, producer or party
22 a notice of charges in respect thereof. The notice
23 shall contain a statement of the facts constituting
24 the alleged violation or violations or the conduct, and
25 shall fix a time and place at which a hearing will be

1 held to determine whether an order to cease and de-
2 sist therefrom should issue against the interstate in-
3 surer or the insurer-affiliated party. Such hearing
4 shall be fixed for a date not earlier than 30 days nor
5 later than 60 days after service of such notice unless
6 an earlier or a later date is set by the Commission
7 at the request of any party so served. Unless the
8 party or parties so served shall appear at the hear-
9 ing personally or by a duly authorized representa-
10 tive, they shall be deemed to have consented to the
11 issuance of the cease-and-desist order. In the event
12 of such consent, or if upon the record made at any
13 such hearing, the Commission shall find that any
14 violation or conduct specified in the notice of
15 charges has been established, the Commission may
16 issue and serve upon the interstate insurer, or the
17 insurer-affiliated party, as the case may be, an order
18 to cease and desist from any such violation or con-
19 duct. Such order may, by provisions which may be
20 mandatory or otherwise, require the interstate in-
21 surer or the insurer-affiliated party to cease and de-
22 sist from the same, and, further, to take affirmative
23 action to correct the conditions resulting from any
24 such violation or conduct.

1 (2) EFFECTIVE DATE.—A cease-and-desist
2 order shall become effective at the expiration of 30
3 days after the service of such order upon the inter-
4 state insurer, the State licensed insurance producer
5 or the insurer-affiliated party, as the case may be
6 (except in the case of a cease-and-desist order issued
7 upon consent, which shall become effective at the
8 time specified therein), and shall remain effective
9 and enforceable as provided therein, except to such
10 extent as it is stayed, modified, terminated, or set
11 aside by action of the Commission or a reviewing
12 court.

13 (3) AFFIRMATIVE ACTION TO CORRECT CONDI-
14 TIONS RESULTING FROM VIOLATIONS OR CON-
15 DUCT.—The authority under this subsection and
16 subsection (c) to issue an order that requires an
17 interstate insurer or an insurer-affiliated party to
18 take affirmative action to correct or remedy any con-
19 ditions resulting from any violation or conduct with
20 respect to which such order is issued includes the
21 authority to require such interstate insurer, pro-
22 ducer or such party to—

23 (A) make restitution or provide reimburse-
24 ment, indemnification, or guarantee against
25 loss;

1 (B) restrict the growth of the interstate in-
2 surer;

3 (C) dispose of any asset or insurance con-
4 tract (including any insurance policy);

5 (D) rescind any other agreements or con-
6 tracts, other than insurance contracts (includ-
7 ing insurance policies) as to which the inter-
8 state insurer is the issuer;

9 (E) employ qualified officers or employees
10 (who may be subject to approval by the Com-
11 mission in its direction); and

12 (F) take such other action as the Commis-
13 sion determines to be appropriate.

14 (4) AUTHORITY TO LIMIT ACTIVITIES.—The au-
15 thority to issue an order under this subsection or
16 subsection (c) includes the authority to place limita-
17 tions on the activities or functions of an interstate
18 insurer or an insurer-affiliated party.

19 (5) STANDARD FOR CERTAIN ORDERS.—No au-
20 thority under this subsection or subsection (c) to
21 prohibit any insurer-affiliated party from with-
22 drawing, transferring, removing, dissipating, or dis-
23 posing of any funds, assets, or other property may
24 be exercised unless the Commission meets the stand-
25 ards of Rule 65 of the Federal Rules of Civil Proce-

1 dure, without regard to the requirement of such rule
2 that the applicant show that the injury, loss, or
3 damage is irreparable and immediate.

4 (c) TEMPORARY CEASE-AND-DESIST ORDERS.—

5 (1) IN GENERAL.—Whenever the Commission
6 shall determine that the violation or threatened vio-
7 lation or the conduct specified in the notice of
8 charges served upon an interstate insurer or an in-
9 surer-affiliated party pursuant to subsection (b)(1),
10 or the continuation thereof, is likely to cause insol-
11 vency or significant dissipation of assets or earnings
12 of an interstate insurer, or is likely to weaken the
13 condition of an interstate insurer or otherwise preju-
14 dice the interests of the policyholders of an inter-
15 state insurer prior to the completion of the pro-
16 ceedings conducted pursuant to subsection (b)(1),
17 the Commission may issue a temporary order requir-
18 ing such interstate insurer, producer or party to
19 cease and desist from any such violation or conduct
20 and to take affirmative action to prevent or remedy
21 such insolvency, dissipation, condition, or prejudice
22 pending completion of such proceedings. Such order
23 may include any requirement authorized under sub-
24 section (b)(3). Such order shall become effective
25 upon service upon the interstate insurer, producer

1 or party and, unless set aside, limited, or suspended
2 by a court in proceedings authorized by paragraph
3 (2), shall remain effective and enforceable pending
4 the completion of the administrative proceedings
5 pursuant to such notice and until such time as the
6 Commission shall dismiss the charges specified in
7 such notice or, if a cease-and-desist order is issued
8 against such interstate insurer, producer or party,
9 until the effective date of such order.

10 (2) INJUNCTION.—Within 10 days after an
11 interstate insurer or an insurer-affiliated party has
12 been served with a temporary cease-and-desist order,
13 the interstate insurer, producer or party may apply
14 to the United States district court for the judicial
15 district in which the main office of the interstate in-
16 surer is located or in which the producer of party is
17 located, as the case may be, or to the United States
18 District Court for the District of Columbia, for an
19 injunction setting aside, limiting, or suspending the
20 enforcement, operation, or effectiveness of such
21 order pending the completion of the administrative
22 proceedings pursuant to the notice of charges served
23 upon the interstate insurer or such party under sub-
24 section (b)(1), and such court shall have jurisdiction
25 to issue such injunction.

1 (3) INCOMPLETE OR INACCURATE RECORDS.—

2 (A) TEMPORARY ORDER.—If a notice of
3 charges served under subsection (b)(1) speci-
4 fies, on the basis of particular facts and cir-
5 cumstances, that an interstate insurer's books
6 and records are so incomplete or inaccurate
7 that the Commission is unable, through the
8 normal supervisory process, to determine the fi-
9 nancial condition of that interstate insurer or
10 the details or purpose of any transaction or
11 transactions that may have a material effect on
12 the financial condition of that interstate in-
13 surer, the Commission may issue a temporary
14 order requiring—

15 (i) the cessation of any activity or
16 practice which gave rise, whether in whole
17 or in part, to the incomplete or inaccurate
18 state of the books or records; or

19 (ii) affirmative action to restore such
20 books or records to a complete and accu-
21 rate state, until the completion of the pro-
22 ceedings under subsection (b)(1).

23 (B) EFFECTIVE PERIOD.—Any temporary
24 order issued under subparagraph (A)—

1 (i) shall become effective upon service;

2 and

3 (ii) unless set aside, limited, or sus-
 4 pended by a court in proceedings under
 5 paragraph (2), shall remain in effect and
 6 enforceable until the earlier of—

7 (I) the completion of the pro-
 8 ceeding initiated under subsection
 9 (a)(1) in connection with the notice of
 10 charges; or

11 (II) the date the Commission de-
 12 termines, by examination or otherwise,
 13 that the interstate insurer's books and
 14 records are accurate and reflect the fi-
 15 nancial condition of the interstate in-
 16 surer.

17 (d) REMOVAL AND PROHIBITION AUTHORITY.—

18 (1) AUTHORITY TO ISSUE ORDER.—Whenever
 19 the Commission determines that—

20 (A) any insurer-affiliated party has, di-
 21 rectly or indirectly—

22 (i) violated—

23 (I) any law or regulation;

1 (II) any cease-and-desist order
2 issued under this section which has
3 become final;

4 (III) any condition imposed in
5 writing by the Commission in connec-
6 tion with the grant of any application,
7 filing, statement, notice or other re-
8 quest by such interstate insurer; or

9 (IV) any written agreement be-
10 tween such interstate insurer and the
11 Commission;

12 (ii) engaged or participated in any
13 conduct involving undue risk of loss to
14 such interstate insurer's policyholders as a
15 whole; or

16 (iii) committed or engaged in any act,
17 omission, or practice which constitutes a
18 breach of such party's fiduciary duty;

19 (B) by reason of the violation, practice, or
20 breach described in any clause of subparagraph

21 (A)—

22 (i) such interstate insurer has suf-
23 fered or will probably suffer financial loss
24 or other damage;

1 (ii) the interests of the interstate in-
 2 surer's policyholders have been or could be
 3 prejudiced; or

4 (iii) such party has received financial
 5 gain or other benefit by reason of such vio-
 6 lation, practice, or breach; and

7 (C) such violation, practice, or breach—

8 (i) involves personal dishonesty on the
 9 part of such party; or

10 (ii) demonstrates willful or continuing
 11 disregard by such party for the condition
 12 of such interstate insurer or the interests
 13 of the interstate insurer's policyholders,
 14 the Commission may serve upon such
 15 party a written notice of the Commission's
 16 intention to suspend or remove such party
 17 from office or to prohibit any further par-
 18 ticipation by such party, in any manner,
 19 in the conduct of the affairs of any inter-
 20 state insurer.

21 (2) TEMPORARY SUSPENSION ORDER.—

22 (A) SUSPENSION OR PROHIBITION AU-
 23 THORIZED.—If the Commission serves written
 24 notice under paragraph (1) on any insurer-af-
 25 filiated party of the Commission's intention to

1 issue an order under such paragraph, the Com-
2 mission may issue a temporary order sus-
3 pending such party from office or prohibiting
4 such party from further participation in any
5 manner in the conduct of the affairs of the
6 interstate insurer, if the Commission—

7 (i) determines that such action is nec-
8 essary for the protection of the interstate
9 insurer or of the interests of the interstate
10 insurer's policyholders; and

11 (ii) serves such party with the tem-
12 porary order of suspension or prohibition.

13 (B) EFFECTIVE PERIOD.—Any temporary
14 order issued under subparagraph (A)—

15 (i) shall become effective upon service;

16 and

17 (ii) unless a court issues a stay of
18 such order under paragraph (5), shall re-
19 main in effect and enforceable until—

20 (I) the date the Commission dis-
21 misses the charges contained in the
22 notice served under paragraph (1)
23 with respect to such party; or

1 (II) the effective date of an order
2 issued by the Commission to such
3 party under paragraph (1).

4 (C) COPY OF ORDER.—If the Commission
5 issues a temporary order under subparagraph
6 (A) to any insurer-affiliated party, the Commis-
7 sion shall serve a copy of such order on any
8 interstate insurer with which such party is asso-
9 ciated at the time such order is issued.

10 (3) PROCEDURES.—A notice of intention to re-
11 move an insurer-affiliated party from office or to
12 prohibit such party from participating in the con-
13 duct of the affairs of an interstate insurer that is
14 served under paragraph (1), shall contain a state-
15 ment of the facts constituting grounds therefor, and
16 shall fix a time and place at which a hearing will be
17 held thereon. Such hearing shall be fixed for a date
18 not earlier than 30 days nor later than 60 days after
19 the date of service of such notice, unless an earlier
20 or a later date is set by the Commission at the re-
21 quest of (A) such party, or (B) the Attorney General
22 of the United States. Unless such party shall appear
23 at the hearing in person or by a duly authorized rep-
24 resentative, such party shall be deemed to have con-
25 sented to the issuance of an order of such removal

1 or prohibition. In the event of such consent, or if
2 upon the record made at any such hearing the Com-
3 mission shall find that any of the grounds specified
4 in such notice have been established, the Commis-
5 sion may issue such orders of suspension or removal
6 from office, or prohibition from participation in the
7 conduct of the affairs of the interstate insurer, as
8 the Commission may deem appropriate. Any such
9 order shall become effective at the expiration of 30
10 days after service upon such interstate insurer and
11 such party (except in the case of an order issued
12 upon consent, which shall become effective at the
13 time specified therein). Such order shall remain ef-
14 fective and enforceable as provided therein, except to
15 such extent as it is stayed, modified, terminated, or
16 set aside by action of the Commission or a reviewing
17 court.

18 (4) INDUSTRYWIDE PROHIBITION.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), any person who, pursuant to
21 any order issued under this subsection or sub-
22 section (e), has been removed or suspended
23 from office in an interstate insurer or prohib-
24 ited from participating in the conduct of the af-

1 fairs of an interstate insurer may not, while
2 such order is in effect—

3 (i) continue or commence to hold any
4 office in, or participate in any manner in
5 the conduct of the affairs of any interstate
6 insurer;

7 (ii) solicit, procure, transfer, attempt
8 to transfer, vote, or attempt to vote any
9 proxy, consent, or authorization with re-
10 spect to any voting rights in any interstate
11 insurer; or

12 (iii) act as an insurer-affiliated party.

13 (B) EXCEPTION IF COMMISSION PROVIDES
14 WRITTEN CONSENT.—If, on or after the date an
15 order is issued under this subsection which re-
16 moves or suspends from office any insurer-af-
17 filiated party or prohibits such party from par-
18 ticipating in the conduct of the affairs of an
19 interstate insurer, such party receives the writ-
20 ten consent of the Commission, subparagraph
21 (A) shall, to the extent of such consent, cease
22 to apply to such party with respect to the inter-
23 state insurer described in each written consent.

24 (C) VIOLATION OF PARAGRAPH TREATED
25 AS VIOLATION OF ORDER.—Any violation of

1 subparagraph (A) by any person who is subject
2 to an order described in such subparagraph
3 shall be treated as a violation of the order.

4 (5) STAY OF SUSPENSION OR PROHIBITION OF
5 INSURER-AFFILIATED PARTY.—Within 10 days after
6 any insurer-affiliated party has been suspended from
7 office or prohibited from participation in the conduct
8 of the affairs of an interstate insurer by a temporary
9 order issued under subsection (d)(2), such party
10 may apply to the United States district court for the
11 judicial district in which the main office of the inter-
12 state insurer is located, or the United States District
13 Court for the District of Columbia, for a stay of
14 such suspension or prohibition pending the comple-
15 tion of the administrative proceedings pursuant to
16 the notice served upon such party under subsection
17 (d)(1), and such court shall have jurisdiction to stay
18 such suspension or prohibition.

19 (e) SUSPENSION OR REMOVAL OF INSURER-AFFILI-
20 ATED PARTY CHARGED WITH FELONY.—

21 (1) SUSPENSION OR PROHIBITION.—

22 (A) IN GENERAL.—Whenever any insurer-
23 affiliated party is charged in any information,
24 indictment, or complaint, with the commission
25 of or participation in—

1 (i) a crime involving dishonesty or
2 breach of trust which is punishable by im-
3 prisonment for a term exceeding 1 year
4 under State or Federal law, or

5 (ii) a criminal violation of section
6 1956, 1957, or 1960 of title 18, United
7 States Code, or section 5322 or 5324 of
8 title 31, United States Code,

9 the Commission may, if continued service or
10 participation by such party may pose a threat
11 to the interstate insurer or the interests of the
12 interstate insurer's policyholders, by written no-
13 tice served upon such party, suspend such party
14 from office or prohibit such party from further
15 participation in any manner in the conduct of
16 the affairs of the interstate insurer.

17 (B) PROVISIONS APPLICABLE TO NO-
18 TICE.—

19 (i) COPY.—A copy of any notice under
20 subparagraph (A) shall also be served upon
21 the interstate insurer.

22 (ii) EFFECTIVE PERIOD.—A suspen-
23 sion or prohibition under subparagraph (A)
24 shall remain in effect until the informa-
25 tion, indictment, or complaint referred to

1 in such subparagraph is finally disposed of
2 or until terminated by the Commission.

3 (2) REMOVAL OR PROHIBITION.—

4 (A) IN GENERAL.—If a judgment of con-
5 viction or an agreement to enter a pretrial di-
6 version or other similar program is entered
7 against an insurer-affiliated party in connection
8 with a crime described in paragraph (1)(A)(i),
9 at such time as such judgment is not subject to
10 further appellate review, the Commission may,
11 if continued service or participation by such
12 party may pose a threat to the interstate in-
13 surer or the interests of the interstate insurer's
14 policyholders, issue and serve upon such party
15 an order removing such party from office or
16 prohibiting such party from further participa-
17 tion in any manner in the conduct of the affairs
18 of the interstate insurer without the prior writ-
19 ten consent of the Commission.

20 (B) REQUIRED FOR CERTAIN OFFENSES.—

21 In the case of a judgment of conviction or
22 agreement against an insurer-affiliated party in
23 connection with a violation described in para-
24 graph (1)(A)(ii), the Commission shall issue
25 and serve upon such party an order removing

1 such party from office or prohibiting such party
2 from further participation in any manner in the
3 conduct of the affairs of the interstate insurer
4 without the prior written consent of the Com-
5 mission.

6 (C) COPY.—A copy of any order under this
7 paragraph shall also be served upon the inter-
8 state insurer, whereupon the insurer-affiliated
9 party who is subject to the order (if a Commis-
10 sion or an officer) shall cease to be a Commis-
11 sion or officer of such interstate insurer.

