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H. R. 3357

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 28, 2001

Mr. ARMEY (for himself, Mr. OXLEY, Mr. SENSENBRENNER, Mr. NUSSLE, and Mr. THOMAS) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary, Ways and Means, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Terrorism Risk Protection Act''.

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

Sec. 1. Short title and table of contents.

Sec. 2. Congressional findings.
Sec. 3. Authority of Secretary of the Treasury.
Sec. 4. Submission of premium information to Secretary.
Sec. 5. Initial and subsequent triggering determinations.
Sec. 6. Federal cost-sharing for commercial insurers.
Sec. 7. Assessments.
Sec. 8. Terrorism loss repayment surcharge.
Sec. 9. Administration of assessments and surcharges.
Sec. 10. Application to self-insurance arrangements and offshore insurers and reinsurers.
Sec. 11. Study of reserves for property and casualty insurance for terrorist or other catastrophic events.
Sec. 12. State preemption.
Sec. 13. Consistent State guidelines for coverage for acts of terrorism.
Sec. 14. Consultation with State insurance regulators and NAIC.
Sec. 15. Litigation management.
Sec. 16. Study of potential effects of terrorism on life insurance industry.
Sec. 17. Railroad and trucking insurance study.
Sec. 18. Study of reinsurance pool system for future acts of terrorism.
Sec. 19. Definitions.
Sec. 20. Covered period and extension of program.
Sec. 21. Regulations.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the terrorist attacks on the World Trade Center and the Pentagon of September 11, 2001, resulted in a large number of deaths and injuries, the destruction and damage to buildings, and interruption of business operations;

(2) the attacks have inflicted possibly the largest losses ever incurred by insurers and reinsurers in a single day;

(3) while the insurance and reinsurance industries have committed to pay the losses arising from the September 11 attacks, the resulting disruption has created widespread market uncertainties with re-

gard to the risk of losses arising from possible future terrorist attacks;

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

(5) the unavailability of affordable commercial property and casualty insurance for terrorist acts threatens the growth and stability of the United States economy, including impeding the ability of financial services providers to finance commercial property acquisitions and new construction;

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

(7) given time, the private markets will diversify and develop risk spreading mechanisms to increase capacity and guard against possible future losses incurred by terrorist attacks;

(8) it is necessary to create a temporary industry risk sharing program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks;

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

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

(10) in addition, it is necessary promptly to conduct a study of whether there is a need for reserves for property and casualty insurance for terrorist or other catastrophic events; and

(11) terrorism insurance plays an important role in the efficient functioning of the economy and the financing of commercial property acquisitions and new construction and, therefore, the Congress intends to continue to monitor, review, and evaluate the private terrorism insurance and reinsurance marketplace to determine whether additional action is necessary to maintain the long-term stability of the real estate and capital markets.

SEC. 3. AUTHORITY OF SECRETARY OF THE TREASURY.

The Secretary of the Treasury shall be responsible for carrying out a program for financial assistance for commercial property and casualty insurers, as provided in this Act.

SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO SECRETARY.

To the extent such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit, to the Secretary or to the NAIC, a state-

ment specifying the net premium amount of coverage written by such insurer under each line of commercial property and casualty insurance sold by such insurer during such periods as the Secretary may provide.

SEC. 5. INITIAL AND SUBSEQUENT TRIGGERING DETERMINATIONS.

(a) IN GENERAL.—For purposes of this Act, a ''triggering determination'' is a determination by the Secretary that an act of terrorism has occurred during the covered period and that the aggregate insured losses resulting from such occurrence or from multiple occurrences of acts of terrorism all occurring during the covered period, meet the requirements under either of the following paragraphs:

(1) INDUSTRY-WIDE TRIGGER.—Such industry-wide losses exceed $1,000,000,000.

