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107TH CONGRESS
1ST SESSION

H. R. 3210

[Report No. 107-300, Parts I and II]

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2001

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

NOVEMBER 19, 2001

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

NOVEMBER 19, 2001

Referral to the Committee on the Budget extended for a period ending not later than November 26, 2001

NOVEMBER 19, 2001

Referred to the Committee on the Judiciary for a period ending not later than November 26, 2001, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

NOVEMBER 19, 2001

Reported from the Committee on Ways and Means with an amendment
[Strike out all after the enacting clause and insert the part printed in boldface roman]

NOVEMBER 26, 2001

Additional sponsors: Mr. LEACH, Ms. HART, Mr. BEREUTER, Mr.
LATOURETTE, and Ms. PRYCE of Ohio

NOVEMBER 26, 2001

Committees on the Budget and the Judiciary discharged; committed to the
Committee of the Whole House on the State of the Union and ordered
to be printed

[For text of introduced bill, see copy of bill as introduced on November 1, 2001]

A BILL

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

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

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

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Ter-*
5 *rorism 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. Triggering determination and covered period.

Sec. 6. Federal cost-sharing for commercial insurers.

Sec. 7. Assessments.

Sec. 8. Terrorism loss repayment surcharge.

Sec. 9. Administration of assessments and surcharges.

Sec. 10. Application to self-insurance arrangements and offshore insurers and re-
insurers.

Sec. 11. Reserve for terrorism coverage under commercial lines of business.

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. Sovereign immunity protections.
Sec. 16. Study of potential effects of terrorism on life insurance industry.
Sec. 17. Railroad insurance study.
Sec. 18. Study of reinsurance pool system for future acts of terrorism.
Sec. 19. Definitions.
Sec. 20. 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 Cen-*
4 *ter and the Pentagon of September 11, 2001, resulted*
5 *in a large number of deaths and injuries, the destruc-*
6 *tion and damage to buildings, and interruption of*
7 *business operations;*

8 *(2) the attacks have inflicted possibly the largest*
9 *losses ever incurred by insurers and reinsurers in a*
10 *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 has*
14 *created widespread market uncertainties with regard*
15 *to the risk of losses arising from possible future ter-*
16 *rorist attacks;*

17 *(4) such uncertainty threatens the continued*
18 *availability of United States commercial property*
19 *and casualty insurance for terrorism risk at mean-*
20 *ingful coverage levels;*

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

7 (6) *in the past, the private insurance markets*
8 *have shown a remarkable resiliency in adapting to*
9 *changed circumstances;*

10 (7) *given time, the private markets will diversify*
11 *and develop risk spreading mechanisms to increase*
12 *capacity and guard against possible future losses in-*
13 *curring by terrorist attacks;*

14 (8) *it is necessary to create a temporary indus-*
15 *try risk sharing program to ensure the continued*
16 *availability of commercial property and casualty in-*
17 *surance and reinsurance for terrorism-related risks;*

18 (9) *such action is necessary to limit immediate*
19 *market disruptions, encourage economic stabilization,*
20 *and facilitate a transition to a viable market for pri-*
21 *vate terrorism risk insurance; and*

22 (10) *in addition, it is necessary to repeal por-*
23 *tions of the tax law which discourage the insurance*
24 *market from developing the necessary reserves to han-*
25 *dle possible future losses due to acts of terrorism.*

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

2 *The Secretary of the Treasury shall be responsible for*
3 *carrying out a program for financial assistance for com-*
4 *mercial property and casualty insurers, as provided in this*
5 *Act.*

6 **SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO SEC-**
7 **RETARY.**

8 *To the extent such information is not otherwise avail-*
9 *able to the Secretary, the Secretary may require each in-*
10 *surer to submit, to the Secretary or to the NAIC, a state-*
11 *ment specifying the net premium amount of coverage writ-*
12 *ten by such insurer for properties and persons in the United*
13 *States under each line of commercial property and casualty*
14 *insurance sold by such insurer during such periods as the*
15 *Secretary may provide.*

16 **SEC. 5. TRIGGERING DETERMINATION AND COVERED PE-**
17 **RIOD.**

18 *(a) IN GENERAL.—For purposes of this Act, a “trig-*
19 *gering determination” is a determination by the Secretary*
20 *that the insured losses resulting from the occurrence of an*
21 *act of terrorism during the covered period (as such term*
22 *is defined in subsection (b)), or the aggregate insured losses*
23 *resulting from multiple occurrences of acts of terrorism all*
24 *occurring during the covered period, meet the requirements*
25 *under either of the following paragraphs:*