12 (D) EFFECT OF ACQUITTAL.—A finding of
13 not guilty or other disposition of the charge
14 shall not preclude the Commission from insti-
15 tuting proceedings after such finding or disposi-
16 tion to remove such party from office or to pro-
17 hibit further participation in interstate insurer
18 affairs, pursuant to paragraphs (1) or (2) of
19 subsection (d).

20 (E) EFFECTIVE PERIOD.—Any notice of
21 suspension or order of removal issued under
22 this paragraph or paragraph (1) shall remain
23 effective and outstanding until the completion
24 of any hearing or appeal authorized under para-

1 graph (3) unless terminated by the Commis-
2 sion.

3 (3) APPEAL.—Within 30 days from service of
4 any notice of suspension or order of removal issued
5 pursuant to paragraph (1) or (2) of this subsection,
6 the insurer-affiliated party concerned may request in
7 writing an opportunity to appear before the Commis-
8 sion to show that the continued service to or partici-
9 pation in the conduct of the affairs of the interstate
10 insurer by such party does not, or is not likely to,
11 pose a threat either to the interstate insurer or to
12 the interests of the interstate insurer's policyholders.
13 Upon receipt of any such request, the Commission
14 shall fix a time (not more than 30 days after receipt
15 of such request, unless extended at the request of
16 such party) and place at which such party may ap-
17 pear, personally or through counsel, before one or
18 more designated employees of the Commission to
19 submit written materials (or, at the discretion of the
20 Commission, oral testimony) and oral argument.
21 Within 60 days of such hearing, the Commission
22 shall notify such party whether the notice of suspen-
23 sion or prohibition from participation in any manner
24 in the conduct of the affairs of the interstate insurer
25 will be continued, terminated, or otherwise modified,

1 or whether the order removing such party from of-
2 fice or prohibiting such party from further participa-
3 tion in any manner in the conduct of the affairs of
4 the interstate insurer will be rescinded or otherwise
5 modified. Such notification shall contain a statement
6 of the basis for the Commission's decision, if adverse
7 to such party.

8 (f) EFFECT ON BOARD OF DIRECTORS.—If at any
9 time, because of the suspension of one or more directors
10 pursuant to this section, there shall be on the board of
11 directors of an interstate insurer less than a quorum of
12 directors not so suspended, all powers and functions vest-
13 ed in or exercisable by such board shall vest in and be
14 exercisable by the director or directors on the board not
15 so suspended, until such time as there shall be a quorum
16 of the board of directors. In the event all of the directors
17 of an interstate insurer are suspended pursuant to this
18 section, the Commission shall appoint persons to serve
19 temporarily as directors in their place and stead pending
20 the termination of such suspensions, or until such time
21 as those who have been suspended cease to be directors
22 of the interstate insurer and their respective successors
23 take office.

24 (g) HEARINGS AND JUDICIAL REVIEW.—

1 (1) Any hearing provided for in this section
2 (other than the hearing provided for in subsection
3 (e)(3) of this section) shall be held in the Federal
4 judicial district in which the main office of the inter-
5 state insurer is located or the insurer-affiliated party
6 is located, as the case may be, unless the party af-
7 forded the hearing consents to another place, and
8 shall be conducted in accordance with the provisions
9 of chapter 5 of title 5, United States Code. After
10 such hearing, and within 90 days after the Commis-
11 sion has notified the parties that the case has been
12 submitted to the Commission for final decision, the
13 Commission shall render a decision (which shall in-
14 clude findings of fact upon which the Commission's
15 decision is predicated) and shall issue and serve
16 upon each party to the proceeding an order or or-
17 ders consistent with the provisions of this section.
18 Judicial review of any such order shall be exclusively
19 as provided in this subsection. Unless a petition for
20 review is timely filed in a court of appeals of the
21 United States, as hereinafter provided in paragraph
22 (2), and thereafter until the record in the proceeding
23 has been filed as so provided, the Commission may
24 at any time, upon such notice and in such manner
25 as it shall deem proper, modify, terminate, or set

1 aside any such order. Upon such filing of the record,
2 the Commission may modify, terminate, or set aside
3 any such order with permission of the court.

4 (2) Any party to any proceeding under para-
5 graph (1) may obtain a review of any order served
6 pursuant to paragraph (1) of this subsection (other
7 than an order issued with the consent of the inter-
8 state insurer or the insurer-affiliated party con-
9 cerned, or an order issued under paragraph (e)(1) or
10 (e)(2)) by the filing in the court of appeals of the
11 United States for the circuit in which the main of-
12 fice of the interstate insurer is located or the in-
13 surer-affiliated party is located, as the case may be,
14 or in the United States Court of Appeals for the
15 District of Columbia Circuit, within 30 days after
16 the date of service of such order, a written petition
17 praying that the order of the Office be modified, ter-
18 minated, or set aside. A copy of such petition shall
19 be forthwith transmitted by the clerk of the court to
20 the Commission, and thereupon the Commission
21 shall file in the court the record in the proceeding,
22 as provided in section 2112 of title 28, United
23 States Code. Upon the filing of such petition, such
24 court shall have jurisdiction, which upon the filing of
25 the record shall except as provided in the last sen-

1 tence of said paragraph (1) be exclusive, to affirm,
2 modify, terminate, or set aside, in whole or in part,
3 the order of the Office. Review of such proceedings
4 shall be had as provided in chapter 7 of title 5,
5 United States Code. The judgment and decree of the
6 court shall be final, except that the same shall be
7 subject to review by the Supreme Court upon certio-
8 rari, as provided in section 1254 of title 28, United
9 States Code.

10 (3) The commencement of proceedings for judi-
11 cial review under paragraph (2) of this subsection
12 shall not, unless specifically ordered by the court,
13 operate as a stay of any order issued by the Com-
14 mission.

15 (h) JURISDICTION AND ENFORCEMENT.—The Com-
16 mission may in its discretion apply to the United States
17 district court for the judicial district in which the main
18 office of the interstate insurer is located or the insurer-
19 affiliated party is located, as the case may be, for the en-
20 forcement of any effective and outstanding notice or order
21 issued under this section, and such court shall have juris-
22 diction and power to order and require compliance there-
23 with; but except as otherwise provided in this section no
24 court shall have jurisdiction to affect by injunction or oth-
25 erwise the issuance or enforcement of any notice or order

1 under any such section, or to review, modify, suspend, ter-
2 minate, or set aside any such notice or order.

3 (i) PENALTIES.—

4 (1) CIVIL MONEY PENALTY.—

5 (A) FIRST TIER.—Any interstate insurer
6 or insurer-affiliated party that—

7 (i) violates any law or regulation;

8 (ii) violates any final order or tem-
9 porary order issued pursuant to subsection
10 (b), (c), (d) or (e) of this section or sub-
11 section (e) of section 201;

12 (iii) violates any written agreement
13 between such interstate insurer, producer
14 or party and the Office,

15 shall pay a civil penalty of not more than
16 \$5,000 for each day during which such violation
17 continues.

18 (B) SECOND TIER.—Notwithstanding sub-
19 paragraph (A), any interstate insurer or any in-
20 surer-affiliated party that—

21 (i)(I) commits any violation described
22 in any clause of subparagraph (A);

23 (II) recklessly engages in any conduct
24 involving an undue risk of loss to such

1 interstate insurer's policyholders as a
2 whole; or

3 (III) breaches any fiduciary duty; and

4 (ii) which violation, practice, or
5 breach—

6 (I) is part of a pattern of mis-
7 conduct;

8 (II) causes or is likely to cause
9 more than a minimal loss to such
10 interstate insurer; or

11 (III) results in pecuniary gain or
12 other benefit to such party,

13 shall pay a civil penalty of not more than
14 \$25,000 for each day during which such viola-
15 tion, practice, or breach continues.

16 (C) THIRD TIER.—Notwithstanding sub-
17 paragraphs (A) and (B), any interstate insurer
18 or any insurer-affiliated party that—

19 (i) knowingly—

20 (I) commits any violation de-
21 scribed in any clause of subparagraph
22 (A);

23 (II) engages in any conduct in-
24 volving an undue risk of loss to such

1 interstate insurer's policyholders as a
2 whole; or

3 (III) breaches any fiduciary duty;

4 and

5 (ii) knowingly or recklessly causes a
6 substantial loss to such interstate insurer
7 or a substantial pecuniary gain or other
8 benefit to such party by reason of such vio-
9 lation, practice, or breach,

10 shall pay a civil penalty in an amount not to ex-
11 ceed the applicable maximum amount deter-
12 mined under subparagraph (D) for each day
13 during which such violation, practice, or breach
14 continues.

15 (D) MAXIMUM AMOUNTS OF PENALTIES
16 FOR ANY VIOLATION DESCRIBED IN SUBPARA-
17 GRAPH (C).—The maximum daily amount of
18 any civil penalty which may be assessed pursu-
19 ant to subparagraph (C) for any violation, prac-
20 tice, or breach described in such subparagraph
21 is an amount to not exceed \$1,000,000.

22 (E) ASSESSMENT.—

23 (i) WRITTEN NOTICE.—Any penalty
24 imposed under subparagraph (A), (B), or
25 (C) may be assessed and collected by the

1 Commission by written notice. Such notice
2 shall contain a statement of the facts con-
3 stituting the basis for assessment of any
4 penalty imposed under subparagraph (A),
5 (B), or (C).

6 (ii) FINALITY OF ASSESSMENT.—If,
7 with respect to any assessment under
8 clause (i), a hearing is not requested pur-
9 suant to subparagraph (H) within the pe-
10 riod of time allowed under such subpara-
11 graph, the assessment shall constitute a
12 final and unappealable order.

13 (F) AUTHORITY TO MODIFY OR REMIT
14 PENALTY.—The Commission may compromise,
15 modify, or remit any penalty which the Com-
16 mission may assess or had already assessed
17 under subparagraph (A), (B), or (C).

18 (G) HEARING.—The interstate insurer or
19 other person against whom any penalty is as-
20 sessed under this paragraph shall be afforded a
21 hearing by the Commission if such interstate
22 insurer or person submits a request for such
23 hearing within 20 days after the issuance of the
24 notice of assessment.

25 (H) COLLECTION.—

1 (i) REFERRAL.—If any interstate in-
2 surer or other person fails to pay an as-
3 sessment after any penalty assessed under
4 this paragraph has become final, the Com-
5 mission shall recover the amount assessed
6 by action in the appropriate United States
7 district court.

8 (ii) APPROPRIATENESS OF PENALTY
9 NOT REVIEWABLE.—In any civil action
10 under clause (i), the validity and appro-
11 priateness of the penalty shall not be sub-
12 ject to review.

13 (2) NOTICE UNDER THIS SECTION AFTER SEPA-
14 RATION FROM SERVICE.—The resignation, termi-
15 nation of employment or participation, or separation
16 of an insurer-affiliated party (including a separation
17 caused by the closing of an interstate insurer) shall
18 not affect the jurisdiction and authority of the Com-
19 mission to issue any notice and proceed under this
20 section against any such party, if such notice is
21 served before the end of the 6-year period beginning
22 on the date such party ceased to be an insurer-affili-
23 ated party with respect to such interstate insurer.

24 (3) PREJUDGMENT ATTACHMENT.—

1 (A) IN GENERAL.—In any action brought
2 by the Commission pursuant to this section, or
3 in actions brought in aid of, or to enforce an
4 order in, any administrative or other civil action
5 for money damages, restitution, or civil money
6 penalties brought by the Commission, the court
7 may, upon application of the Commission, issue
8 a restraining order that—

9 (i) prohibits any person subject to the
10 proceeding from withdrawing, transferring,
11 removing, dissipating, or disposing of any
12 funds, assets or other property; and

13 (ii) appoints a temporary receiver to
14 administer the restraining order.

15 (B) STANDARD.—

16 (i) SHOWING.—Rule 65 of the Federal
17 Rules of Civil Procedure shall apply with
18 respect to any proceeding under subpara-
19 graph (A), without regard to the require-
20 ment of such rule that the applicant show
21 that the injury, loss, or damage is irrep-
22 arable and immediate.

23 (ii) STATE PROCEEDING.—If, in the
24 case of any proceeding in a State court,
25 the court determines that rules of civil pro-

1 cedure available under the laws of such
2 State provide substantially similar protec-
3 tions to a party's right to due process as
4 Rule 65 (as modified with respect to such
5 proceeding by clause (i)), the relief sought
6 under subparagraph (A) may be requested
7 under the laws of such State.

8 (j) CRIMINAL PENALTY.—Whoever, being subject to
9 an order in effect under subsection (d) or (e), without the
10 prior written approval of the Commission, knowingly par-
11 ticipates, directly or indirectly, in any manner (including
12 by engaging in an activity specifically prohibited in such
13 an order) in the conduct of the affairs of any interstate
14 insurer shall be fined not more than \$1,000,000, impris-
15 oned for not more than 5 years, or both.

16 (k) NOTICE OF SERVICE.—Any service required or
17 authorized to be made by the Commission under this sec-
18 tion may be made by registered mail, or in such other
19 manner reasonably calculated to give actual notice as the
20 Commission may by regulation or otherwise provide.

21 (l) ANCILLARY PROVISIONS; SUBPOENA POWER,
22 ETC.—In the course of or in connection with any pro-
23 ceeding or other action under this section, the Commis-
24 sion, or any employee or designated representative thereof,
25 including any person designated to conduct any hearing

1 under this section, shall have the power to administer
2 oaths and affirmations, to take or cause to be taken depo-
3 sitions, and to issue, revoke, quash, or modify subpoenas
4 and subpoenas duces tecum; and the Commission is em-
5 powered to make rules and regulations with respect to any
6 such proceedings, claims, examinations, investigations, or
7 other actions. The attendance of witnesses and the produc-
8 tion of documents provided for in this subsection may be
9 required from any place in any State or other place subject
10 to the jurisdiction of the United States at any designated
11 place where such proceeding or other action is being con-
12 ducted. The Commission or any party to proceedings
13 under this section may apply to the United States District
14 Court for the District of Columbia, or the United States
15 district court for the judicial district in which such pro-
16 ceeding or other action is being conducted, or where the
17 witness resides or carries on business, for enforcement of
18 any subpoena or subpoena duces tecum issued pursuant
19 to this subsection, and such courts shall have jurisdiction
20 and power to order and require compliance therewith. Wit-
21 nesses subpoenaed under this subsection shall be paid the
22 same fees and mileage that are paid witnesses in the dis-
23 trict courts of the United States. Any court having juris-
24 diction of any proceeding or other action instituted under
25 this section by an interstate insurer or an insurer-affili-

1 ated party thereof, may allow to any such party such rea-
2 sonable expenses and attorneys' fees as it deems just and
3 proper; and such expenses and fees shall be paid by the
4 interstate insurer or from its assets. Any person who will-
5 fully shall fail or refuse to attend and testify or to answer
6 any lawful inquiry or to produce books, papers, cor-
7 respondence, memoranda, contracts, agreements, or other
8 records, if in such person's power so to do, in obedience
9 to the subpoena of the Commission, shall be guilty of a
10 misdemeanor and, upon conviction, shall be subject to a
11 fine of not more than \$1,000 or to imprisonment for a
12 term of not more than 1 year or both.

13 (m) NON-UNITED STATES INSURER.—

14 (1) APPLICABILITY.—Except as otherwise spe-
15 cifically provided in this section, the provisions of
16 this section shall be applied to non-U.S. insurers in
17 accordance with this subsection.

18 (2) ACTIONS.—Any conduct or practice outside
19 the United States on the part of a non-United
20 States insurer or any officer, director, employee, or
21 agent thereof may not constitute the basis for any
22 action by the Commission under this section, unless
23 the Commission alleges a belief that such conduct or
24 practice has been, is, or is likely to be a cause of or
25 carried on in connection with or in furtherance of an

1 act or practice within any one or more States which,
2 in and of itself, would constitute an appropriate
3 basis for action by the Commission under this sec-
4 tion.

5 (3) TERMINATION OF BUSINESS.—In any case
6 in which any action or proceeding is brought pursu-
7 ant to an allegation under paragraph (2) for the
8 suspension or removal of any officer, director, or
9 other person associated with a non-United States in-
10 surer, and such person fails to appear promptly as
11 a party to such action or proceeding and to comply
12 with any effective order or judgment therein, any
13 failure by the non-United States insurer to secure its
14 removal from any office he holds in such insurer and
15 from any further participation in its affairs shall, in
16 and of itself, constitute grounds for ordering the
17 non-United States insurer to terminate all under-
18 writing and sale of insurance in the United States
19 and all other insurance operations in the United
20 States.

21 (4) VENUE.—Where the venue of any judicial
22 or administrative proceeding under this section is to
23 be determined by reference to the location of the
24 main office of an interstate insurer, the venue of
25 such a proceeding with respect to a non-United

1 States insurer having one or more offices in not
2 more than one judicial district or other relevant ju-
3 risdiction shall be within such jurisdiction. Where
4 such an interstate insurer has offices in more than
5 one such jurisdiction, the venue shall be in the juris-
6 diction within which the office or offices involved in
7 the proceeding are located, and if there is more than
8 one such jurisdiction, the venue shall be proper in
9 any such jurisdiction in which the proceeding is
10 brought or to which it may appropriately be trans-
11 ferred.

