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IN THE SENATE OF THE UNITED STATES

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AN ACT

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

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 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.

1 SEC. 2. CONGRESSIONAL FINDINGS.

2 The Congress finds that—

3 (1) the terrorist attacks on the World Trade
 4 Center and the Pentagon of September 11, 2001, re-
 5 sulted in a large number of deaths and injuries, the
 6 destruction and damage to buildings, and interrup-
 7 tion of business operations;

8 (2) the attacks have inflicted possibly the larg-
 9 est losses ever incurred by insurers and reinsurers in
 10 a single day;

11 (3) while the insurance and reinsurance indus-
 12 tries have committed to pay the losses arising from
 13 the September 11 attacks, the resulting disruption
 14 has created widespread market uncertainties with re-
 15 gard to the risk of losses arising from possible fu-
 16 ture terrorist attacks;

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

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

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

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

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

22 (9) such action is necessary to limit immediate
23 market disruptions, encourage economic stabiliza-
24 tion, and facilitate a transition to a viable market
25 for private terrorism risk insurance;

1 (10) in addition, it is necessary promptly to
2 conduct a study of whether there is a need for re-
3 serves for property and casualty insurance for ter-
4 rorist or other catastrophic events; and

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

14 **SEC. 3. AUTHORITY OF SECRETARY OF THE TREASURY.**

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

19 **SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO SEC-**
20 **RETARY.**

21 To the extent such information is not otherwise avail-
22 able to the Secretary, the Secretary may require each in-
23 surer to submit, to the Secretary or to the NAIC, a state-
24 ment specifying the net premium amount of coverage writ-
25 ten by such insurer under each line of commercial property

1 and casualty insurance sold by such insurer during such
2 periods as the Secretary may provide.

3 **SEC. 5. INITIAL AND SUBSEQUENT TRIGGERING DETER-**
4 **MINATIONS.**

5 (a) IN GENERAL.—For purposes of this Act, a “trig-
6 gering determination” is a determination by the Secretary
7 that an act of terrorism has occurred during the covered
8 period and that the aggregate insured losses resulting
9 from such occurrence or from multiple occurrences of acts
10 of terrorism all occurring during the covered period, meet
11 the requirements under either of the following paragraphs:

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

14 (2) INDIVIDUAL INSURER TRIGGER.—Such in-
15 dustry-wide losses exceed \$100,000,000 and some
16 portion of such losses for any single commercial in-
17 surer exceed—

18 (A) 10 percent of the capital surplus of
19 such commercial insurer (as such term is de-
20 fined by the Secretary); and

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

24 except that this paragraph shall not apply to any
25 commercial insurer that was not providing commer-

1 (1) INDUSTRY-WIDE TRIGGER.—Subject to sub-
2 sections (c) and (d), with respect to a triggering de-
3 termination under section 5(a)(1), financial assist-
4 ance shall be made available under this section to
5 each commercial insurer in an amount equal to the
6 difference between—

7 (A) 90 percent of the amount of the in-
8 sured losses of the insurer as a result of the
9 triggering event involved; and

10 (B) \$5,000,000.

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

20 (A) 90 percent of the amount of the in-
21 sured losses of the insurer as a result of such
22 triggering event; and

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

1 (3) ADDITIONAL AMOUNTS.—Subject to sub-
2 section (c), if the Secretary has provided financial
3 assistance to a commercial insurer pursuant to para-
4 graph (2) of this subsection and subsequently makes
5 a triggering determination pursuant to section
6 5(a)(1), the Secretary shall provide financial assist-
7 ance to such insurer in connection with such subse-
8 quent triggering determination (in addition to the
9 amount of financial assistance provided to such in-
10 surer pursuant to paragraph (1) of this subsection)
11 in the amount under section 5(a)(2)(B).

12 (c) AGGREGATE LIMITATION.—

13 (1) IN GENERAL.—The aggregate amount of fi-
14 nancial assistance provided pursuant to this section
15 may not exceed \$100,000,000,000.