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

3 (2) *INDIVIDUAL INSURER TRIGGER.*—*Such in-*
4 *dustry-wide losses exceed \$100,000,000 and some por-*
5 *tion of such losses for any single commercial insurer*
6 *exceed—*

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

10 (B) *10 percent of the net commercial prop-*
11 *erty and casualty premiums written by such*
12 *commercial insurer;*

13 *except that this paragraph shall not apply to any*
14 *commercial insurer that was not providing commer-*
15 *cial property and casualty insurance coverage prior*
16 *to September 11, 2001.*

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

20 (c) *DETERMINATIONS REGARDING OCCURRENCES.*—
21 *For purposes of subsection (a), the Secretary shall have the*
22 *sole authority, which may not be delegated or designated*
23 *to any other officer, employee, or position, for determining*
24 *whether—*

1 (1) *an occurrence was caused by an act of ter-*
2 *rorism;*

3 (2) *insured losses from acts of terrorism were*
4 *caused by one or multiple occurrences; and*

5 (3) *an act of terrorism occurred during the cov-*
6 *ered period.*

7 **SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSUR-**
8 **ERS.**

9 (a) *IN GENERAL.*—*Pursuant to a triggering deter-*
10 *mination, the Secretary shall provide financial assistance*
11 *to commercial insurers in accordance with this section to*
12 *cover insured losses resulting from acts of terrorism, which*
13 *shall be repaid in accordance with subsection (e).*

14 (b) *AMOUNT.*—

15 (1) *INDUSTRY-WIDE TRIGGER.*—*Subject to sub-*
16 *section (c), with respect to a triggering determination*
17 *under section 5(a)(1), financial assistance shall be*
18 *made available under this section to each commercial*
19 *insurer in an amount equal to 90 percent of the*
20 *amount of the insured losses of the insurer as a result*
21 *of the triggering event involved.*

22 (2) *INDIVIDUAL INSURER TRIGGER.*—*Subject to*
23 *subsection (c), with respect to a triggering determina-*
24 *tion under section 5(a)(2), financial assistance shall*
25 *be made available under this section, to each commer-*

1 *cial insurer incurring insured losses as a result of the*
2 *triggering event involved that exceed the amounts*
3 *under subparagraphs (A) and (B) of such section, in*
4 *an amount equal to the difference between—*

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

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

10 *(c) AGGREGATE LIMITATION.—The aggregate amount*
11 *of financial assistance provided pursuant to this section*
12 *may not exceed \$100,000,000,000.*

13 *(d) LIMITATIONS.—The Secretary may establish such*
14 *limitations as may be necessary to ensure that payments*
15 *under this section in connection with a triggering deter-*
16 *mination are made only to commercial insurers that are*
17 *not in default of any obligation under section 7 to pay as-*
18 *sessments or under section 8 to collect surcharges.*

19 *(e) REPAYMENT.—Financial assistance made available*
20 *under this section shall be repaid through assessments under*
21 *section 7 collected by the Secretary and surcharges remitted*
22 *to the Secretary under section 8. Any such amounts col-*
23 *lected or remitted shall be deposited into the general fund*
24 *of the Treasury.*

1 (f) *EMERGENCY DESIGNATION.*—Congress designates
2 the amount of new budget authority and outlays in all fis-
3 cal years resulting from this section as an emergency re-
4 quirement pursuant to section 252(e) of the Balanced Budg-
5 et and Emergency Deficit Control Act of 1985 (2 U.S.C.
6 901(e)). Such amount shall be available only to the extent
7 that a request, that includes designation of such amount
8 as an emergency requirement as defined in such Act, is
9 transmitted by the President to Congress.

10 **SEC. 7. ASSESSMENTS.**

11 (a) *IN GENERAL.*—In the case of a triggering deter-
12 mination, each commercial insurer shall be subject to as-
13 sessments under this section for the purpose of repaying fi-
14 nancial assistance made available under section 6 in con-
15 nection with such determination.