(2) INDIVIDUAL INSURER TRIGGER.—Such industry-wide losses exceed $100,000,000 and some portion of such losses for any single commercial insurer exceed—

(A) 10 percent of the capital surplus of such commercial insurer (as such term is defined by the Secretary); and

(B) 10 percent of the net premium written by such commercial insurer that is in force at the time the insured losses occurred;

except that this paragraph shall not apply to any commercial insurer that was not providing commercial property and casualty insurance coverage prior to September 11, 2001, unless such insurer incurs such losses under commercial property and casualty insurance providing coverage for acts of terrorism through a pool of reserves for terrorism risks that is not under the control of any commercial insurer.

(b) DETERMINATIONS REGARDING OCCURRENCES.—The Secretary, after consultation with the Attorney General of the United States and the Secretary of State, shall have the sole authority which may not be delegated or designated to any other officer, employee, or position, for determining whether—

(1) an occurrence was caused by an act of terrorism; and

(2) an act of terrorism occurred during the covered period.

SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSURERS.

(a) IN GENERAL.—Pursuant to a triggering determination, the Secretary shall provide financial assistance to commercial insurers in accordance with this section to cover insured losses resulting from acts of terrorism, which shall be repaid in accordance with subsection (e).

(b) AMOUNT.—

(1) INDUSTRY-WIDE TRIGGER.—Subject to subsections (c) and (d), with respect to a triggering determination under section 5(a)(1), financial assistance shall be made available under this section to each commercial insurer in an amount equal to the difference between—

(A) 90 percent of the amount of the insured losses of the insurer as a result of the triggering event involved; and

(B) $5,000,000.

(2) INDIVIDUAL INSURER TRIGGER.—Subject to subsections (c) and (d), with respect to a triggering determination under section 5(a)(2), financial assistance shall be made available under this section, to each commercial insurer incurring insured losses as a result of the triggering event involved that exceed the amounts under subparagraphs (A) and (B) of such section, in an amount equal to the difference between—

(A) 90 percent of the amount of the insured losses of the insurer as a result of such triggering event; and

(B) the amount under subparagraph (B) of section 5(a)(2).

(3) ADDITIONAL AMOUNTS.—Subject to subsection (c), if the Secretary has provided financial assistance to a commercial insurer pursuant to paragraph (2) of this subsection and subsequently makes a triggering determination pursuant to section 5(a)(1), the Secretary shall provide financial assistance to such insurer in connection with such subsequent triggering determination (in addition to the amount of financial assistance provided to such insurer pursuant to paragraph (1) of this subsection) in the amount under section 5(a)(2)(B).

(c) AGGREGATE LIMITATION.—

(1) IN GENERAL.—The aggregate amount of financial assistance provided pursuant to this section may not exceed $100,000,000,000.

(2) SENSE OF CONGRESS REGARDING SEVERE LOSSES.—It is the sense of the Congress that acts of terrorism resulting in insured losses greater than $100,000,000,000 would necessitate further action by the Congress to address such additional losses.

(d) LIMITATIONS.—The Secretary may establish such limitations as may be necessary to ensure that payments under this section in connection with a triggering determination are made only to commercial insurers that are

not in default of any obligation under section 7 to pay assessments or under section 8 to collect surcharges.

(e) REPAYMENT.—Financial assistance made available under this section shall be repaid through assessments under section 7 collected by the Secretary and surcharges remitted to the Secretary under section 8. Any such amounts collected or remitted shall be deposited into the general fund of the Treasury.

(f) EMERGENCY DESIGNATION.—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this section as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

SEC. 7. ASSESSMENTS.

(a) IN GENERAL.—In the case of a triggering determination, each commercial insurer shall be subject to assessments under this section for the purpose of repaying a portion of the financial assistance made available under section 6 in connection with such determination.

(b) AGGREGATE ASSESSMENT.—Pursuant to a triggering determination, the Secretary shall determine the

aggregate amount to be assessed under this section among all commercial insurers, which shall be equal to the lesser of—

(1) $20,000,000,000; and

(2) the amount of financial assistance paid under section 6 in connection with the triggering determination.