16 (2) SENSE OF CONGRESS REGARDING SEVERE
17 LOSSES.—It is the sense of the Congress that acts
18 of terrorism resulting in insured losses greater than
19 \$100,000,000,000 would necessitate further action
20 by the Congress to address such additional losses.

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

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

3 (e) REPAYMENT.—Financial assistance made avail-
4 able under this section shall be repaid through assess-
5 ments under section 7 collected by the Secretary and sur-
6 charges remitted to the Secretary under section 8. Any
7 such amounts collected or remitted shall be deposited into
8 the general fund of the Treasury.

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

18 **SEC. 7. ASSESSMENTS.**

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

24 (b) AGGREGATE ASSESSMENT.—Pursuant to a trig-
25 gering determination, the Secretary shall determine the

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

4 (1) \$20,000,000,000; and

5 (2) the amount of financial assistance paid
6 under section 6 in connection with the triggering de-
7 termination.

8 The aggregate assessment amount under this subsection
9 shall be assessed to commercial insurers through an indus-
10 try obligation assessment under subsection (c) and, if nec-
11 essary, the remainder shall be assessed through one or
12 more financing assessments under subsection (d).

13 (c) INDUSTRY OBLIGATION ASSESSMENTS.—

14 (1) IN GENERAL.—Immediately upon the occur-
15 rence of a triggering determination, the Secretary
16 shall impose an industry obligation assessment
17 under this subsection on all commercial insurers,
18 subject to paragraph (3).

19 (2) AMOUNT.—The aggregate amount of an in-
20 dustry obligation assessment in connection with a
21 triggering determination shall be equal to—

22 (A) in the case of a triggering determina-
23 tion occurring during the covered period speci-
24 fied in section 20(a), the lesser of—

- 1 (i) the difference between (I)
2 \$5,000,000,000, and (II) the aggregate
3 amount of any assessments made by the
4 Secretary pursuant to this section during
5 the portion of such covered period pre-
6 ceding the triggering determination; and
- 7 (ii) the amount of financial assistance
8 made available under section 6 in connec-
9 tion with the triggering determination; or
- 10 (B) such other aggregate industry obliga-
11 tion amount as may apply pursuant to sub-
12 section (g).

13 (3) TIMING OF MULTIPLE ASSESSMENTS.—

14 (A) DELAYED IMPOSITION AND AGGREGA-
15 TION OF ASSESSMENTS.—In the case of any
16 triggering determination occurring within 12
17 months of the occurrence of a previous trig-
18 gering determination, any industry obligation
19 assessments under this subsection resulting
20 from such subsequent determination shall be
21 imposed upon the conclusion of the quarterly
22 assessment period under subparagraph (B) dur-
23 ing which such determination occurs.

24 (B) QUARTERLY ASSESSMENT PERIOD.—

25 With respect to a subsequent triggering deter-

1 mination referred to in subparagraph (A), the
2 quarterly assessment periods under this sub-
3 paragraph are—

4 (i) the 3-month period that begins
5 upon the imposition of the industry obliga-
6 tion assessment resulting from the trig-
7 gering determination that—

8 (I) occurred most recently before
9 such subsequent triggering determina-
10 tion; and

11 (II) did not occur within 12
12 months of the occurrence of any pre-
13 vious triggering determination; and

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

17 (d) FINANCING ASSESSMENTS.—

18 (1) IN GENERAL.—If the aggregate assessment
19 amount in connection with a triggering determina-
20 tion exceeds the aggregate amount of the industry
21 obligation assessment under subsection (c) in con-
22 nection with the determination, the remaining
23 amount shall be assessed through one or more, as
24 may be necessary pursuant to paragraph (3), financ-
25 ing assessments under this subsection.

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

7 (3) LIMITATION.—The aggregate amount of
8 any financing assessments imposed under this sub-
9 section on any single commercial insurer during any
10 12-month period shall not exceed the amount that is
11 equal to 3 percent of the net premium for such in-
12 surer for such period.