12 (5) SERVICE.—Any service required or author-
13 ized to be made on a non-United States insurer may
14 be made on any office located within any State, but
15 if such service is in connection with an action or pro-
16 ceeding involving one or more offices located in any
17 State, service shall be made on at least one office so
18 involved.

19 (n) PUBLIC DISCLOSURES OF FINAL ORDERS AND
20 AGREEMENTS.—

21 (1) IN GENERAL.—The Commission shall pub-
22 lish and make available to the public on a monthly
23 basis—

1 (A) any written agreement or other written
2 statement for which a violation may be enforced
3 by the Commission;

4 (B) any final order issued with respect to
5 any administrative enforcement proceeding ini-
6 tiated by the Commission under this section or
7 any other law; and

8 (C) any modification to or termination of
9 any order or agreement made public pursuant
10 to this paragraph, unless the Commission, in
11 the Commission's discretion, determines that
12 publication of any such agreement, statement,
13 order, modification or termination would be
14 contrary to the public interest.

15 (2) HEARINGS.—All hearings on the record
16 with respect to any notice of charges issued by the
17 Commission shall be open to the public, unless the
18 Commission, in the Commission's discretion, deter-
19 mines that holding an open hearing would be con-
20 trary to the public interest.

21 (3) TRANSCRIPT OF HEARING.—A transcript
22 that includes all testimony and other documentary
23 evidence shall be prepared for all hearings com-
24 menced pursuant to subsection (g) of this section. A
25 transcript of public hearings shall be made available

1 to the public pursuant to section 552 of title 5,
2 United States Code.

3 (4) DOCUMENTS FILED UNDER SEAL IN PUBLIC
4 ENFORCEMENT HEARINGS.—The Commission may
5 file any document or part of a document under seal
6 in any administrative hearing commenced by the
7 Commission if the Commission, in the Commission's
8 discretion, determines that disclosure of the docu-
9 ment, in whole or in part, would be contrary to the
10 public interest. A written report shall be made part
11 of any determination to withhold any part of a docu-
12 ment from the transcript of the hearing required by
13 paragraph (2).

14 (5) RETENTION OF DOCUMENTS.—The Com-
15 mission shall keep and maintain a record, for a pe-
16 riod of at least 6 years, of all documents described
17 in paragraph (1) and all informal enforcement
18 agreements and other supervisory actions and sup-
19 porting documents issued with respect to or in con-
20 nection with any administrative enforcement pro-
21 ceeding initiated by the Commission under this sec-
22 tion or any other laws.

23 (6) DISCLOSURES TO CONGRESS.—No provision
24 of this subsection may be construed to authorize the
25 withholding, or to prohibit the disclosure, of any in-

1 information to the Congress or any committee or sub-
2 committee of the Congress.

3 (o) FOREIGN INVESTIGATIONS.—

4 (1) REQUESTING ASSISTANCE FROM FOREIGN
5 GOVERNMENTAL AUTHORITIES.—In conducting any
6 investigation, examination, or enforcement action
7 under this Act, the Commission may—

8 (A) request the assistance of any foreign
9 governmental authority; and

10 (B) maintain an office outside the United
11 States.

12 (2) PROVIDING ASSISTANCE TO FOREIGN GOV-
13 ERNMENTAL AUTHORITIES.—

14 (A) IN GENERAL.—The Commission may,
15 at the request of any foreign governmental au-
16 thority, assist such authority if such authority
17 states that the requesting authority is con-
18 ducting an investigation to determine whether
19 any person has violated, is violating, or is about
20 to violate any law or regulation relating to in-
21 surance matters or currency transactions ad-
22 ministered or enforced by the requesting au-
23 thority.

24 (B) INVESTIGATION BY THE COMMIS-
25 SION.—The Commission may, in its discretion,

1 investigate and collect information and evidence
2 pertinent to a request for assistance under sub-
3 paragraph (A). Any such investigation shall
4 comply with the laws of the United States and
5 the policies and procedures of the Commission.

6 (C) FACTORS TO CONSIDER.—In deciding
7 whether to provide assistance under this para-
8 graph, the Commission shall consider—

9 (i) whether the requesting authority
10 has agreed to provide reciprocal assistance
11 with respect to insurance matters within
12 the jurisdiction of the Commission; and

13 (ii) whether compliance with the re-
14 quest would prejudice the public interest of
15 the United States.

16 (3) RULE OF CONSTRUCTION.—Paragraphs (1)
17 and (2) shall not be construed to limit the authority
18 of the Commission or any other Federal agency to
19 provide or receive assistance or information to or
20 from any foreign governmental authority with re-
21 spect to any matter.

22 (p) REFERRAL OF MATTERS TO ENFORCEMENT AU-
23 THORITIES.—The Commission shall refer to the Depart-
24 ment of Justice or to the appropriate State enforcement
25 authorities any information or matters which it deems

1 warrant investigation for possible civil or criminal enforce-
2 ment action.

3 **Subtitle D—Accounting and**
4 **Auditing**

5 **SEC. 251. ACCOUNTING PRINCIPLES AND AUDITING STAND-**
6 **ARDS.**

7 (a) REGULATIONS.—

8 (1) IN GENERAL.—The Commission shall, by
9 regulation, specify the accounting principles and au-
10 diting standards to be followed by an interstate in-
11 surer in preparing financial statements to be filed
12 with the Commission under section 108(a).

13 (2) INITIAL REGULATIONS.—The initial regula-
14 tions under paragraph (1) shall be promulgated on
15 or before the transition commencement date and
16 shall require that—

17 (A) interstate insurers shall follow statu-
18 tory accounting practices as promulgated by the
19 NAIC in its Accounting Practices and Proce-
20 dures Manual; and

21 (B) audited financial statements shall be
22 in accordance with guidance prescribed by the
23 NAIC in its Model Regulation Requiring An-
24 nual Audited Financial Reports;

1 each as in effect as of January 1, 2001, and as
2 amended by the NAIC and in effect thereafter from
3 time to time prior to the transition termination date,
4 except that the Commission may by regulation speci-
5 fy that any such amendment by the NAIC shall, in
6 whole or in part, be inapplicable to interstate insur-
7 ers.

8 (3) AMENDMENT OF NAIC STANDARDS.—The
9 accounting principles and auditing standards for
10 interstate insurers in effect on the transition termi-
11 nation date pursuant to paragraph (2) may there-
12 after be amended by regulations promulgated pursu-
13 ant to paragraph (1).

14 (b) STUDY AND HEARINGS.—The Commission shall
15 conduct a study and hold hearings prior to the transition
16 termination date and shall determine whether modification
17 of the accounting principles and auditing standards for
18 interstate insurers established pursuant to subsection (a)
19 would be consistent with the public interest and the pro-
20 tection of policyholders.

21 **SEC. 252. INVESTMENTS.**

22 (a) IN GENERAL.—

23 (1) INVESTMENTS.—An interstate insurer may
24 loan or invest its funds, and may buy, sell, hold title
25 to, possess, occupy, pledge, convey, manage, protect,

1 insure and deal with its investments, property and
2 other assets. Such investments shall be of sufficient
3 value, liquidity, and diversity to ensure the interstate
4 insurer's ability to meet its outstanding obligations
5 based on reasonable assumptions as to its business.

6 (2) SUBSIDIARIES.—An interstate insurer may
7 invest in, or otherwise acquire, subsidiaries engaged
8 or organized to engage in any business lawful under
9 the laws of the jurisdictions in which such subsidi-
10 aries are organized.

11 (b) INVESTMENT POLICY.—In acquiring, investing,
12 exchanging, holding, selling, and managing investments,
13 an interstate insurer shall establish and follow a written
14 investment policy that shall be reviewed and approved by
15 the interstate insurer's board of directors at least annu-
16 ally. The content and format of an interstate insurer's in-
17 vestment policy shall be at the interstate insurer's discre-
18 tion, but shall include written guidelines appropriate to
19 the interstate insurer's business as to the following issues:

20 (1) The general investment policy of the inter-
21 state insurer, with guidelines and specifications in-
22 tended to assure that its investments are appro-
23 priate for the business conducted by the interstate
24 insurer, its liquidity needs and its capital and sur-
25 plus.

1 (2) Goals and objectives regarding the composi-
2 tion of classes of investments, including maximum
3 internal limits.

4 (3) Requirements for periodic evaluation of the
5 investment portfolio as to its risk and reward char-
6 acteristics, and for adoption and oversight of imple-
7 mentation of procedures and controls covering all as-
8 pects of the investment function.

9 (c) STANDARD OF CARE.—In reviewing and approv-
10 ing the investment policy established pursuant to sub-
11 section (b), the directors of an interstate insurer shall per-
12 form their duties in good faith and with that degree of
13 care that an ordinarily prudent individual in a like position
14 would use under similar circumstances. Among the factors
15 that the board of directors may consider are the following:

16 (1) The interstate insurer's business.

17 (2) General economic conditions.

18 (3) The possible effect of inflation or deflation.

19 (4) The expected tax consequences of invest-
20 ment decisions or strategies.

21 (5) The fairness and reasonableness of the
22 terms of an investment considering its probable risk
23 and reward characteristics and relationship to the
24 investment portfolio as a whole.

1 (6) The extent of the diversification of the
2 interstate insurer's investments among—

- 3 (A) individual investments;
- 4 (B) classes of investments;
- 5 (C) industry concentrations; and
- 6 (D) geographic areas.

7 (7) The quality and liquidity of investments in
8 affiliates.

9 (8) The investment exposure to—

- 10 (A) liquidity risk;
- 11 (B) credit and default risk;
- 12 (C) systemic (market) risk;
- 13 (D) interest rate risk;
- 14 (E) call, prepayment, and extension risk;
- 15 (F) currency risk; and
- 16 (G) foreign sovereign risk.

17 (9) The amount of the interstate insurer's as-
18 sets, capital and surplus, premium writings, and in-
19 surance in force.

20 (10) The amount and adequacy of the inter-
21 state insurer's reported and unreported liabilities.

22 (11) The relationship of the expected cash flows
23 of the interstate insurer's assets and liabilities, and
24 the risk of adverse changes in the interstate insur-
25 er's assets and liabilities.

1 (12) The adequacy of the interstate insurer's
2 capital and surplus to support the risks and liabil-
3 ities of the interstate insurer.

4 (13) The amount of investments made in the
5 communities where the interstate life insurer sells
6 insurance policies or has offices.

7 (d) INTERNAL CONTROLS.—An interstate insurer
8 shall establish and implement internal controls and proce-
9 dures to ensure compliance with its investment policy. In
10 this respect, an evaluation and monitoring process shall
11 occur periodically for assessing the effectiveness of such
12 controls and procedures. Additionally, the interstate in-
13 surer shall assess management's success in meeting the
14 stated objectives within the investment policy.

15 (e) MINIMUM FINANCIAL SECURITY BENCHMARK.—

16 (1) ESTABLISHMENT.—The Commission shall
17 by regulation or order establish what portion of the
18 surplus of an individual interstate insurer or any
19 category of interstate insurers shall constitute a
20 minimum financial security benchmark that will pro-
21 vide reasonable security against contingencies affect-
22 ing an interstate insurer's financial position that are
23 not fully covered by reserves or by reinsurance.

24 (2) MINIMUM.—Any such minimum financial
25 security benchmark shall be not less than the au-

1 thorized control level risk-based capital (or, absent
2 an authorized control level risk-based capital, an-
3 other comparable risk-based capital level established
4 by the Commission) applicable to the interstate in-
5 surer as established under section 256, less any
6 asset valuation reserve and voluntary investment re-
7 serves that may be required.

8 (3) FAILURE TO COMPLY.—Notwithstanding
9 the provisions of subsection (c), if an interstate in-
10 surer fails to meet the minimum financial security
11 benchmark applicable to it, the interstate insurer
12 shall be subject to such investment standards as the
13 Commission shall establish by regulation or order.

14 **SEC. 253. ASSET VALUATION AND RATING.**

15 The Commission shall establish such standards and
16 means to recognize risk factors appropriate to the valu-
17 ation and rating of assets held by an interstate insurer
18 for purposes pertinent to the supervision of interstate in-
19 surers other than risk-based capital. The initial standards
20 and means shall be promulgated on or before the transi-
21 tion commencement date.

22 **SEC. 254. VALUATION OF LIABILITIES.**

23 (a) REGULATIONS.—The Commission shall, by regu-
24 lation, establish standards for the valuation of insurer ob-
25 ligations and liabilities for interstate insurers. The regula-

1 tions may prescribe valuation requirements for particular
2 types of insurance policies and, for other types of insur-
3 ance policies, shall require that reserves be established
4 based on a valuation performed by a qualified actuary in
5 accordance with generally accepted actuarial principles.

6 (b) REGULATIONS DURING TRANSITION PERIOD.—

7 The initial regulations under subsection (a) shall be pro-
8 mulgated on or before the transition commencement date
9 and shall provide that the standards be based on relevant
10 NAIC model laws, regulations, and guidelines in the form
11 adopted by the NAIC, including the Standard Valuation
12 Law, Valuation of Life Insurance Policies Model Regula-
13 tion, Universal Life Insurance Model Regulation, Variable
14 Life Insurance Model Regulation, Health Insurance Re-
15 serves Model Regulation, and NAIC actuarial guidelines
16 applicable to insurance policies that may be underwritten
17 and sold by interstate insurers, each as in effect as of Jan-
18 uary 1, 2001, and as amended by the NAIC and in effect
19 thereafter from time to time prior to the transition termi-
20 nation date, except that the Commission may by regula-
21 tion specify that any such amendment by the NAIC shall,
22 in whole or in part, be inapplicable to interstate insurers.

23 (c) REGULATIONS AFTER TRANSITION PERIOD.—

24 The standards for the valuation of insurer obligations and
25 liabilities for interstate insurers in effect on the transition

1 termination date pursuant to subsection (b) may there-
2 after be amended by regulations promulgated pursuant to
3 subsection (a).

4 **SEC. 255. CONTINUING AND ALTERNATE BENEFITS.**

5 (a) REGULATIONS.—The Commission shall, by regu-
6 lation, establish standards applicable to interstate life in-
7 surers for the determination of continuing and alternate
8 benefits available at the election of the policyholder or
9 upon insurance policy termination that are reflective of the
10 accumulated remaining value in the insurance policy.

11 (b) REGULATIONS DURING TRANSITION PERIOD.—
12 The initial regulations under subsection (a) shall be pro-
13 mulgated on or before the transition commencement date
14 and shall provide that the standards be based on relevant
15 NAIC model laws, regulations, and guidelines in the form
16 adopted by the NAIC, including the Standard Nonfor-
17 feiture Law for Life Insurance, Variable Life Insurance
18 Model Regulation, Standard Nonforfeiture Law for Indi-
19 vidual Deferred Annuities, Long-Term Care Insurance
20 Model Act, Long-Term Care Insurance Model Regulation,
21 and NAIC actuarial guidelines applicable to insurance
22 policies that may be underwritten and sold by interstate
23 insurers, each as in effect as of January 1, 2001, and as
24 amended by the NAIC and in effect thereafter from time
25 to time prior to the transition termination date, except

1 that the Commission may by regulation specify that any
2 such amendment by the NAIC shall, in whole or in part,
3 be inapplicable to interstate insurers.

4 (c) REGULATIONS AFTER TRANSITION PERIOD.—

5 The standards applicable to interstate life insurers for the
6 determination of continuing and alternate benefits in ef-
7 fect on the transition termination date pursuant to sub-
8 section (b) may thereafter be amended by regulations pro-
9 mulgated pursuant to subsection (a).

10 **SEC. 256. RISK-BASED CAPITAL STANDARDS.**

11 (a) REGULATIONS.—

12 (1) ESTABLISHMENT.—The Commissioner
13 shall, by regulation, establish risk-based capital
14 standards for interstate insurers that recognize risk
15 factors appropriate to the business of interstate in-
16 surers and remedies for failure to meet such stand-
17 ards.

18 (2) REGULATIONS DURING TRANSITION PE-
19 RIOD.—The initial regulations under paragraph (1)
20 shall be promulgated on or before the transition
21 commencement date and shall provide that the
22 standards be based on NAIC risk-based capital cal-
23 culations and remedies in the form adopted by the
24 NAIC, each as in effect as of January 1, 2001, and
25 as amended by the NAIC and in effect thereafter

1 from time to time prior to the transition termination
2 date, except that the Commissioner may by regula-
3 tion specify that any such amendment by the NAIC
4 shall, in whole or in part, be inapplicable to inter-
5 state insurers.

6 (3) REGULATIONS AFTER TRANSITION PE-
7 RIOD.—The risk-based capital standards for inter-
8 state insurers and the remedies for failure to meet
9 such standards in effect on the transition termi-
10 nation date pursuant to paragraph (2) may there-
11 after be amended by regulations promulgated pursu-
12 ant to paragraph (1).

13 (b) DISCLOSURE.—Except as may be required or per-
14 mitted under the regulations promulgated pursuant to
15 subsection (a), an interstate insurer shall not disclose its
16 risk-based capital ratio to the general public for any pur-
17 pose.