The aggregate assessment amount under this subsection shall be assessed to commercial insurers through an industry obligation assessment under subsection (c) and, if necessary, the remainder shall be assessed through one or more financing assessments under subsection (d).

(c) INDUSTRY OBLIGATION ASSESSMENTS.—

(1) IN GENERAL.—Immediately upon the occurrence of a triggering determination, the Secretary shall impose an industry obligation assessment under this subsection on all commercial insurers, subject to paragraph (3).

(2) AMOUNT.—The aggregate amount of an industry obligation assessment in connection with a triggering determination shall be equal to—

(A) in the case of a triggering determination occurring during the covered period specified in section 20(a), the lesser of—

(i) the difference between (I) $5,000,000,000, and (II) the aggregate amount of any assessments made by the Secretary pursuant to this section during the portion of such covered period preceding the triggering determination; and

(ii) the amount of financial assistance made available under section 6 in connection with the triggering determination; or

(B) such other aggregate industry obligation amount as may apply pursuant to subsection (g).

(3) TIMING OF MULTIPLE ASSESSMENTS.—

(A) DELAYED IMPOSITION AND AGGREGATION OF ASSESSMENTS.—In the case of any triggering determination occurring within 12 months of the occurrence of a previous triggering determination, any industry obligation assessments under this subsection resulting from such subsequent determination shall be imposed upon the conclusion of the quarterly assessment period under subparagraph (B) during which such determination occurs.

(B) QUARTERLY ASSESSMENT PERIOD.—With respect to a subsequent triggering deter-

mination referred to in subparagraph (A), the quarterly assessment periods under this subparagraph are—

(i) the 3-month period that begins upon the imposition of the industry obligation assessment resulting from the triggering determination that—

(I) occurred most recently before such subsequent triggering determination; and

(II) did not occur within 12 months of the occurrence of any previous triggering determination; and

(ii) each successive 3-month period thereafter that begins during the covered period.

(d) FINANCING ASSESSMENTS.—

(1) IN GENERAL.—If the aggregate assessment amount in connection with a triggering determination exceeds the aggregate amount of the industry obligation assessment under subsection (c) in connection with the determination, the remaining amount shall be assessed through one or more, as may be necessary pursuant to paragraph (3), financing assessments under this subsection.

(2) TIMING.—A financing assessment under this subsection in connection with a triggering determination shall be imposed only upon the expiration of any 12-month period beginning after such determination during which no assessments under this section have been imposed.

(3) LIMITATION.—The aggregate amount of any financing assessments imposed under this subsection on any single commercial insurer during any 12-month period shall not exceed the amount that is equal to 3 percent of the net premium for such insurer for such period.

(e) ALLOCATION OF ASSESSMENT.—The portion of the aggregate amount of any industry obligation assessment or financing assessment under this section that is allocated to each commercial insurer shall be based on the ratio that the net premium written by such commercial insurer during the year during which the assessment is imposed bears to the aggregate written premium for such year, subject to section 9 and the limitation under subsection (d)(3) of this section.

(f) NOTICE AND OBLIGATION TO PAY.—

(1) NOTICE.—As soon as practicable after any triggering determination, the Secretary shall notify each commercial insurer in writing of an assessment

under this section, which notice shall include the amount of the assessment allocated to such insurer.

(2) EFFECT OF NOTICE.—Upon notice to a commercial insurer, the commercial insurer shall be obligated to pay to the Secretary, not later than 60 days after receipt of such notice, the amount of the assessment on such commercial insurer.

(3) FAILURE TO MAKE TIMELY PAYMENT.—If any commercial insurer fails to pay an assessment under this section before the deadline established under paragraph (2) for the assessment, the Secretary may take either or both of the following actions:

(A) CIVIL MONETARY PENALTY.—Assess a civil monetary penalty pursuant to section 9(d) upon such insurer.

(B) INTEREST.—Require such insurer to pay interest, at such rate as the Secretary considers appropriate, on the amount of the assessment that was not paid before the deadline established under paragraph (2).