16 (b) *AGGREGATE ASSESSMENT.*—Pursuant to a trig-
17 gering determination, the Secretary shall determine the ag-
18 gregate amount to be assessed among all commercial insur-
19 ers, which shall be equal to the lesser of—

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

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

24 (c) *ALLOCATION OF ASSESSMENT.*—

1 (1) *IN GENERAL.*—*The Secretary shall allocate*
2 *the aggregate assessment amount determined under*
3 *subsection (b) among all commercial insurers. The*
4 *portion of the aggregate assessment amount that is al-*
5 *located as an assessment on each commercial insurer*
6 *shall be based on the percentage, written by that in-*
7 *surer, of the aggregate written premium for all com-*
8 *mercial insurers, for the calendar year preceding the*
9 *assessment.*

10 (2) *PAYMENT REQUIREMENT.*—*Upon notification*
11 *by the Secretary of an assessment under this section,*
12 *each commercial insurer shall be required to pay to*
13 *the Secretary, in the manner provided under section*
14 *9 by the Secretary, the amount equal to the assess-*
15 *ment on such commercial insurer (subject to the limi-*
16 *tation under paragraph (3)).*

17 (3) *ANNUAL LIMITATION ON AMOUNT ALLOCATED*
18 *TO EACH COMMERCIAL INSURER.*—

19 (A) *IN GENERAL.*—*Of any assessments*
20 *under this section on a commercial insurer, the*
21 *portion required to be paid by any commercial*
22 *insurer during a calendar year shall not exceed*
23 *the amount that is equal to 3 percent of the net*
24 *written premium for such insurer for the pre-*
25 *ceding calendar year.*

1 (B) *MULTIPLE PAYMENTS.*—*If any amounts*
2 *required to be repaid under this section for a cal-*
3 *endar year are limited by operation of subpara-*
4 *graph (A), the Secretary shall provide that all*
5 *such remaining amounts shall be reallocated*
6 *among all commercial insurers (in the manner*
7 *provided in paragraph (1)) over such imme-*
8 *diately succeeding calendar years, and repaid*
9 *over such years, as may be necessary to provide*
10 *for full payment of such remaining amounts, ex-*
11 *cept that the limitation under subparagraph (A)*
12 *shall apply to the amounts paid in any such*
13 *successive calendar years.*

14 (4) *ADMINISTRATIVE FLEXIBILITY.*—

15 (A) *TIMING OF ASSESSMENTS.*—*Assessments*
16 *under this section in connection with a trig-*
17 *gering determination shall be made, to the extent*
18 *that the Secretary considers practicable and ap-*
19 *propriate, at the beginning of the calendar year*
20 *immediately following the triggering determina-*
21 *tion.*

22 (B) *ESTIMATES AND CORRECTIONS.*—*If the*
23 *Secretary makes an assessment at a time other*
24 *than provided under subparagraph (A), the Sec-*
25 *retary may—*

1 (i) require commercial insurers to esti-
2 mate their net premium written for the year
3 in which the assessment is made; and

4 (ii) make a subsequent refund or re-
5 quire additional payments to correct such
6 estimation at the end of the calendar year.

7 (5) *DEFERRAL OF CONTRIBUTIONS.*—The Sec-
8 retary may defer the payment of part or all of the as-
9 sessment required under paragraph (2) to be paid by
10 a commercial insurer, but only to the extent that the
11 Secretary determines that such deferral is necessary to
12 avoid the likely insolvency of the commercial insurer.

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

14 (a) *DETERMINATION OF IMPOSITION AND COLLEC-*
15 *TION.*—

16 (1) *IN GENERAL.*—If, pursuant to a triggering
17 determination, the Secretary determines that the ag-
18 gregate amount of financial assistance provided pur-
19 suant to section 6 exceeds \$20,000,000,000, the Sec-
20 retary shall consider and weigh the factors under
21 paragraph (2) to determine the extent to which a sur-
22 charge under this section should be established.

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

1 (A) the ultimate costs to taxpayers if a sur-
2 charge under this section is not established;

3 (B) the economic conditions in the commer-
4 cial marketplace;

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

7 (D) such other factors as the Secretary con-
8 siders appropriate.

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

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

21 (b) *AMOUNT AND DURATION.*—Subject to subsection
22 (c), the surcharge under this section shall be established in
23 such amount, and shall apply to commercial property and
24 casualty insurance written during such period, as the Sec-
25 retary determines is necessary to recover the aggregate

1 amount of financial assistance provided under section 6 to
2 cover insured losses resulting from the triggering event that
3 exceed \$20,000,000,000.