18 **SEC. 257. DIVIDENDS TO SHAREHOLDERS.**

19 (a) SHAREHOLDER DIVIDENDS PERMITTED.—An
20 interstate insurer may declare and pay dividends or make
21 other distributions in cash or its bonds or its property on
22 its outstanding shares, except when the interstate insurer
23 is insolvent or would thereby be made insolvent, or when
24 the declaration, payment or distribution would be contrary

1 to any restrictions contained in its license or any order
2 issued by the Commission.

3 (b) SOURCE OF SHAREHOLDER DIVIDENDS.—Divi-
4 dends may be declared or paid and other distributions may
5 be made out of surplus only, so that the assets of the
6 interstate insurer remaining after such declaration, pay-
7 ment, or distribution shall at least equal the amount of
8 its capital.

9 **SEC. 258. INSURANCE HOLDING COMPANY SYSTEMS.**

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

11 (1) The term “affiliate” means a person that
12 directly, or indirectly through one or more inter-
13 mediaries, controls, or is controlled by, or is under
14 common control with, the person specified.

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

18 (b) FINANCIAL CONDITION.—The Commission shall
19 establish such requirements as necessary to ensure effec-
20 tive and comprehensive regulation of the financial condi-
21 tion of an insurer in a holding company system. These
22 requirements shall address but are not limited to
23 intrasystem transactions involving the insurer, mergers
24 and acquisitions of insurers, investments in subsidiaries,
25 registration of members of the system and disclosure and

1 verification by examination of matters which may affect
2 the financial status of an insurer in the system.

3 **SEC. 259. RISK LIMITATIONS.**

4 The Commission shall prescribe the amount of risk
5 which may be retained by a property and liability company
6 for an individual risk based upon the insurer's capital and
7 surplus.

8 **SEC. 260. INVESTMENT REGULATIONS.**

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

11 (b) REQUIREMENTS.—Such requirement shall include
12 limitations as to type and issue of investment, percentage
13 limitations for certain investments such as non-investment
14 grade bonds and investments involving real estate and real
15 estate mortgages, and minimum levels of liquidity.

16 **SEC. 261. ADMISSIBLE ASSETS.**

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

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

23 **SEC. 262. LIABILITIES AND RESERVES.**

24 (a) LIABILITIES AND RESERVES.—The Commission
25 shall prescribe requirements for the establishment of li-

1 abilities and reserves resulting from insurance contracts
2 issued by an insurer.

3 (b) LIFE RESERVES.—The requirements established
4 pursuant to subsection (a) shall include, but should not
5 be limited to, requirements for life reserves; active life re-
6 serves and unearned premium reserves; liabilities for
7 claims and losses unpaid; and for claims incurred but not
8 reported.

9 **SEC. 263. INDEPENDENT CPA AUDITS.**

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

14 (b) NOTIFICATIONS.—The requirements in sub-
15 section (a) shall require the insurer furnishing the annual
16 audited financial reports to require the independent cer-
17 tified public accountant to immediately notify in writing
18 an executive officer and all directors of the insurer of the
19 final determination by that independent certified public
20 accountant that the insurer has materially misstated its
21 financial condition as reported to the Commission as of
22 the balance sheet date currently under examination or that
23 the insurer does not meet the minimum capital and sur-
24 plus required by law as of that date. The insurer shall

1 furnish such notification to the Commission within 5 days
2 of receipt thereof.

3 **SEC. 264. QUALIFIED ACTUARIAL ANALYSIS.**

4 The Commission shall require an opinion on life and
5 health policy and claim reserves and loss and loss adjust-
6 ment expense reserves by a qualified actuary or specialist
7 on an annual basis for all insurers.

8 **SEC. 265. TRANSFER OF POLICIES.**

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

18 (b) FACTORS TO BE CONSIDERED.—In reviewing an
19 application to assume or transfer obligations or risks on
20 contracts of insurance under an assumption reinsurance
21 agreement, the Commission shall consider the following
22 factors:

23 (1) the financial condition of the transferring
24 insurer and assuming insurer and the effect the

1 transaction will have on the financial condition of
2 the assuming insurer and the transferring insurer;

3 (2) the managerial expertise and experience of
4 those persons who will control the operations of the
5 assuming insurer;

6 (3) the plans or proposals the assuming insurer
7 has with respect to the administration of the policies
8 subject to the proposed transfer;

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

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

17 (6) whether the contracts of insurance that are
18 the subject of the transfer provide that notice shall
19 be given to policyholders of a potential transfer of
20 policy; and

21 (7) whether the disclosure required by sub-
22 section (c) to the policyholders to be transferred is
23 fair, adequate and not misleading to the policy-
24 holders.

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

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

10 (i) all ratings issued within the previous 3
11 years by a nationally recognized rating agency,
12 the transferring insurer and the assuming in-
13 surer;

14 (ii) the financial statements of the trans-
15 ferring insurer and the assuming insurer for
16 the 3 previous years;

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

24 (iv) an option by a disinterested third
25 party expert that such transfer is fair and in

1 the best interests of the policyholders being
2 transferred, the policyholders who remain with
3 the transferring company, and the policyholders
4 of the assuming company; and

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

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

22 (e) EXCEPTIONS.—The Commission may establish
23 exceptions to the requirements of subsections (b) and (c)
24 where the transfer is part of a conservatorship, receiver-
25 ship, or liquidation process approved by judicial order.

1 **SEC. 266. RESTRICTIONS ON OWNERSHIP AND TRANSFER**
2 **OF OWNERSHIP.**

3 The Commission shall restrict ownership and control
4 of an insurer to persons with appropriate qualifications
5 and good character. These requirements shall require that
6 any transfer of ownership be subject to a review of the
7 qualifications and character of persons who will own or
8 control the insurer.

9 **SEC. 267. REAL ESTATE VALUATION.**

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

13 (b) MATERIALITY.—Such requirements shall provide
14 for the weighing of the materiality of the asset against
15 the costs of determining the market value of the asset.
16 In promulgating a standard for materiality the Commis-
17 sion shall consider the real estate holding as a percentage
18 of an insurer's net worth and as a percentage of the insur-
19 er's other real estate holdings.

20 **SEC. 268. REINSURANCE.**

21 (a) CREDITS.—The Commission shall prescribe re-
22 quirements under which a ceding insurer may be allowed
23 credit for reinsurance either as an asset or as a deduction
24 from liability.

25 (b) VALID LICENSES.—Such requirements shall re-
26 quire that no credit be allowed except where the reinsurer

1 has a valid license issued pursuant to the provisions of
2 this Act.

3 (c) LEGITIMACY.—Such requirements shall establish
4 standards with regard to whether the reinsurance is legiti-
5 mate. In promulgating standards as to the legitimacy of
6 a reinsurance agreement the Commission shall consider a
7 variety of factors including, but not limited to, whether—

8 (1) the primary effect of the reinsurance agree-
9 ment is to transfer deficiency reserves or excess in-
10 terest reserves to the books of the reinsurer for a
11 “risk charge” and the agreement does not provide
12 for significant participation by the reinsurer in one
13 or more of the following risks: mortality, morbidity,
14 investment or surrender benefit;

15 (2) the reserve credit taken by the ceding in-
16 surer is not in compliance with the insurance laws,
17 rules or regulations, including actuarial interpreta-
18 tions or standards, adopted by the Federal or State
19 authorities;

20 (3) the reserve credit taken by the ceding in-
21 surer is greater than the underlying reserve of the
22 ceding company supporting the policy obligations
23 transferred under the reinsurance agreement;

24 (4) the ceding insurer is required to reimburse
25 the reinsurer for negative experience under the rein-

1 surance agreement, except that neither offsetting ex-
2 perience refunds against prior years losses nor pay-
3 ment by the ceding insurer of an amount equal to
4 prior years losses upon voluntary termination of in-
5 force reinsurance by that ceding insurer shall be
6 considered such reimbursement to the reinsurer for
7 negative experience;

8 (5) the ceding insurer can be deprived of sur-
9 plus at the reinsurer's option or automatically upon
10 the occurrence of some event, such as the insolvency
11 of the ceding insurer, except that termination of the
12 reinsurance agreement by the reinsurer for non-pay-
13 ment of reinsurance premiums shall not be consid-
14 ered to be such a deprivation of surplus;

15 (6) the ceding insurer must, at specific points
16 in time scheduled in the agreement, terminate or
17 automatically recapture all or part of the reinsur-
18 ance ceded;

19 (7) no cash payment is due from the reinsurer,
20 throughout the lifetime of the reinsurance agree-
21 ment, with all settlements prior to the termination
22 date of the agreement made only in a "reinsurance
23 account", and no funds in such account are available
24 for the payment of benefits;

1 (8) the reinsurance agreement involves the pos-
 2 sible payment by the ceding insurer to the reinsurer
 3 of amounts other than from income reasonably ex-
 4 pected from the reinsured policies; and

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

8 **SEC. 269. SURPLUS NOTES.**

9 The Commission shall restrict the use of surplus
 10 notes and other financial devices where the Commission
 11 determines such devices would allow an insurer otherwise
 12 in hazardous financial condition to continue to transact
 13 business to the detriment of consumers.

14 **Subtitle E—Consumer Protection**

15 **SEC. 281. OFFICE OF CONSUMER PROTECTION.**

16 The Commission shall establish an Office of Con-
 17 sumer Protection. The Office shall represent the interests
 18 of consumers in proceedings before the Commission. Be-
 19 fore engaging in any such representational activities, the
 20 Office shall—

21 (1) attempt to determine who is the consumer
 22 by establishing appropriate parameters for applica-
 23 tion of the term “consumer” in the context of insur-
 24 ance, taking into account the interests of purchasers
 25 and beneficiaries of insurance policies, including

1 commercial and professional organizations who may
2 require their officers and employees to purchase in-
3 surance policies, third party beneficiaries, employer-
4 provided insurance policies, and mortgage lenders
5 and other commercial interests who may require or
6 recommend the purchase of insurance policies, in-
7 cluding credit life insurance; and

8 (2) establish a process for reconciling or
9 prioritizing conflicting or competing interests of any
10 such consumers with respect to any particular issue
11 or policy the Office may purport to represent.

12 **SEC. 282. CONSUMER DISCLOSURE.**

13 (a) INFORMATION REQUIRED.—The Commission
14 shall prescribe the information which must be provided by
15 representatives of the insurer to a consumer prior to the
16 purchase of any insurance policy or certificate. Such infor-
17 mation shall—

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

20 (2) convey information, understandable to the
21 consumer, that will enable the consumer to make
22 meaningful cost and coverage comparisons of similar
23 policies offered by other insurers and of different
24 policies of the same insurer;

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

4 (4) disclosure of rate-of-return values for non-
5 term life insurance policies that include a cash value
6 component;

7 (5) disclosure, for the same or a similar type of
8 insurance, of comparative data on—

9 (A) insurers' complaint records; and

10 (B) the length of time to settle claims, by
11 size of claim, solvency information, and cov-
12 erage ratings on a company-by-company basis;

13 (6) convey to the consumer existing public in-
14 formation concerning the financial solidity of the in-
15 surer; and

16 (7) include any other information which the
17 Commission deems necessary to fully inform the con-
18 sumer.

19 (b) REVOCATIONS.—The Commission shall establish
20 requirements which allow a consumer to revoke the agree-
21 ment within a reasonable amount of time following accept-
22 ance.

23 (c) CLARITY OF CONTRACTS.—The Commission shall
24 establish requirements for the simplification and, where

1 appropriate, the standardization of insurers' contracts for
2 the benefit of consumers.

3 (d) GOOD FAITH.—The Commission shall require
4 that each individual who sells or offers to sell an insurance
5 policy has a duty of good faith and fair dealing to the
6 purchaser or potential purchaser of such policy. Such re-
7 quirements shall require that such an individual not know-
8 ingly make any misleading representation or fraudulent
9 comparison of any policy or insurer for the purpose of in-
10 ducing any person to purchase a policy or use undue pres-
11 sure to induce the purchase of a policy.

12 (e) CONSUMER FEEDBACK.—

13 (1) IN GENERAL.—An interstate insurer shall
14 provide a means for consumers to provide feedback
15 to the Commission following—

16 (A) the purchase of an insurance policy;

17 (B) the denial, cancellation, or modifica-
18 tion of an insurance policy; and

19 (C) a claim made under an insurance pol-
20 icy sold or serviced by that insurer.

21 (2) AVAILABILITY TO PUBLIC.—An interstate
22 insurer shall provide access to consumer feedback
23 harvested under paragraph (1) to prospective pur-
24 chasers of any insurance policy sold by that insurer

1 before purchase for the same or a similar type of in-
 2 surance.

3 **SEC. 283. REPEAL OF ANTITRUST EXEMPTION FOR BUSI-**
 4 **NESS OF INSURANCE.**

5 (a) IN GENERAL.—The antitrust laws of the United
 6 States shall apply to interstate insurers, State insurers,
 7 and all reinsurers doing business in the United States (re-
 8 gardless of the domicile of such reinsurers), to the same
 9 extent as other business are subject to such laws.

10 (b) EXCEPTIONS.—The antitrust laws shall not apply
 11 to—

12 (1) the sharing of historical loss data among in-
 13 surers, but this paragraph shall not be construed to
 14 permit the sharing of trending data; and

15 (2) the activities of insurers required to partici-
 16 pate in State mandatory residual market mecha-
 17 nisms designed to make insurance available to those
 18 unable to obtain insurance in the voluntary market
 19 and to the activities of insurers required to partici-
 20 pate in a worker's compensation administration
 21 mechanism.

22 **TITLE III—REINSURANCE**

23 **SEC. 301. AUTHORITY OF THE COMMISSION.**

24 (a) IN GENERAL.—The Commission shall have the
 25 authority to establish, by regulation, the standards and

1 procedures for granting a license to professional reinsurers
2 under section 305 and other reinsurers and insurers in
3 the business of providing reinsurance under section 306
4 (collectively may be referred to as “reinsurers”).

5 (b) RULES AND REGULATIONS.—The Commission
6 shall promulgate such rules and regulations as it deems
7 warranted.

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

13 (d) QUALIFIED FINANCIAL INSTITUTION.—The Com-
14 mission shall establish, by regulation, appropriate criteria
15 for becoming a qualified financial institution for purposes
16 of the establishment of a trust fund under section 306(c).
17 Foreign banks with a United States presence may apply
18 for acceptance.

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

23 (f) CERTIFICATE OF SOLVENCY.—The Commission is
24 authorized to issue a Federal certificate of solvency to an
25 insurer or reinsurer pursuant to the financial standards

1 and procedures adopted by the Commission if the Commis-
2 sion determines that the insurer or reinsurer meets such
3 standards.

4 (g) LICENSES.—The Commission shall issue licenses
5 to transact reinsurance business. The Commission may
6 refuse to issue or may revoke such licenses pursuant to
7 the requirements of this Act. Such licenses shall bear a
8 seal of the Commission.

9 (h) INVESTIGATIONS.—The Commission shall con-
10 duct such examinations and investigations on reinsurance
11 matters, as are required to determine whether a person
12 has violated any provision of this title or for the purpose
13 of securing information useful in the lawful administration
14 of any such provision.

15 (i) RECORDS.—The Commission shall maintain
16 records of official transactions, examinations, investiga-
17 tions and proceedings. Such records and reinsurance fil-
18 ings shall be open to public inspections, except as deemed
19 necessary by the Commission.

20 (j) REPORTS.—The Commission shall annually pre-
21 pare a report for delivery to the Congress with respect to
22 reinsurance, recommendations for legislative or adminis-
23 trative action, proposals for rules and regulations affecting
24 reinsurance and matters affecting reinsurance, and such

1 other pertinent information and matters as the Commis-
2 sion deems proper.

3 (k) REVOCATION OF LICENSES.—The Commission
4 may suspend or revoke the license of any reinsurer which
5 violates the provisions of this Act. In addition to, or in
6 lieu of suspension or revocation, the Commission may fine
7 any reinsurer which violates the provisions of this Act in
8 an amount not to exceed \$100,000 per violation.

9 (l) RESEARCH.—The Commission shall conduct re-
10 search and financial analysis of the reinsurance industry
11 and any other research and analysis deemed appropriate.

12 (m) HEARINGS.—The Commission shall hold hear-
13 ings consistent with the requirements of subchapter II of
14 chapter 5 and chapter 7 of title 5, United States Code,
15 for any purpose deemed necessary and within the scope
16 of this Act.

17 (n) ASSESSMENTS.—The Commission shall levy and
18 collect assessments and other fees imposed pursuant to
19 this Act.