(g) AGGREGATE INDUSTRY OBLIGATION AMOUNT FOR PROGRAM EXTENSION YEARS.—If the Secretary exercises the authority under section 20(b) to extend the covered period, the aggregate industry obligation amount

for purposes of subsection (c)(2)(B) shall, in the case of a triggering determination occurring during the portion of the covered period beginning on the date referred to in section 20(a), be equal to the lesser of—

(1) the difference between (A) $10,000,000,000, and (B) the aggregate amount of any assessments made by the Secretary pursuant to this section during the 12-month period preceding the triggering determination; and

(2) the amount of financial assistance made available under section 6 in connection with the triggering determination.

(h) ADMINISTRATIVE FLEXIBILITY.—

(1) ADJUSTMENT OF ASSESSMENTS.—The Secretary may provide for or require estimations of amounts under this section and may provide for subsequent refunds or require additional payments to correct such estimations, as appropriate.

(2) DEFERRAL OF CONTRIBUTIONS.—The Secretary may defer the payment of part or all of an assessment required under this section to be paid by a commercial insurer, but only to the extent that the Secretary determines that such deferral is necessary to avoid the likely insolvency of the commercial insurer.

(3) TIMING OF ASSESSMENTS.—The Secretary shall make adjustments regarding the timing and imposition of assessments (including the calculation of net premiums and aggregate written premium) as appropriate for commercial insurers that provide commercial property and casualty insurance on a non-calendar year basis.

SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.

(a) DETERMINATION OF IMPOSITION AND COLLECTION.—

(1) IN GENERAL.—If, pursuant to a triggering determination, the Secretary determines that the aggregate amount of financial assistance provided pursuant to section 6 exceeds $20,000,000,000, the Secretary shall consider and weigh the factors under paragraph (2) to determine the extent to which a surcharge under this section should be established.

(2) FACTORS.—The factors under this paragraph are—

(A) the ultimate costs to taxpayers if a surcharge under this section is not established;

(B) the economic conditions in the commercial marketplace;

(C) the affordability of commercial insurance for small- and medium-sized business; and

(D) such other factors as the Secretary considers appropriate.

(3) POLICYHOLDER PREMIUM.—The amount established by the Secretary as a surcharge under this section shall be established and imposed as a policyholder premium surcharge on commercial property and casualty insurance written after such determination, for the purpose of repaying financial assistance made available under section 6 in connection with such triggering determination.

(4) COLLECTION.—The Secretary shall provide for commercial insurers to collect surcharge amounts established under this section and remit such amounts collected to the Secretary.

(b) AMOUNT AND DURATION.—Subject to subsection (c), the surcharge under this section shall be established in such amount, and shall apply to commercial property and casualty insurance written during such period, as the Secretary determines is necessary to recover the aggregate amount of financial assistance provided under section 6 in connection with the triggering determination that exceeds $20,000,000,000.

(c) PERCENTAGE LIMITATION.—The surcharge under this section applicable to commercial property and casualty insurance coverage may not exceed, on an annual

basis, the amount equal to 3 percent of the premium charged for such coverage.

(d) OTHER TERMS.—The surcharge under this section shall—

(1) be based on a percentage of the premium amount charged for commercial property and casualty insurance coverage that a policy provides; and

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

(e) EXCLUSIONS.—For purposes of this section, commercial property and casualty insurance does not include any reinsurance provided to primary insurance companies.

SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SURCHARGES.

(a) MANNER AND METHOD.—

(1) IN GENERAL.—Except to the extent specified in such sections, the Secretary shall provide for the manner and method of carrying out assessments under section 7 and surcharges under section 8, including the timing and procedures of making assessments and surcharges, notifying commercial insurers of assessments and surcharge requirements, collecting payments from and surcharges through commercial insurers, and refunding of any excess

amounts paid or crediting such amounts against future assessments.

(2) EFFECT OF ASSESSMENTS AND SURCHARGES ON URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.—In determining the method and manner of imposing assessments under section 7 and surcharges under section 8, including the amount of such assessments and surcharges, the Secretary shall take into consideration—

(A) the economic impact of any such assessments and surcharges on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

(B) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

(C) the various exposures to terrorism risk for different lines of commercial property and casualty insurance.