13 (e) ALLOCATION OF ASSESSMENT.—The portion of
14 the aggregate amount of any industry obligation assess-
15 ment or financing assessment under this section that is
16 allocated to each commercial insurer shall be based on the
17 ratio that the net premium written by such commercial
18 insurer during the year during which the assessment is
19 imposed bears to the aggregate written premium for such
20 year, subject to section 9 and the limitation under sub-
21 section (d)(3) of this section.

22 (f) NOTICE AND OBLIGATION TO PAY.—

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

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

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

8 (3) FAILURE TO MAKE TIMELY PAYMENT.—If
9 any commercial insurer fails to pay an assessment
10 under this section before the deadline established
11 under paragraph (2) for the assessment, the Sec-
12 retary may take either or both of the following ac-
13 tions:

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

17 (B) INTEREST.—Require such insurer to
18 pay interest, at such rate as the Secretary con-
19 siders appropriate, on the amount of the assess-
20 ment that was not paid before the deadline es-
21 tablished under paragraph (2).

22 (g) AGGREGATE INDUSTRY OBLIGATION AMOUNT
23 FOR PROGRAM EXTENSION YEARS.—If the Secretary ex-
24 ercises the authority under section 20(b) to extend the
25 covered period, the aggregate industry obligation amount

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

5 (1) the difference between (A)
6 \$10,000,000,000, and (B) the aggregate amount of
7 any assessments made by the Secretary pursuant to
8 this section during the 12-month period preceding
9 the triggering determination; and

10 (2) the amount of financial assistance made
11 available under section 6 in connection with the trig-
12 gering determination.

13 (h) ADMINISTRATIVE FLEXIBILITY.—

14 (1) ADJUSTMENT OF ASSESSMENTS.—The Sec-
15 retary may provide for or require estimations of
16 amounts under this section and may provide for sub-
17 sequent refunds or require additional payments to
18 correct such estimations, as appropriate.

19 (2) DEFERRAL OF CONTRIBUTIONS.—The Sec-
20 retary may defer the payment of part or all of an
21 assessment required under this section to be paid by
22 a commercial insurer, but only to the extent that the
23 Secretary determines that such deferral is necessary
24 to avoid the likely insolvency of the commercial in-
25 surer.

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

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

9 (a) **DETERMINATION OF IMPOSITION AND COLLEC-**
10 **TION.**—

11 (1) **IN GENERAL.**—If, pursuant to a triggering
12 determination, the Secretary determines that the ag-
13 gregate amount of financial assistance provided pur-
14 suant to section 6 exceeds \$20,000,000,000, the
15 Secretary shall consider and weigh the factors under
16 paragraph (2) to determine the extent to which a
17 surcharge under this section should be established.

18 (2) **FACTORS.**—The factors under this para-
19 graph are—

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

22 (B) the economic conditions in the com-
23 mercial marketplace;

24 (C) the affordability of commercial insur-
25 ance for small- and medium-sized business; and

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

3 (3) POLICYHOLDER PREMIUM.—The amount es-
4 tablished by the Secretary as a surcharge under this
5 section shall be established and imposed as a policy-
6 holder premium surcharge on commercial property
7 and casualty insurance written after such determina-
8 tion, for the purpose of repaying financial assistance
9 made available under section 6 in connection with
10 such triggering determination.

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

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

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

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

3 (d) OTHER TERMS.—The surcharge under this sec-
4 tion shall—

5 (1) be based on a percentage of the premium
6 amount charged for commercial property and cas-
7 ualty insurance coverage that a policy provides; and

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

11 (e) EXCLUSIONS.—For purposes of this section, com-
12 mercial property and casualty insurance does not include
13 any reinsurance provided to primary insurance companies.

14 **SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SUR-**
15 **CHARGES.**

16 (a) MANNER AND METHOD.—

17 (1) IN GENERAL.—Except to the extent speci-
18 fied in such sections, the Secretary shall provide for
19 the manner and method of carrying out assessments
20 under section 7 and surcharges under section 8, in-
21 cluding the timing and procedures of making assess-
22 ments and surcharges, notifying commercial insurers
23 of assessments and surcharge requirements, col-
24 lecting payments from and surcharges through com-
25 mercial insurers, and refunding of any excess

1 amounts paid or crediting such amounts against fu-
2 ture assessments.