20 **SEC. 302. RULES AND REGULATIONS.**

21 In addition to any other rules and regulations the
22 Commission deems necessary for the effective regulation
23 of reinsurance, the Commission shall promulgate rules and
24 regulations—

1 (1) requiring a license to conduct the business
2 of reinsurance in the United States;

3 (2) establishing minimum levels of capital and
4 surplus necessary for reinsurers to transact busi-
5 ness;

6 (3) requiring, where appropriate, the establish-
7 ment of irrevocable trust accounts in qualified
8 United States financial institutions adequate for the
9 payment of the claims of their United States policy
10 holders and ceding insurers, their assigns and suc-
11 cessors in interest;

12 (4) requiring that all reinsurers agree to submit
13 to the jurisdiction and be bound by the final order
14 or judgment of any court of competent jurisdiction
15 in the United States;

16 (5) reviewing the business plan of all reinsurers
17 seeking a license to see that the reinsurer's methods
18 of operation are reasonable, prudent and do not
19 present a threat to the public;

20 (6)(i) defining standards for identifying rein-
21 surers found to be in such condition as to render the
22 continuance of their business hazardous to the pub-
23 lic, and

24 (ii) defining the authority of the Commission to
25 order a company to take necessary corrective action

1 or cease and desist certain practices which, if not
2 corrected, could place the company in a hazardous
3 financial condition;

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

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

9 (9) requiring a diversified investment portfolio;

10 (10) prescribing assets which may be admitted,
11 authorized or allowed as assets in the statutory fi-
12 nancial statement; and

13 (11) restricting the credit that may be allowed
14 to licensed reinsurers, either as asset or as a reduc-
15 tion of liabilities for retrocessions reinsurers not li-
16 censed to do business in the United States.

17 **SEC. 303. INFORMATION, RECORDS, AND MEETINGS.**

18 For purposes of subchapter II of chapter 5 of title
19 5, United States Code, the Commission shall, with respect
20 to activities under this Act, be considered agencies respon-
21 sible for the regulation or supervision of financial institu-
22 tions.

23 **SEC. 304. LICENSE OF PROFESSIONAL REINSURERS.**

24 (a) IN GENERAL.—The Commission is authorized to
25 license and otherwise regulate professional reinsurers. A

1 professional reinsurer shall be subject to regulation solely
2 by the Commission as to the business of reinsurance in
3 the United States.

4 (b) ESTABLISHMENT OF STANDARDS.—The Commis-
5 sion shall, by regulation, establish standards and proce-
6 dures for the licensing and regulation of professional rein-
7 surers. Such standards shall give due consideration to the
8 public interest in providing secure reinsurance capacity in
9 the United States and to the need for promptly collectible
10 reinsurance recoverables.

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

14 (1) Minimum net worth requirements, risk-
15 based or otherwise, appropriate to the nature of the
16 reinsurance written by the different types and sizes
17 of reinsurers, except that the Commission shall set
18 the minimum at an amount not less than
19 \$50,000,000 and shall establish additional net worth
20 requirements for appropriate categories of profes-
21 sional reinsurers based upon their operations, in-
22 cluding such factors as premium volume, volatility,
23 and loss development characteristics of the types of
24 reinsurance provided by such reinsurers. The Com-
25 mission shall adjust such minimum for inflation

1 every fifth year unless for good cause the Commis-
2 sion determines that it should be adjusted more fre-
3 quently.

4 (2) Appropriate standards for investments, re-
5 serves, and asset valuations relating to minimum net
6 worth, including percentage limitations for various
7 categories of investments; except that investments in
8 excess of minimum net worth and reserves shall be
9 subject to the prudent person standard.

10 (3) Limitations on the net amount of exposure
11 that may be retained on a single risk, based on the
12 amount of net worth.

13 (4) Accounting standards and standards for re-
14 serve valuation that will promote strong and appro-
15 priate financial monitoring.

16 (5) Liquidity requirements appropriate to the
17 nature of the reinsurance written.

18 (6) Requirements for annual reports by inde-
19 pendent accountants of financial statements report-
20 ing financial condition and financial activities.

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

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

1 (9) Disclosure of all subsidiary and affiliate re-
2 lationships and the identity of all persons which con-
3 trol the professional reinsurer.

4 (10) Regulation of financial transactions within
5 holding company systems.

6 (11) Procedures for initial and special examina-
7 tions and for the annual financial review of financial
8 statements.

9 (12) Regulations under which a foreign insurer
10 or reinsurer may establish a United States branch
11 which may become a certified professional reinsurer.

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

15 (14) Appointment of an agent in the United
16 States upon whom may be served any lawful process
17 in any action, suit, or proceeding instituted by or on
18 behalf of any person in the United States, and an
19 agreement that, in the event such process may not
20 be served upon the appointed agent, process may be
21 served upon the Commission.

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

1 (16) Procedures for ongoing monitoring and en-
2 forcement of compliance with the Commission's
3 standards.

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

6 (18) Minimum standards governing the fidu-
7 ciary duties of officers and directors of professional
8 reinsurers.

9 (19) Submission of an outline of current and
10 projected operations in the United States dem-
11 onstrating that the methods of operation are reason-
12 able, prudent, and do not present an undue risk to
13 the public.

14 (20) Demonstration of sufficient data proc-
15 essing capability and capacity to meet all data collec-
16 tion and reporting requirements of the Commission.

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

22 (22) Disclosure requirements, in addition to
23 those enumerated above, for information to be pro-
24 vided to the Commission and the public.

1 (ii) shall establish additional net
2 worth requirements for appropriate cat-
3 egories of reinsurers based upon their op-
4 erations, including such factors as pre-
5 mium volume, volatility, and loss develop-
6 ment characteristics of the types of rein-
7 surance provided by such reinsurers; and

8 (iii) shall ensure that reinsurance obli-
9 gations will be met; or

10 (B) in the case of a financially sound ap-
11 plicant that does not meet the net worth dollar
12 standard of subparagraph (A), obtain a waiver
13 of this minimum dollar standard if the Commis-
14 sion concludes that the applicant is sufficiently
15 financially sound, is able to pay its reinsurance
16 obligations, and has sufficient expertise to pro-
17 vide the type of reinsurance that it intends to
18 offer.

19 (2) The insurer or reinsurer shall be authorized
20 by the law of its domiciliary jurisdiction to assume
21 reinsurance; demonstrate to the Commission that it
22 has sufficient assets and management experience so
23 that it can operate safely in the United States rein-
24 surance market in a way that will protect the public
25 interest; and maintain a trust fund in a qualified fi-

1 nancial institution which includes a trusted surplus
2 for the protection of United States ceding insurers
3 and which is—

4 (A) for a single company, an amount not
5 less than its United States reinsurance liabil-
6 ities arising from reinsurance contracts entered
7 into after the date of enactment of this Act plus
8 \$20,000,000;

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

16 (C) for a group of incorporated insurers
17 under common administration, and which has
18 continuously transacted an insurance or rein-
19 surance business outside the United States for
20 at least 10 years, in an amount not less than
21 the group's United States reinsurance liabilities
22 arising from reinsurance contracts entered into
23 after the date of enactment of this Act plus
24 \$100,000,000.

1 The Commission shall require additional amounts to
2 be held in a trust established under this paragraph
3 as a condition for initial or continued license if the
4 Commission determines that such additional
5 amounts are required for the protection of United
6 States ceding insurers.

7 (3) The insurer or reinsurer shall be authorized
8 by the laws of its domiciliary jurisdiction to assume
9 reinsurance and demonstrate to the Commission that
10 it has sufficient assets and management experience
11 so that it will operate safely in the United States re-
12 insurance market in a way that will protect the pub-
13 lic interest and in addition complies with the fol-
14 lowing:

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

21 (B) In the event the Commission deter-
22 mines that the funding required by subsection
23 (e) is inadequate to protect United States
24 ceding insurers, the Commission may require,
25 as a condition for initial or continued license,

1 additional security requirements, including the
2 establishment of a United States trust fund for
3 the exclusive protection of United States ceding
4 insurers. The Commission may require such
5 trust fund to be in any amount that the Com-
6 mission determines to be appropriate to protect
7 United States ceding insurers.

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

14 (1) The trust fund shall be exclusively for the
15 purpose of securing the payment of valid claims of
16 United States ceding insurers and their assigns and
17 successors in interest.

18 (2) The trust fund shall be established in a
19 qualified financial institution in a form approved by
20 the Commission. The Commission shall establish ac-
21 ceptable criteria for assets held in trust, which shall
22 include cash, securities, bonds, commercial paper,
23 clean, irrevocable, unconditional, and automatically
24 renewable letters of credit issued by a qualified fi-
25 nancial institution, or any other appropriate assets,

1 whether United States or non-United States, the fair
2 market value of which can be readily ascertained
3 and which provide the stability necessary for ade-
4 quate protection of the trust beneficiaries.

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

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

21 (5) The trustees of the trust shall report annu-
22 ally to the Commission in writing, setting forth the
23 balance of the trust, providing an actuary's opinion
24 as to the reasonableness of the trust reserves, listing
25 the trust's investments at the preceding year end,

1 and certifying the date of termination of the trust
2 if so planned, or certifying that the trust shall not
3 expire as to new business prior to the next following
4 December 31. The trust shall remain in effect as
5 long as there are outstanding obligations under the
6 reinsurance agreements to which the trust pertains.

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

16 (7) The trust shall be subject to annual review
17 and initial and special examination by the Commis-
18 sion in the same manner as the Commission may ex-
19 amine certified reinsurers.

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

23 (1) cash under the control of the ceding in-
24 surer;

1 (2) a clean, irrevocable, unconditional, and
2 automatically renewable letter of credit issued by a
3 qualified financial institution and held by the ceding
4 insurer; or

5 (3) other funding acceptable to the Commission.

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

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

21 (1) Have been doing business in its country of
22 domicile for at least 3 years, or be an affiliate of an
23 insurer or reinsurer which has been doing business
24 in its country of domicile for at least 3 years, unless
25 the Commission, for good cause shown, pursuant to

1 regulations, waives this 3-year operating require-
2 ment.

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

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

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

17 (5) Agree to allow the Commission to examine
18 its books and records and to waive any protection it
19 has under any secrecy laws of its domiciliary juris-
20 diction, except that such examinations will only take
21 place upon the Commission's showing of good cause
22 for concern about the financial soundness or sol-
23 vency of the subject entity.

24 (6) Appoint an agent in the United States upon
25 whom may be served any lawful process in any ac-

1 tion, suit, or proceeding instituted by or on behalf
 2 of a domestic ceding insurer, and agree that, in the
 3 event such process may not be served upon the ap-
 4 pointed agent, process may be served upon the Com-
 5 mission.

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

15 **SEC. 306. SUSPENSION AND REVOCATION OF FEDERAL LI-**
 16 **CENSE TO PROVIDE REINSURANCE.**

17 (a) IN GENERAL.—The Commission shall suspend or
 18 revoke the certificate of a professional reinsurer issued
 19 under section 305 or a reinsurance certificate issued under
 20 section 306 at any time the Commission determines the
 21 standards for holding such license are no longer satisfied.
 22 The Commission shall provide the opportunity for a hear-
 23 ing on the record before making a determination to sus-
 24 pend or revoke such certificate.

25 (b) NOTICE OF SUSPENSION OR REVOCATION.—

1 (1) The Commission shall notify the State or
2 country of domicile of a licensed professional rein-
3 surer or holder of a reinsurance license that the li-
4 cense has been suspended or revoked. Such notifica-
5 tion shall be made at the earliest possible date.

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

10 **SEC. 307. CREDIT FOR REINSURANCE.**

11 (a) IN GENERAL.—Notwithstanding any provision of
12 State law to the contrary, any insurer certified by the
13 Commission may count reinsurance as an asset or a de-
14 duction from its liabilities on its annual financial state-
15 ment only if the provider of reinsurance, at the time such
16 statement is filed—

17 (1) holds a Federal license as a professional re-
18 insurer under section 305;

19 (2) holds a Federal certificate of solvency and
20 is licensed pursuant to section 306(c)(1);

21 (3) maintains a United States trust fund and is
22 licensed pursuant to section 306(c)(2); or

23 (4) is licensed pursuant to section 306(c)(3)
24 and funds its obligations to ceding insurers and rein-
25 surers as required in section 306(e).

1 (b) LIMITATION ON CREDIT.—With regard to a rein-
2 surer licensed pursuant to section 306(e)(3), a ceding in-
3 surer 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 306(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 305 or a reinsurance license
14 issued pursuant to section 306 only if—

15 (1) the reinsurer submits to the Commission 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 Commission 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 306(e) and submits to
2 the Commission 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 Commis-
6 sion if the provider's application for a license is de-
7 nied;

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

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

20 (d) PREEMPTION.—No State shall regulate credit for
21 reinsurance when purchased by federally licensed insurers.
22 The Commission through the Commission shall have ex-
23 clusive 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 306; 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 306.

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

19 A ceding insurer affected by the suspension or revocation
20 of a license issued pursuant to this title shall immediately
21 notify the Commission 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. 308. RELATIONSHIP TO STATE LAW.**

2 (a) PREEMPTION.—A professional reinsurer certified
3 pursuant to section 305 or licensed under section 306
4 shall be exempt from the application of any State law or
5 regulation pertaining to the licensing or regulation of rein-
6 surers or reinsurance transactions.

7 (b) NONDISCRIMINATION.—

8 (1) With respect to any State law requiring evi-
9 dence of insurance or of financial responsibility, re-
10 insurance contracts made by a professional reinsurer
11 licensed pursuant to section 305 or by the holder of
12 a reinsurance license issued pursuant to section 306
13 shall be accorded the same treatment as is accorded
14 to such contracts issued by insurers subject to regu-
15 lation for financial condition by that State.

16 (2) No State shall revoke, suspend, refuse to
17 issue, or refuse to renew any license, privilege, char-
18 ter, certificate, franchise, or any other right con-
19 ferred, guaranteed, or protected by law because an
20 insurer or reinsurer obtains or maintains a certifi-
21 cate to provide reinsurance from the Commission.
22 No tax, fee, or assessment of any kind may be im-
23 posed on an insurer or reinsurer certified by the
24 Commission in any manner or on any basis different
25 from that applied to other insurers by that State.
26 No corporate charter or franchise issued to an in-

1 surer or reinsurer licensed by the Commission shall
2 be rendered invalid or subject to revocation, lapse, or
3 forfeiture merely by reason of the failure of an in-
4 surer or reinsurer licensed by the Commission to ob-
5 tain a license or certificate of authority issued by a
6 State in addition to the license issued by the Com-
7 mission.

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

9 (a) IN GENERAL.—The Commission shall conduct ex-
10 aminations of reinsurers licensed under section 305 and
11 insurers and reinsurers licensed under section 306 that
12 have a Federal solvency certificate. Each reinsurer shall
13 provide to the Commission annual and, as deemed appro-
14 priate by the Commission, quarterly reports of its financial
15 condition and operations which shall be in such form, con-
16 tain such information, and be made on such dates, as the
17 Commission may require.

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

22 (c) CONTENTS OF ANNUAL REPORT.—Each annual
23 report shall include—

24 (1) financial statements;

1 (2) any supplemental information or alternative
2 presentation that the Commission may require; and

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

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

9 (B) the reinsurer's compliance with des-
10 ignated safety and soundness laws and require-
11 ments; and

12 (C) any other information required by the
13 Commission.

14 (d) FINANCIAL EXAMINATIONS.—The Commission
15 shall establish, by regulation, procedures for an effective
16 system of examining the activities, operations, financial
17 condition and affairs of insurers and reinsurers.

18 (e) ANNUAL INDEPENDENT AUDITS OF FINANCIAL
19 STATEMENTS.—

20 (1) AUDITS REQUIRED.—Each reinsurer shall
21 have an annual independent audit made of its finan-
22 cial statements by an independent certified public
23 accountant in accordance with accounting standards
24 determined by the Commission.

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

5 (A) are presented fairly in accordance with
6 accounting principles determined by the Com-
7 mission; and

8 (B) to the extent determined necessary by
9 the Commission, comply with such other disclo-
10 sure requirements as may be imposed under
11 subsection (b).

12 (f) CERTIFICATION OF ANNUAL AND QUARTERLY
13 REPORTS.—

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

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

1 examined by them and to the best of their knowledge
2 and belief is true and correct.

3 (g) SPECIAL REPORTS.—The Commission may re-
4 quire special reports from a reinsurer, in such form and
5 containing such information as the Commission may pre-
6 scribe, on dates fixed by the Commission, whenever in the
7 Commission's judgment, such reports are necessary for
8 the Commission to carry out the purposes of this Act.

9 **SEC. 310. ACCOUNTING STANDARDS.**

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

20 **SEC. 311. EXAMINATIONS.**

21 (a) IN GENERAL.—The Commission shall conduct a
22 full scope examination of the affairs, transactions, ac-
23 counts, records and assets of each licensed reinsurer to
24 assure the solidity and proper functioning of the reinsurer.
25 In addition, the Commission may conduct an examination

1 under this section whenever the Commission determines
2 that an examination is necessary to determine the condi-
3 tion of the reinsurer for the purpose of ensuring its finan-
4 cial safety and soundness.

5 (b) INITIAL APPLICATION AND EXAMINATION.—The
6 Commission shall conduct an initial examination of every
7 insurer or reinsurer that applies for a Federal certificate
8 of solvency to determine if the applicant satisfies the na-
9 tional standards established under this Act.

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

1 authority held by the reinsurer to engage in any business
2 subject to the Commission's authority. Any such pro-
3 ceeding for suspension, revocation or refusal of any license
4 or authority shall be conducted pursuant to a hearing.