(b) TIMING OF COVERAGES AND ASSESSMENTS.—The Secretary may adjust the timing of coverages and assessments provided under this Act to provide for equivalent application of the provisions of this Act to commercial insurers and policies that are not based on a calendar year.

(c) ADJUSTMENT.—The Secretary may adjust the assessments charged under section 7 or the percentage imposed under the surcharge under section 8 at any time, as the Secretary considers appropriate to protect the national interest, which may include avoiding unreasonable economic disruption or excessive market instability and avoiding undue burdens on small businesses.

(d) CIVIL MONETARY PENALTY.—

(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any commercial insurer that the Secretary determines, on the record after opportunity for a hearing—

(A) has failed to pay an assessment under section 7 in accordance with the requirements of, or regulations issued, under this Act;

(B) has failed to charge, collect, or remit surcharges under section 8 in accordance with the requirements of, or regulations issued under, this Act;

(C) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts; or

(D) has otherwise failed to comply with the provisions of, or the regulations issued under, this Act.

(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this Act or the regulations issued under this Act, such amount in dispute.

SEC. 10. APPLICATION TO SELF-INSURANCE ARRANGEMENTS AND OFFSHORE INSURERS AND REINSURERS.

(a) SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC, apply the provisions of this Act, as appropriate, to self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event and all of the provisions of this Act are applied uniformly to such entities.

(b) OFFSHORE INSURERS AND REINSURERS.—The Secretary shall ensure that the provisions of this Act are applied as appropriate to any offshore or non-admitted entities that provide commercial property and casualty insurance.

SEC. 11. STUDY OF RESERVES FOR PROPERTY AND CASUALTY INSURANCE FOR TERRORIST OR OTHER CATASTROPHIC EVENTS.

(a) IN GENERAL.—The Secretary of the Treasury shall conduct a study of issues relating to permitting property and casualty insurance companies to establish deductible reserves against losses for future acts of terrorism, including—

(1) whether such tax-favored reserves would promote (A) insurance coverage of risks of terrorism, and (B) the accumulation of additional resources needed to satisfy potential claims resulting from such risks,

(2) the lines of business for which such reserves would be appropriate, including whether such reserves should be applied to personal or commercial lines of business,

(3) how the amount of such reserves would be determined,

(4) how such reserves would be administered,

(5) a comparison of the Federal tax treatment of such reserves with other insurance reserves permitted under Federal tax laws,

(6) an analysis of the use of tax-favored reserves for catastrophic events, including acts of terrorism, under the tax laws of foreign countries, and

(7) whether it would be appropriate to permit similar reserves for other future catastrophic events, such as natural disasters, taking into account the factors under the preceding paragraphs.

(b) REPORT.—Not later than 4 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study under subsection (a), together with recommendations for amending the Internal Revenue Code of 1986 or other appropriate action.

SEC. 12. STATE PREEMPTION.

(a) COVERED PERILS.—A commercial insurer shall be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under this Act or under any regulations issued by the Secretary.

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

(c) FILE AND USE.—

(1) IN GENERAL.—With respect only to commercial property and casualty insurance covering acts of terrorism, any provision of State law that requires, as a condition precedent to the effectiveness of rates or policies for such insurance that is made available by an insurer licensed to transact such business in the State, any action (including prior approval by the State insurance regulator for such State) other than filing of such rates and policies and related information with such State insurance regulator is preempted to the extent such law requires such additional actions for such insurance coverage.

(2) SUBSEQUENT REVIEW AUTHORITY.—Paragraph (1) shall not be considered to preempt a provision of State law solely because the law provides that rates and policies for such insurance coverage are, upon such filing, subject to subsequent review

and action, which may include actions to disapprove or discontinue use of such rates or policies, by the State insurance regulator.