3 (2) EFFECT OF ASSESSMENTS AND SUR-
4 CHARGES ON URBAN AND SMALLER COMMERCIAL
5 AND RURAL AREAS AND DIFFERENT LINES OF IN-
6 SURANCE.—In determining the method and manner
7 of imposing assessments under section 7 and sur-
8 charges under section 8, including the amount of
9 such assessments and surcharges, the Secretary
10 shall take into consideration—

11 (A) the economic impact of any such as-
12 sessments and surcharges on commercial cen-
13 ters of urban areas, including the effect on
14 commercial rents and commercial insurance
15 premiums, particularly rents and premiums
16 charged to small businesses, and the availability
17 of lease space and commercial insurance within
18 urban areas;

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

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

4 (b) TIMING OF COVERAGES AND ASSESSMENTS.—

5 The Secretary may adjust the timing of coverages and as-
6 sessments provided under this Act to provide for equiva-
7 lent application of the provisions of this Act to commercial
8 insurers and policies that are not based on a calendar
9 year.

10 (c) ADJUSTMENT.—The Secretary may adjust the as-

11 sessment charged under section 7 or the percentage im-
12 posed under the surcharge under section 8 at any time,
13 as the Secretary considers appropriate to protect the na-
14 tional interest, which may include avoiding unreasonable
15 economic disruption or excessive market instability and
16 avoiding undue burdens on small businesses.

17 (d) CIVIL MONETARY PENALTY.—

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

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

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

5 (C) has intentionally provided to the Sec-
6 retary erroneous information regarding pre-
7 mium or loss amounts; or

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

11 (2) AMOUNT.—The amount under this para-
12 graph is the greater of \$1,000,000 and, in the case
13 of any failure to pay, charge, collect, or remit
14 amounts in accordance with this Act or the regula-
15 tions issued under this Act, such amount in dispute.

16 **SEC. 10. APPLICATION TO SELF-INSURANCE ARRANGE-**
17 **MENTS AND OFFSHORE INSURERS AND REIN-**
18 **SURERS.**

19 (a) SELF-INSURANCE ARRANGEMENTS.—The Sec-
20 retary may, in consultation with the NAIC, apply the pro-
21 visions of this Act, as appropriate, to self-insurance ar-
22 rangements by municipalities and other entities, but only
23 if such application is determined before the occurrence of
24 a triggering event and all of the provisions of this Act are
25 applied uniformly to such entities.

1 (b) OFFSHORE INSURERS AND REINSURERS.—The
2 Secretary shall ensure that the provisions of this Act are
3 applied as appropriate to any offshore or non-admitted en-
4 tities that provide commercial property and casualty insur-
5 ance.

6 **SEC. 11. STUDY OF RESERVES FOR PROPERTY AND CAS-**
7 **UALTY INSURANCE FOR TERRORIST OR**
8 **OTHER CATASTROPHIC EVENTS.**

9 (a) IN GENERAL.—The Secretary of the Treasury
10 shall conduct a study of issues relating to permitting prop-
11 erty and casualty insurance companies to establish deduct-
12 ible reserves against losses for future acts of terrorism,
13 including—

14 (1) whether such tax-favored reserves would
15 promote (A) insurance coverage of risks of ter-
16 rorism, and (B) the accumulation of additional re-
17 sources needed to satisfy potential claims resulting
18 from such risks,

19 (2) the lines of business for which such reserves
20 would be appropriate, including whether such re-
21 serves should be applied to personal or commercial
22 lines of business,

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

25 (4) how such reserves would be administered,

1 (5) a comparison of the Federal tax treatment
2 of such reserves with other insurance reserves per-
3 mitted under Federal tax laws,

4 (6) an analysis of the use of tax-favored re-
5 serves for catastrophic events, including acts of ter-
6 rorism, under the tax laws of foreign countries, and

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

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

17 **SEC. 12. STATE PREEMPTION.**

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

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

7 (c) FILE AND USE.—

8 (1) IN GENERAL.—With respect only to com-
9 mercial property and casualty insurance covering
10 acts of terrorism, any provision of State law that re-
11 quires, as a condition precedent to the effectiveness
12 of rates or policies for such insurance that is made
13 available by an insurer licensed to transact such
14 business in the State, any action (including prior ap-
15 proval by the State insurance regulator for such
16 State) other than filing of such rates and policies
17 and related information with such State insurance
18 regulator is preempted to the extent such law re-
19 quires such additional actions for such insurance
20 coverage.