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

1 (e) EXAMINATION REPORT.—

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

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

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

1 Commission considers necessary and appro-
2 priate to cure 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 re-
7 filing the report pursuant to paragraph (1) of
8 this subsection.

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

14 (g) EXPENSES.—Each reinsurer shall pay to the
15 Commission the expense attendant to conducting the ex-
16 amination.

17 (h) TECHNICAL EXPERTS.—The Commission may
18 obtain the services of any technical experts the Commis-
19 sion considers appropriate to provide temporary technical
20 assistance relating to an examination under this Act. The
21 Commission shall describe, in the record of each examina-
22 tion, the nature and extent of any such temporary tech-
23 nical assistance.

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

1 (1) IN GENERAL.—The Commission may cause
2 any record, paper, or document to be copied or pho-
3 tographed, in a manner that complies with the min-
4 imum 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 Commission 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 Commission shall continue to hold the content of the
19 examination 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
22 Commission may open the report for public inspec-
23 tion so long as no court of competent jurisdiction
24 has stayed its publication.

1 (2) DISCLOSURE FOR ENFORCEMENT PUR-
2 POSES.—Nothing in this Act shall prevent or be con-
3 strued as prohibiting the Commission from dis-
4 closing the content of an examination report, pre-
5 liminary examination report or results, of any mat-
6 ter relating thereto, to a State insurance depart-
7 ment, to the insurance department of another coun-
8 try, or to Federal or State law enforcement officials
9 at any time, as long as such agency or office receiv-
10 ing the report or matters relating thereto agrees in
11 writing to hold it confidential and in a manner con-
12 sistent with this 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.—No cause of action
19 shall arise, nor shall liability be imposed against any per-
20 son for the act of communicating or delivering information
21 or data to the Commission or the Commission's authorized
22 representative or examiner pursuant to an examination
23 made under this Act, if such act of communication or de-
24 livery was performed in good faith and without fraudulent
25 intent or the intent to deceive.

1 **SEC. 312. ACTUARIES.**

2 (a) REQUIREMENT TO USE QUALIFIED ACTU-
3 ARIES.—The Board of Directors of each insurer and rein-
4 surer shall appoint an actuary who is qualified to issue
5 an opinion on the reasonableness of the reserves of such
6 insurer or reinsurer. A qualified actuary is a person who
7 is a member in good standing of the American Academy
8 of Actuaries or someone who is otherwise qualified as de-
9 termined by the Commission. The Board of Directors of
10 the certified insurer or reinsurer shall notify the Commis-
11 sion or the State insurance regulator of the name of the
12 appointed actuary at the time of the appointment and
13 shall notify the Commission or such regulator within 10
14 days when an appointed actuary is dismissed, resigns, or
15 otherwise leaves the position.

16 **SEC. 313. LIMITATION ON SUBSEQUENT EMPLOYMENT.**

17 (a) IN GENERAL.—Neither any member of the Com-
18 mission nor any former officer or employee of the Commis-
19 sion may accept compensation from any reinsurer during
20 the 2-year period beginning on the date of separation from
21 employment by the Commission.

22 (b) APPLICABILITY.—The limitation contained in
23 subsection (a) applies only to any former officer or em-
24 ployee who, while employed by the Office, was com-
25 pensated at a rate in excess of the lowest rate for a posi-

1 tion classified higher than GS-15 of the General Schedule
2 under section 5107 of title 5, United States Code.

3 **SEC. 314. EXCHANGE OF INFORMATION.**

4 At the request of the Commission, State insurance
5 departments and other State authorities shall furnish the
6 Commission with any records, reports, results of examina-
7 tion, or other information in their possession relevant to
8 matters under this Act.

9 **SEC. 315. ARBITRATION CLAUSES.**

10 In the event of any difference of opinion between the
11 reinsurer and the ceding insurer with respect to the inter-
12 pretation of an agreement or contract to transfer obliga-
13 tions or risks of contract of insurance, such disagreements
14 shall be resolved by arbitration under the Federal Arbitra-
15 tion Act.

16 **SEC. 316. REINSURANCE INTERMEDIARIES.**

17 (a) REQUIREMENTS.—A reinsurer shall not engage
18 the services of any person, firm, association or corporation
19 to act as a reinsurance intermediary broker or manager,
20 either directly or indirectly, unless such intermediary is
21 licensed by the Commission.

22 (b) INTERMEDIARY LICENSE.—

23 (1) IN GENERAL.—The Commission may issue
24 a reinsurance intermediary's license to any person,
25 firm, association or corporation who or which has

1 complied with the rules and regulations adopted by
2 the Commission.

3 (2) FIRMS OR ASSOCIATION.—Any such license
4 issued to a firm or association and any employees
5 designated to act as reinsurance intermediaries
6 under such license, shall be named in the application
7 and any supplements to the application.

8 (3) CORPORATIONS.—Any such license issued to
9 a corporation shall authorize all of the officers and
10 any designated employees and directors of the cor-
11 poration to act as reinsurance intermediaries on be-
12 half of such corporation, and all such persons shall
13 be named in the application and any supplements to
14 the application.

15 (c) WRITTEN APPLICATIONS.—

16 (1) IN GENERAL.—Before a reinsurance
17 intermediary's license shall be issued or renewed, the
18 prospective licensee shall properly file with the Com-
19 mission a written application that shall be in such
20 form or forms and supplements as the Commission
21 prescribes, and pay a fee in an amount determined
22 by the Commission.

23 (2) EXPIRATION.—Every reinsurance
24 intermediary's license shall expire on the thirty-first
25 day of August next following the date of issue.

1 (3) RENEWALS.—If an application for renewal
2 has been filed with the Commission before Sep-
3 tember 1 of the year of expiration, license sought to
4 be renewed shall continue in full force and effect ei-
5 ther until the issuance by the Commission of the re-
6 newal license applied for, or until five days after the
7 Commission has refused to issue such renewal li-
8 cense and given notice of such refusal to the appli-
9 cant.

10 (4) REFUSAL TO RENEW.—Before refusing to
11 renew any such license, the Commission shall notify
12 the applicant of the Commission's intention and
13 shall give such applicant an opportunity for a hear-
14 ing.

15 (d) REFUSAL TO ISSUE A LICENSE.—The Commis-
16 sion may refuse to issue a reinsurance intermediary's li-
17 cense if, in its judgment, the applicant or any member,
18 principal, officer or director of such applicant, is not trust-
19 worthy and competent to act as a reinsurance inter-
20 mediary, or that any controlling person of such applicant
21 is not trustworthy to act as a reinsurance intermediary,
22 or that any of the foregoing has given cause for revocation
23 or suspension of such license, or has failed to comply with
24 any prerequisite for the issuance of such license.

1 (e) EXAMINATIONS.—A reinsurance intermediary
2 shall be subject to examination by the Commission as
3 often as may be deemed necessary by the Commission to
4 assure compliance with this section and any rules and reg-
5 ulations promulgated under this title. The Commission
6 shall have access to all books, accounts and records of the
7 reinsurance intermediary in a form usable to the Commis-
8 sion.

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

19 (g) FIDUCIARY RESPONSIBILITY.—Every reinsurance
20 intermediary acting as such shall be responsible, in a fidu-
21 ciary capacity, for all funds received or collected in such
22 capacity, and shall not, without the express consent of the
23 principals, mingle any such funds with the intermediary's
24 own funds held by the intermediary in any other capacity.

1 **SEC. 317. APPOINTMENT OF RECEIVERS.**

2 (a) JURISDICTION.—The Commission shall act as a
3 receiver for a reinsurer licensed under section 305 and
4 those insurers or reinsurers licensed under section 306
5 who have a Federal certificate for solvency (hereinafter re-
6 ferred collectively as “reinsurers”), for purposes of reha-
7 bilitation and liquidation when appointed as a receiver in
8 proceedings instituted in accordance with the provisions
9 of this Act. The United States District Court courts shall
10 have exclusive jurisdiction of proceedings to appoint the
11 Commission as receiver for a reinsurer.

12 (b) PETITION FOR APPOINTMENT.—

13 (1) THE FILING OF A PETITION.—A proceeding
14 to appoint the Commission as receiver of a reinsurer
15 shall be commenced by the filing of a petition seek-
16 ing such appointment in the appropriate United
17 States district court for the district in which the re-
18 insurer has its principal office or domicile, or in the
19 United States District Court for the District of Co-
20 lumbia.

21 (2) WHO MAY FILE.—A petition may be filed by
22 the Commission.

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

24 (A) the Commission or any person or other
25 governmental agency acting under the Commis-
26 sion’s authority; and

1 (B) any person acting under the Commis-
2 sion's authority that—

3 (i) has no claim against, or financial
4 interest in, the reinsurer or other basis of
5 conflict of interest; and

6 (ii) has the financial and management
7 expertise necessary to direct the operations
8 and affairs of the reinsurer.

9 (c) JUDICIAL REVIEW.—

10 (1) TIMING AND JURISDICTION.—A reinsurer
11 for which a receiver is appointed may bring an ac-
12 tion in the United States district court, in the dis-
13 trict in which the court ordered the appointment of
14 a receiver, for an order requiring the Commission to
15 terminate the appointment of the receiver. The
16 court, upon the merits, may dismiss such action, or
17 may direct the Commission to terminate the ap-
18 pointment of the receiver. Such an action may be
19 commenced no later than 20 days after the date in
20 which the court ordered an appointment of a re-
21 ceiver.

22 (2) CONSENSUAL APPOINTMENTS.—The ap-
23 pointment of a receiver under subsection (b) pursu-
24 ant to consent of the reinsurer shall not be subject
25 to judicial review under this subsection.

1 (3) STANDARD OF REVIEW.—A decision of the
2 Commission to appoint a receiver may be set aside
3 under this subsection only if the court finds that the
4 decision was arbitrary, capricious, an abuse of dis-
5 cretion, or otherwise not in accordance with applica-
6 ble laws.

7 (4) LIMITATION ON JURISDICTION.—Except as
8 otherwise provided in this subsection, no court may
9 take any action regarding the removal of a receiver
10 or otherwise restrain or affect the exercise of powers
11 or functions of a receiver.

12 **SEC. 318. ORDER APPOINTING RECEIVER.**

13 (a) IN GENERAL.—An order appointing a receiver
14 shall specify whether the receiver is to act to rehabilitate
15 or to liquidate the reinsurer.

16 (b) REGULAR ACCOUNTING TO COURT.—The order
17 appointing the Commission as receiver shall require reg-
18 ular accounting to the court of the receiver's administra-
19 tion of the reinsurer's assets including, but not limited to,
20 a listing of all funds received or disbursed by the receiver
21 during the period covered by the report. Accounting shall
22 be at such intervals as the court specifies in its order or
23 by rule, but no less frequently than every quarter.

24 (c) COPY OF REPORT TO STATE INSURANCE REGU-
25 LATOR.—A copy of the accounting reports shall be pro-

1 vided to the appropriate State insurance regulators in the
2 State where the reinsurer transacts any reinsurance busi-
3 ness.

4 **SEC. 319. EFFECT OF ORDER.**

5 (a) **TRANSFER OF CONTROL.**—The order appointing
6 the Commission as receiver shall have the effect of imme-
7 diately transferring to the receiver the possession and con-
8 trol and the unconditional right to possession and control
9 of all the business, assets, contract and rights of action,
10 books, records, and affairs of the reinsurer, wherever lo-
11 cated.

12 (b) **NO BREACH OF CONTRACT.**—The entry of any
13 order appointing the Commission as receiver shall not con-
14 stitute an anticipatory breach of any contract of the rein-
15 surer, nor provide grounds for revocation or cancellation
16 of any such contract other than by the receiver.

17 (c) **RIGHTS AND LIABILITIES.**—Upon issuance of the
18 order under subsection (a), the rights, and liabilities of
19 the reinsurer and of its creditors, and all other persons
20 interested in its estate, shall be fixed as of the date of
21 entry of the order.

22 **SEC. 320. JURISDICTION OVER PROPERTY OF REINSURER.**

23 The filing of a petition under section 315 shall imme-
24 diately vest the district court with exclusive jurisdiction
25 over the reinsurer and its property wherever located and

1 over all parties to the proceedings by which the receiver
2 acquired the right to possession and control of the busi-
3 ness, assets and affairs of the reinsurer and shall suspend
4 the further jurisdiction of other courts and administrative
5 bodies with respect to such proceeding.

6 **SEC. 321. EXAMINATIONS.**

7 The Commission may examine and supervise a rein-
8 surer in receivership during the period in which the rein-
9 surer continues to operate as a going concern.

10 **SEC. 322. EXPENSES OF ESTABLISHING RECEIVERSHIP.**

11 All expenses of the receiver or any person acting
12 under the receiver's authority and direction in the taking
13 possession of the reinsurer and of conducting the pro-
14 ceedings placing it in receivership, of obtaining the ap-
15 pointment of the Commission as receiver, in the adminis-
16 tration of the receivership, and in the conduct of all pro-
17 ceedings related to it, shall be paid out of the funds or
18 assets of the reinsurer.

19 **SEC. 323. COMPENSATION OF RECEIVER AND EMPLOYEES.**

20 A receiver and professional employees (other than
21 Federal employees) shall be compensated for activities
22 conducted as receiver. Compensation may not be provided
23 in amounts greater than the compensation paid to employ-
24 ees of the Federal Government for similar services.

1 **SEC. 324. STANDING OF GUARANTY ASSOCIATIONS.**

2 Any guaranty association shall have standing to ap-
3 pear in any court proceeding concerning the rehabilitation
4 or liquidation of a reinsurer if such association has paid
5 guaranty obligations for which it has not been reimbursed
6 or is or may become liable for as guarantor of obligations
7 of the reinsurer in rehabilitation or liquidation.

8 **SEC. 325. APPLICABILITY OF RECEIVERSHIP TO FOREIGN**
9 **REINSURER.**

10 The Commission shall be appointed as receiver under
11 this Act for a foreign reinsurer or insurer licensed under
12 section 305 or 306 to the extent of its assets, operations,
13 and business in the United States. To the extent that such
14 assets are insufficient to cover claims against the foreign
15 reinsurer or insurer, the Commission may bring an action
16 in the United States district court with jurisdiction over
17 the receivership to recover amounts due and owing.

18 **SEC. 326. STAY OF ACTIONS.**

19 (a) IN GENERAL.—The entry of an order appointing
20 the Commission as receiver shall operate as a stay of the
21 commencement or continuation of any action or pro-
22 ceeding in any Federal or State court, or any administra-
23 tive or other proceeding, against the insolvent reinsurer
24 or against an insured of the insurer on a claim for which
25 the reinsurer may be liable, or against the Commission
26 as receiver, except as provided in subsection (b).

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

10 (c) ACTIONS BY THE RECEIVER.—Upon issuance of
11 an order appointing the Commission as receiver, the Com-
12 mission may within 2 years from such order, or such other
13 longer time as applicable law may permit, institute an ac-
14 tion or proceeding on behalf of the estate of the reinsurer
15 upon any cause of action against which the period of limi-
16 tation fixed by applicable law has not expired at the time
17 of the filing of the petition upon which such order is en-
18 tered.

19 (d) STATUTE OF LIMITATIONS.—No statute of limi-
20 tations or defense of laches shall run with respect to any
21 cause of action against a reinsurer between the filing of
22 a petition for receivership and the denial of the petition.
23 Any action against the reinsurer that might have been
24 commenced when the petition was filed may be commenced
25 within 60 days after the petition is denied.

1 **SEC. 327. COOPERATION OF OFFICERS, OWNERS, AND EM-**
2 **PLOYEES.**

3 Any officer, manager, director, trustee, owner, em-
4 ployee or agent of any reinsurer, or any other person with
5 authority over or in charge of any segment of the rein-
6 surer's affairs including any person who exercises control
7 directly or indirectly over activities of the reinsurer
8 through any holding company or other affiliate of the rein-
9 surer, shall cooperate with the receiver. For purposes of
10 this section, the term "cooperate" shall include, but shall
11 not be limited to, the following:

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

14 (2) To make available to the receiver any books,
15 accounts, documents, or other records or information
16 or property of or pertaining to the reinsurer and in
17 the possession, custody or control of such persons.

18 **SEC. 328. INJUNCTIONS AND ORDERS.**

19 (a) IN GENERAL.—The United States District Court
20 upon application of the Commission, as receiver, may
21 grant injunctions and orders directed to any and all
22 courts, persons, and parties as necessary to confirm or se-
23 cure such stays of proceedings, or to extend any such stay
24 upon a showing by the Commission that additional time
25 is necessary for it to participate completely in the further
26 conduct of the action or proceeding.