(3) TREATMENT OF PRIOR REVIEW PROVISIONS.—Any authority for prior review and action by a State regulator preempted under paragraph (1) shall be deemed to be authority to conduct a subsequent review and action on such filings.

SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE FOR ACTS OF TERRORISM.

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

(1) the NAIC, in consultation with the Secretary, should develop appropriate definitions for acts of terrorism that are consistent with this Act and appropriate standards for making determinations regarding occurrences of acts of terrorism;

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

(3) in consulting with the NAIC, the Secretary should advocate and promote the development of definitions and standards that are appropriate for purposes of this Act; and

(4) after consultation with the NAIC, the Secretary should adopt further definitions for acts of terrorism and standards for determinations that are appropriate for this Act.

(b) INSURANCE RESERVE GUIDELINES.—

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

(A) the NAIC should develop appropriate guidelines for commercial insurers and pools regarding maintenance of reserves against the risks of acts of terrorism; and

(B) each State should adopt such guidelines for purposes of regulating commercial insurers doing business in that State.

(2) CONSIDERATION OF ADOPTION OF NATIONAL GUIDELINES.—Upon the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall make a determination of whether the guidelines referred to in paragraph (1) have, by such time, been developed and adopted by nearly all States in a uniform manner. If the Secretary determines that such guidelines have not been so developed and adopted, the Secretary shall consider adopting, and may adopt, such guidelines on a national basis in a manner that su-

persedes any State law regarding maintenance of reserves against such risks.

(c) GUIDELINES REGARDING DISCLOSURE OF PRICING AND TERMS OF COVERAGE.—

(1) SENSE OF CONGRESS.—It is the sense of the Congress that the States should require, by laws or regulations governing the provision of commercial property and casualty insurance that includes coverage for acts of terrorism, that the price of any such terrorism coverage, including the costs of any terrorism related assessments or surcharges under this Act, be separately disclosed.

(2) ADOPTION OF NATIONAL GUIDELINES.—If the Secretary determines that the States have not enacted laws or adopted regulations adequately providing for the disclosures described in paragraph (1) within a reasonable period of time after the date of the enactment of this Act, the Secretary shall, after consultation with the NAIC, adopt guidelines on a national basis requiring such disclosure in a manner that supersedes any State law regarding such disclosure.

SEC. 14. CONSULTATION WITH STATE INSURANCE REGULATORS AND NAIC.

(a) IN GENERAL.—The Secretary shall consult with the State insurance regulators and the NAIC in carrying out this Act.

(b) FINANCIAL ASSISTANCE, ASSESSMENTS, AND SURCHARGES.—The Secretary may take such actions, including entering into such agreements and providing such technical and organizational assistance to insurers and State insurance regulators, as may be necessary to provide for the distribution of financial assistance under section 6 and the collection of assessments under section 7 and surcharges under section 8.

(c) INVESTIGATING AND AUDITING CLAIMS.—The Secretary may, in consultation with the State insurance regulators and the NAIC, investigate and audit claims of insured losses by commercial insurers and otherwise require verification of amounts of premiums or losses, as appropriate.

SEC. 15. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION FOR CLAIMS RELATING TO TERRORIST ACTS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary makes a determination pursuant to section 5(b) that one or more acts of terrorism occurred, there shall exist a Federal cause of action,

which, except as provided in subsection (b), shall be the exclusive remedy for claims arising out of, relating to, or resulting from such acts of terrorism.

(2) EFFECT OF DETERMINATION.—A determination referred to in paragraph (1)—

(A) shall not be subject to judicial review;

(B) shall take effect upon its publication in the Federal Register; and

(C) shall be subject to such changes as the Secretary may provide in one or more later determinations made in accordance with the provisions of this paragraph.

(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(4) JURISDICTION.—For each determination under paragraph (1), the Judicial Panel on Multidistrict Litigation shall designate one or more district courts of the United States which shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) brought pursuant to this sub-

section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(5) LIMITS ON DAMAGES.—In an action brought under this subsection for damages:

(A) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(B)(i) Each defendant in such an action shall be liable only for the amount of noneconomic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(ii) For purposes of clause (i), the term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(6) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this subsection shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of the acts of terrorism with respect to which the determination under paragraph (1) was made.