21 (2) SUBSEQUENT REVIEW AUTHORITY.—Para-
22 graph (1) shall not be considered to preempt a pro-
23 vision of State law solely because the law provides
24 that rates and policies for such insurance coverage
25 are, upon such filing, subject to subsequent review

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

4 (3) TREATMENT OF PRIOR REVIEW PROVI-
5 SIONS.—Any authority for prior review and action
6 by a State regulator preempted under paragraph (1)
7 shall be deemed to be authority to conduct a subse-
8 quent review and action on such filings.

9 **SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE**
10 **FOR ACTS OF TERRORISM.**

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

13 (1) the NAIC, in consultation with the Sec-
14 retary, should develop appropriate definitions for
15 acts of terrorism that are consistent with this Act
16 and appropriate standards for making determina-
17 tions regarding occurrences of acts of terrorism;

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

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

1 (4) after consultation with the NAIC, the Sec-
2 retary should adopt further definitions for acts of
3 terrorism and standards for determinations that are
4 appropriate for this Act.

5 (b) INSURANCE RESERVE GUIDELINES.—

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

8 (A) the NAIC should develop appropriate
9 guidelines for commercial insurers and pools re-
10 garding maintenance of reserves against the
11 risks of acts of terrorism; and

12 (B) each State should adopt such guide-
13 lines for purposes of regulating commercial in-
14 surers doing business in that State.

15 (2) CONSIDERATION OF ADOPTION OF NA-
16 TIONAL GUIDELINES.—Upon the expiration of the 6-
17 month period beginning on the date of the enact-
18 ment of this Act, the Secretary shall make a deter-
19 mination of whether the guidelines referred to in
20 paragraph (1) have, by such time, been developed
21 and adopted by nearly all States in a uniform man-
22 ner. If the Secretary determines that such guidelines
23 have not been so developed and adopted, the Sec-
24 retary shall consider adopting, and may adopt, such
25 guidelines on a national basis in a manner that su-

1 persedes any State law regarding maintenance of re-
2 serves against such risks.

3 (c) GUIDELINES REGARDING DISCLOSURE OF PRIC-
4 ING AND TERMS OF COVERAGE.—

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

13 (2) ADOPTION OF NATIONAL GUIDELINES.—If
14 the Secretary determines that the States have not
15 enacted laws or adopted regulations adequately pro-
16 viding for the disclosures described in paragraph (1)
17 within a reasonable period of time after the date of
18 the enactment of this Act, the Secretary shall, after
19 consultation with the NAIC, adopt guidelines on a
20 national basis requiring such disclosure in a manner
21 that supersedes any State law regarding such disclo-
22 sure.

1 **SEC. 14. CONSULTATION WITH STATE INSURANCE REGU-**
2 **LATORS AND NAIC.**

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

6 (b) FINANCIAL ASSISTANCE, ASSESSMENTS, AND
7 SURCHARGES.—The Secretary may take such actions, in-
8 cluding entering into such agreements and providing such
9 technical and organizational assistance to insurers and
10 State insurance regulators, as may be necessary to provide
11 for the distribution of financial assistance under section
12 6 and the collection of assessments under section 7 and
13 surcharges under section 8.

14 (c) INVESTIGATING AND AUDITING CLAIMS.—The
15 Secretary may, in consultation with the State insurance
16 regulators and the NAIC, investigate and audit claims of
17 insured losses by commercial insurers and otherwise re-
18 quire verification of amounts of premiums or losses, as
19 appropriate.