1 (b) TYPES OF INJUNCTIONS.—The Commission, as
2 receiver, may at any time apply for such restraining or-
3 ders, preliminary and permanent injunctions, and other
4 orders as may be deemed necessary and proper to pre-
5 vent—

6 (1) the transaction of further business by or on
7 behalf of the reinsurer;

8 (2) the transfer of property by or on behalf of
9 the reinsurer;

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

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

13 (5) dissipation and transfer of bank accounts of
14 the reinsurer;

15 (6) the institution or further prosecution of any
16 actions or proceedings against the reinsurer or the
17 receiver;

18 (7) the obtaining of preferences, judgments, at-
19 tachments, garnishments or liens against the rein-
20 surer, or its assets;

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

23 (9) the making of any sale or deed for non-
24 payment of taxes or assessments that would lessen
25 the value of the assets of the reinsurer;

1 (10) the withholding from the receiver of books,
2 accounts, documents, or other records relating to the
3 reinsurer; or

4 (11) any other threatened or contemplated ac-
5 tion that might lessen the value of the reinsurer's
6 assets or prejudice the rights of creditors, share-
7 holders, or the administration of any proceeding
8 under this title.

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

12 (d) PAYMENT OF CREDITORS.—The Commission may
13 require a receiver to set aside and make available for pay-
14 ment to creditors any amounts that the Commission deter-
15 mines may safely be used for such purpose. All creditors
16 who are similarly situated shall be treated in a similar
17 manner.

18 **SEC. 329. PENDING LITIGATION.**

19 The Commission shall take such action respecting all
20 pending litigation as it deems necessary in the interests
21 of justice and for the protection of creditors and the pub-
22 lic.

1 **SEC. 330. CONFLICTS OF INTEREST AND FINANCIAL DIS-**
2 **CLOSURE.**

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

6 **SEC. 331. PROCEEDING AGAINST CULPABLE PERSONS.**

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

12 **SEC. 332. LIABILITY PROTECTION FOR RECEIVERS.**

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

21 (b) OTHER RECEIVERS.—In any case where the re-
22 ceiver is not a receiver described in subsection (a), the re-
23 ceiver shall not be personally liable for damages in tort
24 or otherwise for acts or omissions performed pursuant to
25 and in the course of the duties and responsibilities of the
26 receivership, unless such acts or omissions constitute gross

1 negligence or any form of intentional tortious conduct or
2 criminal conduct.

3 (c) INDEMNIFICATION.—The Commission may in-
4 demnify the receiver on such terms as the Commission
5 considers appropriate.

6 **SEC. 333. POWERS OF EXAMINATION; SUBPOENAS.**

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

13 **SEC. 334. GROUNDS FOR THE APPOINTMENT OF RECEIVER**
14 **FOR REHABILITATION.**

15 (a) IN GENERAL.—The Commission may, after pro-
16 viding written notice under subsection (c), file a petition
17 in a United States District Court to be appointed a re-
18 ceiver of a reinsurer for purposes of rehabilitation upon
19 a determination in writing that—

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

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

1 (3) the reinsurer has concealed or is concealing
2 books, papers, records, or assets of the reinsurer
3 that are material to the discharge of the Commis-
4 sion's responsibilities under this subtitle, or has re-
5 fused or is refusing to submit such books, papers,
6 records, or information regarding the affairs of the
7 reinsurer for inspection to the Commission upon re-
8 quest;

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

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

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

21 (7) without first obtaining the written consent
22 of the Commission, the reinsurer has transferred, or
23 attempted to transfer, in a manner in violation of
24 any solvency regulation or order of the Commission,
25 substantially its entire property or business, or has

1 entered into any transaction the effect of which is to
2 merge, consolidate, or reinsure substantially its en-
3 tire property or business in or with the property or
4 business of any other person;

5 (8) the reinsurer has failed to file its annual re-
6 port or other financial report required by statute
7 within the time allowed by law and, after written de-
8 mand by the Commission, has failed to give an ade-
9 quate explanation immediately;

10 (9) the reinsurer has neglected or refused to
11 comply with an order of the Commission to cure
12 within the time prescribed by the Commission any
13 deficiency, whenever its capital and minimum re-
14 quired surplus, is below statutory requirements; and

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

19 (b) CONSENT OF THE REINSURER.—Notwith-
20 standing subsection (a), the Commission may file a peti-
21 tion to be appointed a receiver for a reinsurer, if a major-
22 ity of the members of its board of directors or a majority
23 of its shareholders by an affirmative vote consent to such
24 appointment.

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

7 (1) that the Commission will seek to be ap-
8 pointed as receiver for the reinsurer for purposes of
9 rehabilitation; and

10 (2) stating the reasons for the appointment of
11 such receiver.

12 **SEC. 335. REHABILITATION ORDERS.**

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

1 **SEC. 336. POWERS OF RECEIVER FOR PURPOSES OF REHA-**
2 **BILITATION.**

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

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

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

1 (d) LIMITATIONS.—A receiver shall be subject to any
2 rules, regulations, and orders issued from time to time by
3 the Commission and, except as otherwise specifically pro-
4 vided in rules, regulations, or orders, shall have the same
5 rights and privileges and be subject to the same duties,
6 restrictions, penalties, conditions, and limitations applica-
7 ble to directors, officers, or employees of the reinsurer.

8 (e) ENFORCEMENT OF CONTRACTS.—

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

15 (2) ENFORCEABLE CONTRACTS.—Any contract
16 shall be enforceable under paragraph (1), if the re-
17 ceiver—

18 (A) determines that the continued enforce-
19 ability of the contract is necessary to achieve
20 the purpose of receivership; and

21 (B) specifically provides for the enforce-
22 ability of the contract in a regulation or order,
23 issued for the purpose of this subsection, which
24 describes such contract.

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

6 **SEC. 337. TERMINATION OF THE RECEIVERSHIP FOR REHA-**
7 **BILITATION.**

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

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

19 (c) PETITION THE COURT.—

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

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

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

14 **SEC. 338. LIQUIDATION.**

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

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

12 **SEC. 339. 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
23 issuance 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. 340. POWERS OF THE COMMISSION AS RECEIVER FOR**
11 **LIQUIDATION.**

12 The Commission 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 Commission;

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. 341. 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. 342. 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. 343. 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. 344. NOTICE TO CREDITORS AND OTHERS.**

20 (a) NOTICE OF LIQUIDATION.—The Commission
21 shall give or cause to be given notice of the liquidation
22 order 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. 345. 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. 346. PAYMENT OF CLAIMS.**

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

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

23 (c) **JUDICIAL REVIEW OF FINAL DETERMINATION.**—
24 Final determination made by the Commission shall be re-
25 viewable in accordance with chapter 7 of title 5, United

1 States Code (5 U.S.C. 701 et seq.), the United States
2 Court of Appeals for the District of Columbia or the Court
3 of Appeals for the Federal Judicial Circuit where the dis-
4 trict court that ordered the liquidation is located. Any re-
5 quest for review of a final determination by the Commis-
6 sion shall be filed with the appropriate circuit court of ap-
7 peals not later than 60 days after such determination is
8 ordered.

9 **SEC. 347. DUTIES OF AGENTS AND INTERMEDIARIES.**

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

16 **SEC. 348. FRAUDULENT TRANSFERS.**

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

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

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

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

19 **SEC. 349. VOIDABLE PREFERENCES AND LIENS.**

20 (a) **IN GENERAL.**—A preference is a transfer of any
21 of the property of a reinsurer to or for the benefit of a
22 creditor, for or on account of an antecedent debt, made
23 by the reinsurer within 1 year before the filing of a suc-
24 cessful petition for liquidation under this Act, the effect
25 of which transfer may be to enable the creditor to obtain

1 a greater percentage of his debt than another creditor of
2 the same class would receive. If a liquidation order is en-
3 tered while the reinsurer is already subject to a receiver-
4 ship order, then such transfers shall be deemed pref-
5 erences if made within 1 year before the filing of the suc-
6 cessful petition for receivership, or within 2 years before
7 the filing of the successful petition for liquidation, which-
8 ever time is shorter.

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

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

1 **SEC. 350. SETOFFS.**

2 (a) IN GENERAL.—Mutual debts or mutual credits,
3 whether arising out of one or more reinsurance or other
4 contracts between the reinsurer in receivership and an-
5 other person shall be set off and the balance only shall
6 be allowed or paid.

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

9 (1) the circumstances creating the obligation of
10 the insurer or reinsurer in receivership occurred
11 after the effective date of the cancellation or termi-
12 nation of policies in effect at the time of the entry
13 of the receivership order;

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

17 (3) the obligation of the insurer or reinsurer is
18 owed to an affiliate of the person or to any other en-
19 tity or association other than the person;

20 (4) the obligation of the person is owed to an
21 affiliate of the insurer or reinsurer, or to any other
22 person;

23 (5) the obligation of the person is to pay an as-
24 sessment levied against the members or subscribers
25 of the insurer or reinsurer, or is to pay a balance
26 upon a subscription to the capital stock of the in-

1 surer or reinsurer, or is in any other way in the na-
2 ture of a capital contribution; or

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

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

21 **SEC. 351. RECOVERY OF PREMIUMS OWED.**

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

1 **SEC. 352. PRIORITY OF DISTRIBUTION.**

2 The priority of distribution of claims from the rein-
3 surer's estate shall be in accordance with the order in
4 which each class of claims is herein set forth. Every claim
5 in each class shall be paid in full or adequate funds re-
6 tained for such payment before the members of the next
7 class receive any payment. No subclasses shall be estab-
8 lished within any class. The order of distribution of claims
9 shall be:

10 (1) CLASS 1.—The costs and expenses of ad-
11 ministration during liquidation, including but not
12 limited to—

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

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

23 (C) any necessary filing fees;

24 (D) the fees and mileage payable to wit-
25 nesses; and

1 (E) reasonable attorney's fees and other
2 professional services rendered in the rehabilita-
3 tion and liquidation.

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

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

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

22 (5) CLASS 5.—Claims for punitive or exemplary
23 damages and any claim for any amount due an in-
24 surer, insurance pool, or underwriting association as
25 subrogated recoveries, contribution, indemnification,

1 or otherwise. All other claims of general creditors
2 not falling within any other priority under this sec-
3 tion, including claims for taxes and debts due the
4 Federal Government or any State or local govern-
5 ment.

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

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

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

13 **SEC. 353. UNCLAIMED AND WITHHELD FUNDS.**

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

21 **SEC. 354. TERMINATION OF PROCEEDINGS.**

22 (a) BUSINESS CONCLUDED.—When all business re-
23 garding the liquidation of a reinsurer has been concluded,
24 the Commission as receiver shall apply to the court for
25 discharge.

1 (b) PETITION TO REOPEN.—After the liquidation
2 proceeding has been terminated and the receiver dis-
3 charged, the Commission or other interested party may
4 at any time petition the district court to reopen the pro-
5 ceedings for good cause, including the discovery of addi-
6 tional assets. If the court is satisfied that there is justifica-
7 tion for reopening, it shall so order.

8 **SEC. 355. CONSTRUCTION.**

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

12 **SEC. 356. LIMITATION ON TRANSACTION OF REINSURANCE.**

13 No insurer or reinsurer shall transact the business
14 of reinsurance in the United States without complying
15 with the applicable provisions of this Act.

16 **SEC. 357. PREEMPTION.**

17 This Act is intended to preempt all State laws regu-
18 lating reinsurers.

19 **SEC. 358. EXISTING LICENSES AND CONTRACTS.**

20 (a) DISCLAIMER.—No provision of this title shall
21 apply with respect to the transaction of reinsurance until
22 2 years following the date of enactment.

23 (b) CONTRACTS.—No provision of this title shall be
24 deemed to modify or invalidate any contract lawfully in

1 force prior to 2 years following the date of enactment of
2 this title.

3 **SEC. 359. PROTECTION OF CONFIDENTIAL INFORMATION.**

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

7 **TITLE IV—NATIONAL INSUR-**
8 **ANCE GUARANTY CORPORA-**
9 **TION**

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

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

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

23 (c) DUTIES.—The Corporation shall—

24 (1) provide a program for the payment of cov-
25 ered claims under certain life, health, and property

1 and casualty insurance policies, and any other insur-
2 ance policies deemed appropriate by the Board of
3 Directors;

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

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

9 (4) perform any other function authorized
10 under this title.

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

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

18 **SEC. 402. DEFINITIONS.**

19 As used in this title, the term:

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

22 (2) “State insurance regulator” means State
23 Insurance Department.

1 **SEC. 403. BOARD OF DIRECTORS.**

2 (a) **MANAGEMENT.**—The management of the Cor-
3 poration shall be vested in a Board of Directors consisting
4 of 3 members. The members shall be the Insurance Regu-
5 latory Commission, the Secretary of the Treasury, and the
6 Comptroller of the Currency.

7 (b) **CHAIRPERSON.**—The Chairperson of the Cor-
8 poration shall be the Insurance Regulatory Commission.

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

18 (d) **VACANCY.**—In the event of a vacancy in the Of-
19 fice of the Comptroller of the Currency or the Office of
20 Secretary of the Treasury and pending the appointment
21 of a successor, or during the absence or disability of the
22 Comptroller of the Currency or the Secretary of the Treas-
23 ury, the Acting Comptroller of the Currency or the Acting
24 Secretary of the Treasury, as the case may be, shall be
25 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 Commission. The Board of
24 Directors may establish claim accounts for such other
25 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 to 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 car-
20 rying on of operations and the maintenance of of-
21 fices) and to exercise all other rights and powers
22 granted to it by this Act in any State or other juris-
23 diction without regard to any qualification, licensing
24 or 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,
23 capital, reserves, surplus, and its income, shall be
24 exempt from all taxation imposed by any State,
25 county, municipality, or local taxing authority, ex-
26 cept that any real property of the Corporation shall

1 be 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 pro-
13 ceeding to appoint the Corporation as liquidator of a mem-
14 ber insurer shall be commenced by the filing of a petition
15 seeking such appointment in a United States district court
16 and the service of a copy of the petition upon the Corpora-
17 tion.

18 (b) WHO MAY FILE.—A petition may be filed by a
19 State insurance regulator or a receiver acting under its
20 authority, either of which has the unconditional right to
21 possession and control of the business, assets and affairs
22 of the member insurer for purposes of conservation or re-
23 habilitation pursuant to an order of a court of competent
24 jurisdiction which has not been stayed or superseded.

1 (c) WHERE FILED.—The petition, if filed by a State
2 insurance regulator or a receiver acting under the author-
3 ity of a State insurance regulator, shall be filed in the
4 United States District Court for the district in which the
5 member insurer has its principal office of domicile or in
6 which is located the court that issued the order referred
7 to in subsection (b).

8 (d) RESPONSE TO PETITION.—Within 10 days after
9 the service upon it of a petition under subsection (a) the
10 Corporation shall file and serve a response thereto, accept-
11 ing or rejecting the proposed appointment, stating the
12 ground or grounds of such rejection. The Corporation may
13 reject the proposed appointment only if the insurer was
14 not a member of the Corporation on the date the petition
15 was filed.

16 **SEC. 504. ORDER APPOINTING CORPORATION LIQUIDATOR.**

17 (a) IN GENERAL.—The Corporation shall accept the
18 appointment as receiver for purposes of liquidation of an
19 insolvent member insurer.

20 (b) REGULAR ACCOUNTING TO COURT.—The order
21 appointing the Corporation as receiver shall require reg-
22 ular accounting of the Corporation's administration of the
23 insurer's assets to the court. Accounting shall be at such
24 intervals as the court specifies in its order or by rule, but
25 no less frequently than semiannually. Copies of the ac-

1 counting shall be served upon the State insurance regu-
2 lators of the State of the insurer's domicile and of each
3 State in which it is or was licensed or transacted an insur-
4 ance business.

5 (c) CORPORATION NOT SUBJECT TO ANY OTHER AU-
6 THORITY.—When acting as a receiver pursuant to an ap-
7 pointment described in this title, the Corporation shall not
8 be subject to the direction or supervision of any other
9 agency or department of the United States or any State
10 in the exercise of the Corporations' rights, powers, and
11 privileges.

12 **SEC. 505. EFFECT OF ORDER.**

13 (a) TITLE.—The Corporation shall hold and have
14 title to all of the assets, property, contracts and rights
15 of action, books, and records of the insurer, wherever lo-
16 cated. The State insurance regulator, the State receiver,
17 and any ancillary State receivers shall, upon demand by
18 the Corporation, promptly transfer all assets and records
19 to the insurer, or of their respective receiverships to the
20 Corporation.

21 (b) ENTRY OF ORDER.—The entry of an order ap-
22 pointing the Corporation as liquidator shall not constitute
23 an anticipatory breach of any contract of the insurer, nor
24 provide ground for revocation or cancellation of any such
25 contract other than by the Corporation as liquidator.

1 (c) RIGHTS AND LIABILITIES.—Upon issuance of the
2 order, the rights and liabilities of the insurer and of its
3 creditors, and all other persons interested in its estate,
4 shall be fixed as of the date of entry of the order of liq-
5 uidation.

6 **SEC. 506. JURISDICTION OVER PROPERTY OF INSURER.**

7 The filing of a petition under section 503 shall imme-
8 diately vest the district court with exclusive jurisdiction
9 over the insurer and its property wherever located, and
10 over all parties to the proceedings by which the State in-
11 surance regulator or the receiver acting under its author-
12 ity, acquired the right to possession and control of the
13 business, assets and affairs of the insurer and shall sus-
14 pend the further jurisdiction of other courts and adminis-
15 trative bodies with respect to any such proceedings.