4 (c) *PERCENTAGE LIMITATION.*—The surcharge under
5 this section applicable to commercial property and casualty
6 insurance coverage may not exceed, on an annual basis, the
7 amount equal to 3 percent of the premium charged for such
8 coverage.

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

11 (1) be based on a percentage of the amount of
12 commercial property and casualty insurance coverage
13 that a policy provides; and

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

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

20 **SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SUR-**
21 **CHARGES.**

22 (a) *MANNER AND METHOD.*—

23 (1) *IN GENERAL.*—The Secretary shall provide
24 for the manner and method of carrying out assess-
25 ments under section 7 and surcharges under section

1 8, including the timing and procedures of making as-
2 sessments and surcharges, notifying commercial in-
3 surers of assessments or surcharge requirements, col-
4 lecting payments from and surcharges through com-
5 mercial insurers, and refunding of any excess
6 amounts paid or crediting such amounts against fu-
7 ture assessments.

8 (2) *EFFECT OF ASSESSMENTS AND SURCHARGES*
9 *ON URBAN COMMERCIAL CENTERS.*—*In determining*
10 *the method and manner of imposing assessments*
11 *under section 7 and surcharges under section 8, in-*
12 *cluding the amount of such assessments and sur-*
13 *charges, the Secretary shall take into consideration*
14 *the economic impact of any such assessments and sur-*
15 *charges on commercial centers of urban areas, includ-*
16 *ing the effect on commercial rents and commercial in-*
17 *surance premiums, particularly rents and premiums*
18 *charged to small businesses, and the availability of*
19 *lease space and commercial insurance within urban*
20 *areas.*

21 (b) *TIMING OF COVERAGES AND ASSESSMENTS.*—*The*
22 *Secretary may adjust the timing of coverages and assess-*
23 *ments provided under this Act to provide for equivalent ap-*
24 *plication of the provisions of this Act to commercial insur-*
25 *ers and policies that are not based on a calendar year.*

1 (c) *ADJUSTMENT.*—*The Secretary may adjust the as-*
2 *sessments charged under section 7 or the percentage imposed*
3 *under the surcharge under section 8 at any time, as the*
4 *Secretary considers appropriate to protect the national in-*
5 *terest, which may include avoiding unreasonable economic*
6 *disruption or excessive market instability and avoiding*
7 *undue burdens on small businesses.*

8 **SEC. 10. APPLICATION TO SELF-INSURANCE ARRANGE-**
9 **MENTS AND OFFSHORE INSURERS AND REIN-**
10 **SURERS.**

11 (a) *SELF-INSURANCE ARRANGEMENTS.*—*The Sec-*
12 *retary may, in consultation with the NAIC, apply the pro-*
13 *visions of this Act, as appropriate, to self-insurance ar-*
14 *rangements by municipalities and other entities, but only*
15 *if such application is determined before the occurrence of*
16 *a triggering event and all of the provisions of this Act are*
17 *applied uniformly to such entities.*

18 (b) *OFFSHORE INSURERS AND REINSURERS.*—*The*
19 *Secretary shall ensure that the provisions of this Act are*
20 *applied as appropriate to any offshore or non-admitted en-*
21 *tities that provide commercial property and casualty insur-*
22 *ance.*

1 **SEC. 11. RESERVE FOR TERRORISM COVERAGE UNDER**
 2 **COMMERCIAL LINES OF BUSINESS.**

3 (a) *IN GENERAL.*—Section 832 of the Internal Revenue
 4 Code of 1986 (relating to insurance company taxable in-
 5 come) is amended by adding at the end the following new
 6 subsection:

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

10 “(1) *INCLUSION FOR DECREASES, AND DEDUC-*
 11 *TION FOR INCREASES, IN BALANCE OF RESERVE.*—

12 “(A) *DECREASE TREATED AS GROSS IN-*
 13 *COME.*—If for any taxable year—

14 “(i) the opening balance for the ter-
 15 rorism commercial business reserve exceeds

16 “(ii) the closing balance for such re-
 17 serve,

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

20 “(B) *INCREASE TREATED AS DEDUCTION.*—
 21 If for any taxable year—

22 “(i) the closing balance for the ter-
 23 rorism commercial business reserve exceeds

24 “(ii) the opening balance for such re-
 25 serve,

1 *such excess shall be taken into account as a de-*
2 *duction under subsection (c)(14).*