20 **SEC. 15. LITIGATION MANAGEMENT.**

21 (a) FEDERAL CAUSE OF ACTION FOR CLAIMS RE-
22 LATING TO TERRORIST ACTS.—

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

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

4 (2) EFFECT OF DETERMINATION.—A deter-
5 mination referred to in paragraph (1)—

6 (A) shall not be subject to judicial review;

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

9 (C) shall be subject to such changes as the
10 Secretary may provide in one or more later de-
11 terminations made in accordance with the pro-
12 visions of this paragraph.

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

19 (4) JURISDICTION.—For each determination
20 under paragraph (1), the Judicial Panel on Multidis-
21 trict Litigation shall designate one or more district
22 courts of the United States which shall have original
23 and exclusive jurisdiction over all actions for any
24 claim (including any claim for loss of property, per-
25 sonal injury, or death) brought pursuant to this sub-

1 section. The Judicial Panel on Multidistrict Litiga-
2 tion shall select and assign the district court or
3 courts based on the convenience of the parties and
4 the just and efficient conduct of the proceedings.
5 For purposes of personal jurisdiction, the district
6 court or courts designated by the Judicial Panel on
7 Multidistrict Litigation shall be deemed to sit in all
8 judicial districts in the United States.

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

11 (A) No punitive damages intended to pun-
12 ish or deter, exemplary damages, or other dam-
13 ages not intended to compensate a plaintiff for
14 actual losses may be awarded, nor shall any
15 party be liable for interest prior to the judg-
16 ment.

17 (B)(i) Each defendant in such an action
18 shall be liable only for the amount of non-
19 economic damages allocated to the defendant in
20 direct proportion to the percentage of responsi-
21 bility of the defendant for the harm to the
22 plaintiff, and no plaintiff may recover non-
23 economic damages unless the plaintiff suffered
24 physical harm.

1 (ii) For purposes of clause (i), the term
2 “noneconomic damages” means damages for
3 losses for physical and emotional pain, suf-
4 fering, inconvenience, physical impairment,
5 mental anguish, disfigurement, loss of enjoy-
6 ment of life, loss of society and companionship,
7 loss of consortium, hedonic damages, injury to
8 reputation, and any other nonpecuniary losses.

9 (6) COLLATERAL SOURCES.—Any recovery by a
10 plaintiff in an action under this subsection shall be
11 reduced by the amount of collateral source com-
12 pensation, if any, that the plaintiff has received or
13 is entitled to receive as a result of the acts of ter-
14 rorism with respect to which the determination
15 under paragraph (1) was made.

16 (7) ATTORNEY FEES.—Reasonable attorneys
17 fees for work performed shall be subject to the dis-
18 cretion of the court, but in no event shall any attor-
19 ney charge, demand, receive, or collect for services
20 rendered, fees or compensation in an amount in ex-
21 cess of 20 percent of the damages ordered by the
22 court to be paid pursuant to this section, or in ex-
23 cess of 20 percent of any court-approved settlement
24 made of any claim cognizable under this section.
25 Any attorney who charges, demands, receives, or col-

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

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

8 (1) attempts to commit, knowingly participates
9 in, aids and abets, or commits any act of terrorism
10 with respect to which a determination under sub-
11 section (a)(1) was made, or any criminal act related
12 to or resulting from such act of terrorism; or

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

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

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

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

22 (2) any provision of the Air Transportation
23 Safety and System Stabilization Act (Public Law
24 107-42; 49 U.S.C. 40101 note).

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

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), in every case in which a person obtains
6 a judgment against a terrorist party on a claim for
7 compensatory damages for an act of terrorism, or a
8 claim for money damages brought pursuant to sec-
9 tion 1605(a)(7) of title 28, United States Code, the
10 frozen assets of that terrorist party, or any agency
11 or instrumentality of that terrorist party, shall be
12 available for satisfaction of the judgment, to the ex-
13 tent of any compensatory damages awarded in the
14 judgment for which the terrorist party is liable.

15 (2) PRESIDENTIAL WAIVER.—

16 (A) Subject to subparagraph (B), upon de-
17 termining on an asset-by-asset basis that a
18 waiver is necessary in the national security in-
19 terest, the President may waive the require-
20 ments of this subsection in connection with
21 (and prior to the enforcement of) any judicial
22 order directing attachment in aid of execution
23 or execution against any property subject to the
24 Vienna Convention on Diplomatic Relations or
25 the Vienna Convention on Consular Relations.