(7) ATTORNEY FEES.—Reasonable attorneys fees for work performed shall be subject to the discretion of the court, but in no event shall any attorney charge, demand, receive, or collect for services rendered, fees or compensation in an amount in excess of 20 percent of the damages ordered by the court to be paid pursuant to this section, or in excess of 20 percent of any court-approved settlement made of any claim cognizable under this section. Any attorney who charges, demands, receives, or col-

lects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than 1 year, or both.

(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any person who—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism with respect to which a determination under subsection (a)(1) was made, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

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

(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

(1) any party's contractual right to arbitrate a dispute; or

(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107–42; 49 U.S.C. 40101 note).

(e) SATISFACTION OF JUDGMENTS FROM FROZEN ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.—

(1) IN GENERAL.—Except as provided in paragraph (2), in every case in which a person obtains a judgment against a terrorist party on a claim for compensatory damages for an act of terrorism, or a claim for money damages brought pursuant to section 1605(a)(7) of title 28, United States Code, the frozen assets of that terrorist party, or any agency or instrumentality of that terrorist party, shall be available for satisfaction of the judgment, to the extent of any compensatory damages awarded in the judgment for which the terrorist party is liable.

(2) PRESIDENTIAL WAIVER.—

(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(B) A waiver under this paragraph shall not apply to—

(i) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

(ii) any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.

(3) DEFINITIONS.—In this subsection:

(A) The term ''terrorist party'' means a terrorist, a terrorist organization, or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(B) The term ''frozen assets'' means assets seized or frozen by the United States in accordance with law.

(C) The term ''property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations'' and the term ''asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations'' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

SEC. 16. STUDY OF POTENTIAL EFFECTS OF TERRORISM ON LIFE INSURANCE INDUSTRY.

(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this Act, the President shall establish a commission (in this section referred to as the ''Commission'') to study and report on the potential effects of an act or acts of terrorism on the life insurance industry in the United States and the markets served by such industry.

(b) MEMBERSHIP AND OPERATIONS.—

(1) APPOINTMENT.—The Commission shall consist of 7 members, as follows:

(A) The Secretary of the Treasury or the designee of the Secretary.

(B) The Chairman of the Board of Governors of the Federal Reserve System or the designee of the Chairman.

(C) The Assistant to the President for Homeland Security.

(D) 4 members appointed by the President, who shall be—

(i) a representative of direct underwriters of life insurance within the United States;

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

(iii) an officer of the NAIC; and

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

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

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

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

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

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

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

(C) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the life insurance industry in the United States to independently cover such losses.

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

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

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

(f) TERMINATION.—The Commission shall terminate 60 days after submission of the report pursuant to subsection (e).

SEC. 17. RAILROAD AND TRUCKING INSURANCE STUDY.

The Secretary of the Treasury shall conduct a study to determine how the Federal Government can address a possible crisis in the availability and affordability of railroad and trucking insurance by making such insurance for acts of terrorism available on commercially reasonable terms. Not later than 120 days after the date of the enactment of this Act the Secretary shall submit to the Congress a report regarding the results and conclusions of the study.

SEC. 18. STUDY OF REINSURANCE POOL SYSTEM FOR FUTURE ACTS OF TERRORISM.

(a) STUDY.—The Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General of the United States shall jointly conduct a study on

the advisability and effectiveness of establishing a reinsurance pool system relating to future acts of terrorism to replace the program provided for under this Act.

(b) CONSULTATION.—In conducting the study under subsection (a), the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall consult with (1) academic experts, (2) the United Nations Secretariat for Trade and Development, (3) representatives from the property and casualty insurance industry, (4) representatives from the reinsurance industry, (5) the NAIC, and (6) such consumer organizations as the Secretary considers appropriate.