3 “(2) *TERRORISM COMMERCIAL BUSINESS RE-*
4 *SERVE.—For purposes of this section, the term ‘ter-*
5 *rorism commercial business reserve’ means amounts*
6 *held in a segregated account (or other separately iden-*
7 *tifiable arrangement or joint pooled account) which*
8 *are set aside exclusively—*

9 “(A) *to mature or liquidate, either by pay-*
10 *ment or reinsurance, future unaccrued claims*
11 *arising from declared terrorism losses under*
12 *commercial lines of business, and*

13 “(B) *if so directed by the insurance com-*
14 *missioner of any State, to pay other claims as*
15 *part of a plan of the company to avoid insol-*
16 *vency.*

17 “(3) *LIMITATION ON AMOUNT OF RESERVE.—*

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

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

1 “(ii) if such excess is distributed dur-
2 ing such following taxable year, the opening
3 balance of such reserve for such following
4 taxable year shall be determined without re-
5 gard to such excess.

6 “(B) RESERVE LIMIT.—

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

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

15 “(iii) ALLOCATION OF LIMIT.—

16 “(I) IN GENERAL.—A reserve’s al-
17 locable share of the national limit for
18 any calendar year is the amount which
19 bears the same ratio to the national
20 limit for such year as the company’s
21 net premium for insurance for com-
22 mercial lines of business which does
23 not exclude coverage for acts of ter-
24 rorism bears to the aggregate written
25 premium for insurance (without re-

1 *gard to terrorism coverage) for all com-*
2 *panies for commercial lines of business.*

3 “(II) *DETERMINATION OF NET*
4 *WRITTEN PREMIUMS.—Except as other-*
5 *wise provided in this section, all deter-*
6 *minations under this subsection shall*
7 *be made on the basis of the amounts*
8 *required to be set forth on the annual*
9 *statement approved by the National*
10 *Association of Insurance Commis-*
11 *sioners.*

12 “(III) *AGGREGATE WRITTEN PRE-*
13 *MIUMS AND NET PREMIUMS.—For pur-*
14 *poses of this clause, the terms ‘aggre-*
15 *gate written premium’ and ‘net pre-*
16 *mium’ have the meanings given such*
17 *terms in section 19 of the Terrorism*
18 *Risk Protection Act.*

19 “(iv) *INFLATION ADJUSTMENT OF*
20 *LIMIT.—In the case of any calendar year*
21 *after 2002, the \$40,000,000,000 amount in*
22 *clause (ii) shall be increased by an amount*
23 *equal to the product of—*

24 “(I) *such dollar amount, and*

1 “(II) the cost-of-living adjustment
2 determined under subsection (f)(3) for
3 such calendar year, determined by sub-
4 stituting ‘calendar year 2001’ for ‘cal-
5 endar year 1992’ in subparagraph (B)
6 thereof.

7 If any amount after adjustment under the
8 preceding sentence is not a multiple of
9 \$1,000,000, such amount shall be rounded
10 to the nearest multiple of \$1,000,000.

11 “(4) *DECLARED TERRORISM LOSSES.*—For pur-
12 poses of this subsection—

13 “(A) *IN GENERAL.*—The term ‘declared ter-
14 rorism losses’ means, with respect to a taxable
15 year—

16 “(i) the amount of net losses and loss
17 adjustment expenses incurred in commercial
18 lines of business that are attributable to 1
19 or more declared terrorism events, plus

20 “(ii) any nonrecoverable assessments,
21 surcharges, or other liabilities that are
22 borne by the company and are attributable
23 to such events.

24 “(B) *DECLARED TERRORISM EVENT.*—The
25 term ‘declared terrorism event’ means any event

1 *declared by the Secretary of the Treasury to be*
2 *an act of terrorism against the United States for*
3 *purposes of this section.*

4 “(5) *REGULATIONS.*—*The Secretary shall pre-*
5 *scribe such regulations as may be appropriate to*
6 *carry out this subsection, and shall prescribe such*
7 *regulations after consultation with the National Asso-*
8 *ciation of Insurance Commissioners.”*

9 **(b) CONFORMING AMENDMENTS.**—

10 (1) *Paragraph (1) of section 832(b) of such Code*
11 *is amended by striking “and” at the end of subpara-*
12 *graph (D), by striking the period at the end of sub-*
13 *paragraph (E) and inserting in lieu thereof “, and”,*
14 *and by adding at the end the following new subpara-*
15 *graph:*