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

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

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

15 (3) DEFINITIONS.—In this subsection:

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

23 (B) The term “frozen assets” means assets
24 seized or frozen by the United States in accord-
25 ance with law.

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

3 (B) The Chairman of the Board of Gov-
4 ernors of the Federal Reserve System or the
5 designee of the Chairman.

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

8 (D) 4 members appointed by the Presi-
9 dent, who shall be—

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

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

15 (iii) an officer of the NAIC; and

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

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

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

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

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

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

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

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

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

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

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

8 (f) TERMINATION.—The Commission shall terminate
9 60 days after submission of the report pursuant to sub-
10 section (e).

11 **SEC. 17. RAILROAD AND TRUCKING INSURANCE STUDY.**

12 The Secretary of the Treasury shall conduct a study
13 to determine how the Federal Government can address a
14 possible crisis in the availability and affordability of rail-
15 road and trucking insurance by making such insurance for
16 acts of terrorism available on commercially reasonable
17 terms. Not later than 120 days after the date of the enact-
18 ment of this Act the Secretary shall submit to the Con-
19 gress a report regarding the results and conclusions of the
20 study.

21 **SEC. 18. STUDY OF REINSURANCE POOL SYSTEM FOR FU-**
22 **TURE ACTS OF TERRORISM.**

23 (a) STUDY.—The Secretary, the Board of Governors
24 of the Federal Reserve System, and the Comptroller Gen-
25 eral of the United States shall jointly conduct a study on

1 the advisability and effectiveness of establishing a reinsur-
2 ance pool system relating to future acts of terrorism to
3 replace the program provided for under this Act.

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

13 (c) REPORT.—Not later than 6 months after the date
14 of the enactment of this Act, the Secretary, the Board of
15 Governors of the Federal Reserve System, and the Comp-
16 troller General shall jointly submit a report to the Con-
17 gress on the results of the study under subsection (a).

18 **SEC. 19. DEFINITIONS.**

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

21 (1) ACT OF TERRORISM.—

22 (A) IN GENERAL.—The term “act of ter-
23 rorism” means any act that the Secretary de-
24 termines meets the requirements under sub-
25 paragraph (B), as such requirements are fur-

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

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

5 (i) is unlawful;

6 (ii) causes harm to a person, property,
7 or entity, in the United States, or in the
8 case of a domestic United States air car-
9 rier or a United States flag vessel (or a
10 vessel based principally in the United
11 States on which United States income tax
12 is paid and whose insurance coverage is
13 subject to regulation in the United States),
14 in or outside the United States;

15 (iii) is committed by a person or
16 group of persons or associations who are
17 recognized, either before or after such act,
18 by the Department of State or the Sec-
19 retary as an international terrorist group
20 or have conspired with such a group or the
21 group's agents or surrogates;

22 (iv) has as its purpose to overthrow or
23 destabilize the government of any country,
24 or to influence the policy or affect the con-
25 duct of the government of the United

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

3 (v) is not considered an act of war,
4 except that this clause shall not apply with
5 respect to any coverage for workers com-
6 pensation.

7 (2) AFFILIATE.—The term “affiliate” means,
8 with respect to an insurer, any company that con-
9 trols, is controlled by, or is under common control
10 with the insurer.

11 (3) AGGREGATE WRITTEN PREMIUM.—The
12 term “aggregate written premium” means, with re-
13 spect to a year, the aggregate premium amount of
14 all commercial property and casualty insurance cov-
15 erage written during such year under all lines of
16 commercial property and casualty insurance.

17 (4) COMMERCIAL INSURER.—The term “com-
18 mercial insurer” means any corporation, association,
19 society, order, firm, company, mutual, partnership,
20 individual, aggregation of individuals, or any other
21 legal entity that provides commercial property and
22 casualty insurance. Such term includes any affiliates
23 of a commercial insurer.