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall jointly submit a report to the Congress on the results of the study under subsection (a).

SEC. 19. DEFINITIONS.

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

(1) ACT OF TERRORISM.—

(A) IN GENERAL.—The term ''act of terrorism'' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are fur-

ther defined and specified by the Secretary in consultation with the NAIC.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States;

(iii) is committed by a person or group of persons or associations who are recognized, either before or after such act, by the Department of State or the Secretary as an international terrorist group or have conspired with such a group or the group's agents or surrogates;

(iv) has as its purpose to overthrow or destabilize the government of any country, or to influence the policy or affect the conduct of the government of the United

States or any segment of the economy of United States, by coercion; and

(v) is not considered an act of war, except that this clause shall not apply with respect to any coverage for workers compensation.

(2) AFFILIATE.—The term ''affiliate'' means, with respect to an insurer, any company that controls, is controlled by, or is under common control with the insurer.

(3) AGGREGATE WRITTEN PREMIUM.—The term ''aggregate written premium'' means, with respect to a year, the aggregate premium amount of all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance.

(4) COMMERCIAL INSURER.—The term ''commercial insurer'' means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurer.

(5) COMMERCIAL PROPERTY AND CASUALTY INSURANCE.—

(A) IN GENERAL.—The term ''commercial property and casualty insurance'' means insurance or reinsurance, or retrocessional reinsurance, for persons or properties in the United States against—

(i) loss of or damage to property;

(ii) loss of income or extra expense incurred because of loss of or damage to property;

(iii) third party liability claims caused by negligence or imposed by statute or contract, including workers compensation; or

(iv) loss resulting from debt or default of another.

(B) EXCLUSIONS.—Such term does not include—

(i) insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, or other insurance for personal, family, or household needs;

(ii) insurance for professional liability, including medical malpractice, errors and omissions, or directors' and officers' liability; or

(iii) health or life insurance.

(6) CONTROL.—A company has control over another company if—

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

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

(C) the Secretary determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the other company.

(7) COVERED PERIOD.—The term ''covered period'' has the meaning given such term in section 20.

(8) INDUSTRY-WIDE LOSSES.—The term ''industry-wide losses'' means the aggregate insured losses sustained by all insurers from coverage written under all lines of commercial property and casualty insurance.

(9) INSURED LOSS.—The term ''insured loss'' means any loss, net of reinsurance and

retrocessional reinsurance, covered by commercial property and casualty insurance.

(10) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners.

(11) NET PREMIUM.—The term ''net premium'' means, with respect a commercial insurer and a year, the aggregate premium amount collected by such commercial insurer for all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance by such commercial insurer, less any premium paid by such commercial insurer to other commercial insurers to insure or reinsure those risks.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(13) STATE.—The term ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(14) STATE INSURANCE REGULATOR.—The term ''State insurance regulator'' means, with re-

spect to a State, the principal insurance regulatory authority of the State.

(15) TRIGGERING DETERMINATION.—The term ''triggering determination'' has the meaning given such term in section 5(a).

(16) TRIGGERING EVENT.—The term ''triggering event'' means, with respect to a triggering determination, the occurrence of an act of terrorism, or the occurrence of such acts, that caused the insured losses resulting in such triggering determination.

(17) UNITED STATES.—The term ''United States'' means, collectively, the States (as such term is defined in this section).

SEC. 20. COVERED PERIOD AND EXTENSION OF PROGRAM.

(a) COVERED PERIOD.—Except to the extent provided otherwise under subsection (b), for purposes of this Act, the term ''covered period'' means the period beginning on the date of the enactment of this Act and ending on January 1, 2003.

(b) EXTENSION OF PROGRAM.—If the Secretary determines that extending the covered period is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, the Secretary may, subject to sub-

section (c), extend the covered period by not more than two years.

(c) REPORT.—The Secretary may exercise the authority under subsection (b) to extend the covered period only if the Secretary submits a report to the Congress providing notice of and setting forth the reasons for such extension.

SEC. 21. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out this Act.

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