16 “(F) *each net decrease in reserves which is*
17 *required by paragraph (1) or (3) of subsection*
18 *(h) to be taken into account under this subpara-*
19 *graph.”*

20 (2) *Subsection (c) of section 832 of such Code is*
21 *amended by striking “and” at the end of paragraph*
22 *(12), by striking the period at the end of paragraph*
23 *(13) and inserting in lieu thereof “; and”, and by*
24 *adding at the end the following new paragraph:*

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

4 (c) *EFFECTIVE DATE.*—The amendments made by this
5 subsection shall apply to taxable years beginning after De-
6 cember 31, 2001.

7 **SEC. 12. STATE PREEMPTION.**

8 (a) *COVERED PERILS.*—A commercial insurer shall be
9 considered to have complied with any State law that re-
10 quires or regulates the provision of insurance coverage for
11 acts of terrorism if the insurer provides coverage in accord-
12 ance with the definitions regarding acts of terrorism under
13 this Act or under any regulations issued by the Secretary.

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

19 (c) *FILE AND USE.*—With respect only to commercial
20 property and casualty insurance covering acts of terrorism,
21 any provision of State law that requires, as a condition
22 precedent to the effectiveness of rates or policies for such
23 insurance that is made available by an insurer licensed to
24 transact such business in the State, any action (including
25 prior approval by the State insurance regulator for such

1 *State) other than filing of such rates and policies and re-*
2 *lated information with such State insurance regulator is*
3 *preempted to the extent such law requires such additional*
4 *actions for such insurance coverage. This subsection shall*
5 *not be considered to preempt a provision of State law solely*
6 *because the law provides that rates and policies for such*
7 *insurance coverage are, upon such filing, subject to subse-*
8 *quent review and action, which may include actions to dis-*
9 *approve or discontinue use of such rates or policies, by the*
10 *State insurance regulator.*

11 **SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE**
12 **FOR ACTS OF TERRORISM.**

13 *(a) SENSE OF CONGRESS REGARDING COVERED PER-*
14 *ILS.—It is the sense of the Congress that—*

15 *(1) the NAIC, in consultation with the Secretary,*
16 *should develop appropriate definitions for acts of ter-*
17 *rorism and appropriate standards for making deter-*
18 *minations regarding occurrences of acts of terrorism;*

19 *(2) each State should adopt the definitions and*
20 *standards developed by the NAIC for purposes of reg-*
21 *ulating insurance coverage made available in that*
22 *State;*

23 *(3) in consulting with the NAIC, the Secretary*
24 *should advocate and promote the development of defi-*

1 *initions and standards that are appropriate for pur-*
2 *poses of this Act; and*

3 *(4) after consultation with the NAIC, the Sec-*
4 *retary should adopt definitions for acts of terrorism*
5 *and standards for determinations that are appro-*
6 *priate for this Act.*

7 *(b) INSURANCE RESERVE GUIDELINES.—*

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

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

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

17 *(2) CONSIDERATION OF ADOPTION OF NATIONAL*
18 *GUIDELINES.—Upon the expiration of the 6-month*
19 *period beginning on the date of the enactment of this*
20 *Act, the Secretary shall make a determination of*
21 *whether the guidelines referred to in paragraph (1)*
22 *have, by such time, been developed and adopted by*
23 *nearly all States in a uniform manner. If the Sec-*
24 *retary determines that such guidelines have not been*
25 *so developed and adopted, the Secretary shall consider*

1 *adopting, and may adopt, such guidelines on a na-*
2 *tional basis in a manner that would supercede any*
3 *State law regarding maintenance of reserves against*
4 *such risks.*

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

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

15 *(2) ADOPTION OF NATIONAL GUIDELINES.—If the*
16 *Secretary determines that the States have not enacted*
17 *laws or adopted regulations adequately providing for*
18 *the disclosures described in paragraph (1) within a*
19 *reasonable period of time after the date of the enact-*
20 *ment of this Act, the Secretary shall, after consulta-*
21 *tion with the NAIC, adopt guidelines on a national*
22 *basis requiring such disclosure in a manner that*
23 *supercedes any State law regarding such disclosure.*