24 (5) COMMERCIAL PROPERTY AND CASUALTY IN-
25 SURANCE.—

1 (A) IN GENERAL.—The term “commercial
2 property and casualty insurance” means insur-
3 ance or reinsurance, or retrocessional reinsur-
4 ance, for persons or properties in the United
5 States against—

6 (i) loss of or damage to property;

7 (ii) loss of income or extra expense in-
8 curred because of loss of or damage to
9 property;

10 (iii) third party liability claims caused
11 by negligence or imposed by statute or con-
12 tract, including workers compensation; or

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

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

17 (i) insurance for homeowners, tenants,
18 private passenger nonfleet automobiles,
19 mobile homes, or other insurance for per-
20 sonal, family, or household needs;

21 (ii) insurance for professional liability,
22 including medical malpractice, errors and
23 omissions, or directors’ and officers’ liabil-
24 ity; or

25 (iii) health or life insurance.

1 (6) CONTROL.—A company has control over an-
2 other company if—

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

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

11 (C) the Secretary determines, after notice
12 and opportunity for hearing, that the company
13 directly or indirectly exercises a controlling in-
14 fluence over the management or policies of the
15 other company.

16 (7) COVERED PERIOD.—The term “covered pe-
17 riod” has the meaning given such term in section
18 20.

19 (8) INDUSTRY-WIDE LOSSES.—The term “in-
20 dustry-wide losses” means the aggregate insured
21 losses sustained by all insurers from coverage writ-
22 ten under all lines of commercial property and cas-
23 ualty insurance.

24 (9) INSURED LOSS.—The term “insured loss”
25 means any loss, net of reinsurance and

1 retrocessional reinsurance, covered by commercial
2 property and casualty insurance.

3 (10) NAIC.—The term “NAIC” means the Na-
4 tional Association of Insurance Commissioners.

5 (11) NET PREMIUM.—The term “net premium”
6 means, with respect a commercial insurer and a
7 year, the aggregate premium amount collected by
8 such commercial insurer for all commercial property
9 and casualty insurance coverage written during such
10 year under all lines of commercial property and cas-
11 ualty insurance by such commercial insurer, less any
12 premium paid by such commercial insurer to other
13 commercial insurers to insure or reinsure those
14 risks.

15 (12) SECRETARY.—The term “Secretary”
16 means the Secretary of the Treasury.

17 (13) STATE.—The term “State” means the
18 States of the United States, the District of Colum-
19 bia, the Commonwealth of Puerto Rico, the Com-
20 monwealth of the Northern Mariana Islands, Guam,
21 the Virgin Islands, American Samoa, and any other
22 territory or possession of the United States.

23 (14) STATE INSURANCE REGULATOR.—The
24 term “State insurance regulator” means, with re-

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

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

6 (16) TRIGGERING EVENT.—The term “trig-
7 gering event” means, with respect to a triggering de-
8 termination, the occurrence of an act of terrorism,
9 or the occurrence of such acts, that caused the in-
10 sured losses resulting in such triggering determina-
11 tion.

12 (17) UNITED STATES.—The term “United
13 States” means, collectively, the States (as such term
14 is defined in this section).

15 **SEC. 20. COVERED PERIOD AND EXTENSION OF PROGRAM.**

16 (a) COVERED PERIOD.—Except to the extent pro-
17 vided otherwise under subsection (b), for purposes of this
18 Act, the term “covered period” means the period begin-
19 ning on the date of the enactment of this Act and ending
20 on January 1, 2003.

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

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

3 (c) REPORT.—The Secretary may exercise the au-
4 thority under subsection (b) to extend the covered period
5 only if the Secretary submits a report to the Congress pro-
6 viding notice of and setting forth the reasons for such ex-
7 tension.

8 **SEC. 21. REGULATIONS.**

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

Passed the House of Representatives November 29,
2001.

Attest:

JEFF TRANDAHL,
Clerk.

Calendar No. 252

107TH CONGRESS
1ST SESSION

H. R. 3210

AN ACT

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

DECEMBER 3, 2001

Read the second time and placed on the calendar