16 **SEC. 507. STAY OF ACTIONS.**

17 (a) IN GENERAL.—The entry of an order appointing
18 the Corporation as liquidator shall operate as a stay of
19 the commencement or continuation of any action or pro-
20 ceeding in any State or Federal court, or any administra-
21 tive or other proceeding, against the insolvent insurer or
22 against an insured of the insurer on a claim for which
23 the insurer may be liable, or against the Corporation as
24 liquidator, except as provided in subsection (b).

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

10 (c) ACTIONS BY THE LIQUIDATORS.—Upon issuance
11 of an order appointing the Corporation as liquidator, the
12 Corporation may within 2 years from such order, or such
13 other longer time as applicable law may permit, institute
14 an action or proceeding on behalf of the estate of the in-
15 surer upon any cause of action against which the period
16 of limitation fixed by applicable law has not expired at
17 the time of the filing of the petition upon which such order
18 is entered.

19 (d) STATUTE OF LIMITATIONS.—No statute of limi-
20 tations or defense of laches shall run with respect to any
21 cause of action against an insurer between the filing of
22 a petition for liquidation and the denial of the petition.
23 Any action against the insurer that might have been com-
24 menced when the petition was filed may be commenced
25 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 Commission
24 and the appropriate State regulator 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 incon-
14 sistent 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 re-

1 viewable 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 re-
18 lated 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. CRIMES BY OR AFFECTING PERSONS ENGAGED IN**
4 **THE BUSINESS OF INSURANCE WHOSE AC-**
5 **TIVITIES AFFECT INTERSTATE COMMERCE.**

6 (a) IN GENERAL.—Chapter 47 of title 18, United
7 States Code, is amended by adding at the end thereof the
8 following new sections:

9 **“§ 1037. Crimes by or affecting persons engaged in**
10 **the business of insurance whose activi-**
11 **ties affect interstate commerce**

12 “(a)(1) Whoever is engaged in the business of insur-
13 ance whose activities affect interstate commerce and
14 knowingly, with the intent to deceive, makes any false ma-
15 terial statement or report or willfully and materially over-
16 values any land, property or security—

17 “(A) in connection with any reports or docu-
18 ments presented to any insurance regulatory official
19 or agency or an agent or examiner appointed by
20 such official or agency to examine the affairs of such
21 person, and

22 “(B) for the purpose of influencing the actions
23 of such official or agency or such an appointed agent
24 or examiner,

25 shall be 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 the term
4 of imprisonment shall be not more than 15 years if the
5 statement or report or overvaluing of land, property, or
6 security jeopardized the safety and soundness of an in-
7 surer.

8 “(b)(1) Whoever—

9 “(A) acting as, or being an officer, director,
10 agent, or employee of, any person engaged in the
11 business of insurance whose activities affect inter-
12 state commerce, or

13 “(B) is engaged in the business of insurance
14 whose activities affect interstate commerce or is in-
15 volved (other than as an insured or beneficiary
16 under a policy of insurance) in a transaction relating
17 to the conduct of affairs of such a business,

18 willfully embezzles, abstracts, purloins, or misappropriates
19 any of the moneys, funds, premiums, credits, or other
20 property of such person so engaged shall be punished as
21 provided in paragraph (2).

22 “(2) The punishment for an offense under paragraph
23 (1) is a fine of not more than \$1,000,000 or imprisonment
24 for not more than 10 years, or both, except that if such
25 embezzlement, abstraction, purloining, or misappropria-

1 tion described in paragraph (1) jeopardized the safety and
2 soundness of an insurer, such imprisonment shall be not
3 more than 15 years. If the amount or value so embezzled,
4 abstracted, purloined, or misappropriated does not exceed
5 \$5,000, whoever violates paragraph (1) shall be fined as
6 provided in this title or imprisoned not more than 1 year,
7 or both.

8 “(c)(1) Whoever is engaged in the business of insur-
9 ance and whose activities affect interstate commerce or is
10 involved (other than as an insured or beneficiary under
11 a policy of insurance) in a transaction relating to the con-
12 duct of affairs of such a business, knowingly makes any
13 false entry of material fact in any book, report, or state-
14 ment of such person engaged in the business of insurance
15 with intent to deceive any person, including any officer,
16 employee, or agent of such person engaged in the business
17 of insurance, any insurance regulatory official or agency,
18 or any agent or examiner appointed by such official or
19 agency to examine the affairs of such person, about the
20 financial condition or solvency of such business shall be
21 punished as provided in paragraph (2).

22 “(2) The punishment for an offense under paragraph
23 (1) is a fine of not more than \$1,000,000 or imprisonment
24 for not more than 10 years, or both, except that if the
25 false entry in any book, report, or statement of such per-

1 son jeopardized the safety and soundness of an insurer,
2 such imprisonment shall be not more than 15 years.

3 “(d) Whoever, by threats or force or by any threat-
4 ening letter or communication, corruptly influences, ob-
5 structs, or impedes or endeavors corruptly to influence, ob-
6 struct, or impede the due and proper administration of
7 the law under which any proceeding involving the business
8 of insurance whose activities affect interstate commerce
9 is pending before any insurance regulatory official or
10 agency or any agent or examiner appointed by such official
11 or agency to examine the affairs of a person engaged in
12 the business of insurance whose activities affect interstate
13 commerce, shall be fined as provided in this title or impris-
14 oned not more than 10 years, or both.

15 “(e)(1)(A) Any individual who has been convicted of
16 any criminal felony involving dishonesty or a breach of
17 trust, or who has been convicted of an offense under this
18 section, and who willfully engages in the business of insur-
19 ance whose activities affect interstate commerce or partici-
20 pates in such business, shall be fined as provided in this
21 title or imprisoned not more than 5 years, or both.

22 “(B) Any individual who is engaged in the business
23 of insurance whose activities affect interstate commerce
24 and who willfully permits the participation described in

1 subparagraph (A) shall be fined as provided in this title
2 or imprisoned not more than 5 years, or both.

3 “(2) A person described in paragraph (1)(A) may en-
4 gage in the business of insurance or participate in such
5 business if such person has the written consent of any in-
6 surance regulatory official authorized to regulate the in-
7 surer, which consent specifically refers to this subsection.

8 “(f) As used in this section—

9 “(1) the term ‘business of insurance’ means—

10 “(A) the writing of insurance, or

11 “(B) the reinsuring of risks,

12 by an insurer, including all acts necessary or inci-
13 dental to such writing or reinsuring and the activi-
14 ties of persons who act as, or are, officers, directors,
15 agents, or employees of insurers or who are other
16 persons authorized to act on behalf of such persons;

17 “(2) the term ‘insurer’ means any entity the
18 business activity of which is the writing of insurance
19 or the reinsuring of risks, and includes any person
20 who acts as, or is, an officer, director, agent, or em-
21 ployee of that business;

22 “(3) the term ‘interstate commerce’ means—

23 “(A) commerce within the District of Co-
24 lumbia, or any territory or possession of the
25 United States;

1 “(B) all commerce between any point in
2 the State, territory, possession, or the District
3 of Columbia and any point outside thereof;

4 “(C) all commerce between points within
5 the same State through any place outside such
6 State; or

7 “(D) all other commerce over which the
8 United States has jurisdiction; and

9 “(4) the term ‘State’ includes any State, the
10 District of Columbia, the Commonwealth of Puerto
11 Rico, the Northern Mariana Islands, the Virgin Is-
12 lands, American Samoa, and the Trust Territory of
13 the Pacific Islands.

14 **“§ 1038. Civil penalties and injunctions for violations**
15 **of section 1033**

16 “(a) The Attorney General may bring a civil action
17 in the appropriate United States district court against any
18 person who engages in conduct constituting an offense
19 under section 1033 and, upon proof of such conduct by
20 a preponderance of the evidence, such person shall be sub-
21 ject to a civil penalty of not more than \$50,000 for each
22 violation or the amount of compensation which the person
23 received or offered for the prohibited conduct, whichever
24 amount is greater. If the offense has contributed to the
25 decision of a court of appropriate jurisdiction to issue an

1 order directing the conservation, rehabilitation, or liquida-
2 tion of an insurer, such penalty shall be remitted to the
3 appropriate regulatory official for the benefit of the policy-
4 holders, claimants, and creditors of such insurer. The im-
5 position of a civil penalty under this subsection does not
6 preclude any other criminal or civil statutory, common
7 law, or administrative remedy, which is available by law
8 to the United States or any other person.

9 “(b) If the Attorney General has reason to believe
10 that a person is engaged in conduct constituting an of-
11 fense under section 1033, the Attorney General may peti-
12 tion an appropriate United States district court for an
13 order prohibiting that person from engaging in such con-
14 duct. The court may issue an order prohibiting that person
15 from engaging in such conduct if the court finds that the
16 conduct constitutes such an offense. The filing of a peti-
17 tion under this section does not preclude any other remedy
18 which is available by law to the United States or any other
19 person.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 for chapter 47 of such title is amended by adding at the
22 end the following new items:

“1037. Crimes by or affecting persons engaged in the business of insurance
whose activities affect interstate commerce.

“1038. Civil penalties and injunctions for violations of section 1037.”.

1 **SEC. 602. 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 (C);

8 (2) by inserting “or” at the end of subpara-
9 graph (D); and

10 (3) by adding at the end thereof the following
11 new subparagraph:

12 “(E) 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;”.

20 (b) **LIMITATIONS.**—Section 3293 of such title is
21 amended by inserting “1037,” after “1033,”.

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:

25 “(e)(1) Whoever—

1 “(A) acting as, or being, an officer, director,
2 agent or employee of a person engaged in the busi-
3 ness of insurance whose activities affect interstate
4 commerce, or

5 “(B) is engaged in the business of insurance
6 whose activities affect interstate commerce or is in-
7 volved (other than as an insured or beneficiary
8 under a policy of insurance) in a transaction relating
9 to the conduct of affairs of such a business, with
10 intent to obstruct a judicial proceeding, directly or
11 indirectly notifies any other person about the exist-
12 ence or contents of a subpoena for records of that
13 person engaged in such business or information that
14 has been furnished to a Federal grand jury in re-
15 sponse to that subpoena, shall be fined as provided
16 by this title or imprisoned not more than 5 years,
17 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 1037 of this title.”.

1 **TITLE VII—PREEMPTIONS**

2 **SEC. 701. GENERAL PROHIBITION.**

3 No State may prevent or interfere with the ability
4 of a covered party to engage in any activity authorized
5 under this Act.

6 **SEC. 702. STATE LICENSE NOT REQUIRED.**

7 No covered person shall be required to obtain any
8 State license or similar authorization in order to engage
9 in any State in any business or activity authorized by this
10 Act.

11 **SEC. 703. STATE INSURANCE LAW.**

12 Except as otherwise provided in this Act, no State
13 law that relates to the formation, chartering, supervision,
14 regulation, or business practices of an insurer, or any
15 other matter related to the business of insurance, includ-
16 ing issuance or revocation of a license to conduct the busi-
17 ness of insurance, regulation of solvency and financial con-
18 dition, mergers and acquisitions, any policy form and en-
19 dorsement, marketing and sales practice, underwriting,
20 damage appraisal and claims adjustment, any claims han-
21 dling and settlement practice, and unfair insurance trade
22 practices and market conduct activity (including any re-
23 quirement related to nonrenewal, cancellation, and change
24 in policy terms, including rates) shall apply to a covered

1 party, except to the extent consistent with the provisions
2 of this Act.

3 **SEC. 704. PROHIBITION OF DISCRIMINATION.**

4 (a) IN GENERAL.—Any State law that is not pre-
5 empted by section 703 may not discriminate against a cov-
6 ered party or a State-licensed insurance producer selling
7 a product of a national insurer or be applied to a covered
8 party in a manner different than it is applied to a State
9 insurer, State-licensed agency, affiliate of any such insurer
10 or agency, or any officer, director, employee, or agent of
11 such insurer, agency, or affiliate.

12 **SEC. 705. PERMISSIBLE STATE REGULATION.**

13 Except as provided by section 704, the following
14 State laws are not preempted by section 703 or any other
15 provision of this Act, and the following activities of a cov-
16 ered party shall be subject to State regulation, to the ex-
17 tent applicable:

18 (1) RESIDUAL MARKET INSURANCE PRO-
19 GRAMS.—Any State law that requires participation
20 in an assigned risk plan, mandatory joint under-
21 writing association, or any other mandatory residual
22 market mechanism designed to make insurance
23 available to those unable to obtain it in the vol-
24 untary market. This paragraph shall not apply to
25 any State law governing participation in any vol-

1 untary joint underwriting association or similar ar-
2 rangement. The Commission may review any State
3 law regulating any activity described in this para-
4 graph and may preempt such law if the Commission
5 determines it to be inconsistent with any provision
6 or purpose of this Act.

7 (2) TAXES.—Any State law that imposes liabil-
8 ity for State and local taxes and assessments on in-
9 surers, including premium taxes, retaliatory taxes,
10 tax credits, deductions, and offsets related thereto,
11 as provided in section 401.

12 (3) CORPORATE GOVERNANCE.—Except to the
13 extent inconsistent with any provision or purpose of
14 this Act, any State governing insurance company in-
15 corporation, organization, corporate governance, vot-
16 ing rights, and related matters.

17 (4) REPARATION REQUIREMENTS.—Any State
18 law that prescribes the requirements of the repara-
19 tions that every insurer must provide if it under-
20 writes and sells policies of a particular type in a
21 State.

22 (5) ADVISORY ORGANIZATIONS.—Any State law
23 that mandates the participation of insurers in an ad-
24 visory or statistical organization that does not re-

1 quire an interstate insurer to use any particular
2 rate, rating element, price, or form.

3 (6) WORKERS' COMPENSATION.—Any State law
4 that regulates participation in a workers' compensa-
5 tion administration mechanism if participation is not
6 inconsistent with any provision of this Act.

7 (7) RATE REGULATION.—Any State law that
8 regulates insurance rates.

9 (8) CONVERSION TO STOCK FORM.—Any State
10 law that regulates the conversion of a mutual State
11 insurer to an insurer in stock form.

12 (9) INSURANCE PRODUCER LICENSING.—Any
13 State law that regulates the licensing of insurance
14 producers.

15 **SEC. 706. SALES ACTIVITIES BY STATE-LICENSED INSUR-**
16 **ANCE PRODUCERS.**

17 No State may—

18 (1) prevent a State-licensed insurance producer
19 from selling, soliciting, or negotiating an insurance
20 policy or annuity contract issued by an interstate in-
21 surer;

22 (2) impose any condition on a State-licensed
23 producer that significantly interferes with the ability
24 of selling, soliciting, or negotiating an insurance pol-

1 icy or annuity contract issued by an interstate in-
2 surer; or

3 (3) discriminate, in any manner, against a
4 State-licensed producer because it sells, solicits, or
5 negotiates an insurance policy or annuity contract
6 issued by an interstate insurer.

7 **SEC. 707. STATE TAXATION.**

8 (a) IN GENERAL.—Except as provided in subsection
9 (b), an interstate insurer shall be subject to all taxes, in-
10 cluding insurance retaliatory taxes, imposed under the au-
11 thority of any State legislation to the same extent and in
12 the same manner as an insurer chartered in the State
13 where the interstate insurer is considered domiciled pursu-
14 ant to subsection (c).

15 (b) EXCEPTION.—No State shall have power to im-
16 pose its insurance retaliatory tax on any interstate insurer
17 unless, for any tax purpose for which State of domicile
18 is relevant, every interstate insurer is treated by such
19 State as domiciled in the State designated by each na-
20 tional insurer in accordance with subsection (c) and unless
21 the insurance retaliatory tax is imposed on insurers char-
22 tered by the State to the same extent and in the same
23 manner.

24 (c) DESIGNATION OF DOMICILE.—For purposes of
25 this section, an interstate insurer may designate one of

1 the following States as its State of domicile, by filing such
2 designation in writing with the Commission. If an inter-
3 state insurer makes no designation of a State of domicile
4 pursuant to this subsection, it shall be deemed to have
5 designated as its State of domicile that State in which is
6 located its principal place of business in the United States.

7 (d) CHANGE IN DOMICILE.—With the approval of the
8 Director, an interstate insurer may change its State of
9 domicile to any other State meeting the requirements of
10 subsection (c).

11 (e) STATUS OF INTERSTATE INSURER.—For pur-
12 poses of State taxation, an interstate insurer shall not be
13 considered to be a department, agency, or instrumentality
14 of the Federal Government, nor, except as provided in this
15 section, shall an interstate insurer be exempt from any
16 State tax or subject to a lesser burden of any State tax,
17 solely by reason of its status as an interstate insurer under
18 this Act.

19 **SEC. 708. DEFINITIONS.**

20 In this title:

21 (1) COVERED PARTY.—The term “covered
22 party” means an interstate insurer, including any
23 officer, director, or employee of such interstate in-
24 surer.

1 (2) STATE LAW.—The term “State law” means
2 any law, rule, regulation, interpretation, or order
3 adopted by a State legislature or promulgated by a
4 State regulatory or enforcement agency, and any
5 provision of a State constitution.

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