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 SUR-*
7 *CHARGES.*—*The Secretary may take such actions, including*
8 *entering into such agreements and providing such technical*
9 *and organizational assistance to insurers and State insur-*
10 *ance regulators, as may be necessary to provide for the dis-*
11 *tribution of financial assistance under section 6 and the*
12 *collection of assessments under section 7 and surcharges*
13 *under section 8.*

14 (c) *INVESTIGATING AND AUDITING CLAIMS.*—*The Sec-*
15 *retary may, in consultation with the State insurance regu-*
16 *lators and the NAIC, investigate and audit claims of in-*
17 *sured losses by commercial insurers.*

18 **SEC. 15. SOVEREIGN IMMUNITY PROTECTIONS.**

19 (a) *FEDERAL CAUSE OF ACTION FOR DAMAGES FROM*
20 *TERRORIST ACTS RESULTING IN TRIGGERING DETERMINA-*
21 *TION.*—

22 (1) *IN GENERAL.*—*If a triggering determination*
23 *occurs requiring an assessment under section 7 or a*
24 *surcharge under section 8, there shall exist a Federal*
25 *cause of action, which shall be the exclusive remedy,*
26 *for damages claimed pursuant to, or in connection*

1 *with, any acts of terrorism that caused the insured*
2 *losses resulting in such triggering determination.*

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

8 (3) *JURISDICTION.*—*Pursuant to each triggering*
9 *determination, the Judicial Panel on Multidistrict*
10 *Litigation shall designate one or more district courts*
11 *of the United States which shall have original and ex-*
12 *clusive jurisdiction over all actions brought pursuant*
13 *to this subsection that arise out of the triggering event*
14 *involved.*

15 (4) *OFFSET FOR RELIEF PAYMENTS.*—*Any recov-*
16 *ery by a plaintiff in an action under this subsection*
17 *shall be offset by the amount, if any, received by the*
18 *plaintiff from the United States pursuant to any*
19 *emergency or disaster relief program, or from any*
20 *other collateral source, for compensation of losses re-*
21 *lated to the act of terrorism involved.*

22 (b) *DAMAGES IN ACTIONS REGARDING INSURANCE*
23 *CLAIMS.*—*In an action brought under this section for dam-*
24 *ages or coverage claimed by or against an insured pursuant*
25 *to, or in connection with, any commercial property and*

1 *casualty insurance providing coverage for acts of terrorism*
2 *that resulted in a triggering determination:*

3 (1) *PROHIBITION OF PUNITIVE DAMAGES.—No*
4 *punitive damages intended to punish or deter may be*
5 *awarded.*

6 (2) *NONECONOMIC DAMAGES.—*

7 (A) *IN GENERAL.—Each defendant in such*
8 *an action shall be liable only for the amount of*
9 *noneconomic damages allocated to the defendant*
10 *in direct proportion to the percentage of respon-*
11 *sibility of the defendant for the harm to the*
12 *claimant.*

13 (B) *DEFINITION.—For purposes of subpara-*
14 *graph (A), the term “noneconomic damages”*
15 *means damages for losses for physical and emo-*
16 *tional pain, suffering, inconvenience, physical*
17 *impairment, mental anguish, disfigurement, loss*
18 *of enjoyment of life, loss of society and compan-*
19 *ionship, loss of consortium, hedonic damages, in-*
20 *jury to reputation, and any other nonpecuniary*
21 *losses.*

22 *Nothing in this subsection may be construed to limit an*
23 *action by an injured party for damages other than a claim*
24 *for commercial property and casualty insurance resulting*

1 *from an act of terrorism causing a triggering determina-*
2 *tion.*

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

6 (d) *PROTECTIVE ORDERS.*—*The United States or the*
7 *Secretary may seek protective orders or assert privileges or-*
8 *dinarily available to the United States to protect against*
9 *the disclosure of classified information, including the invo-*
10 *cation of the military and State secrets privilege.*

11 (e) *EXCLUSION.*—*Nothing in this section shall apply*
12 *to, or in any way limit, the liability of any person who—*

13 (1) *attempts to commit, knowingly participates*
14 *in, knowingly and intentionally aids and abets, or*
15 *commits, any act of terrorism or any criminal act re-*
16 *lated to or resulting from an act of terrorism that*
17 *caused the insured losses resulting in the triggering*
18 *determination; or*

19 (2) *knowingly participates in a conspiracy to*
20 *commit any act of terrorism or any criminal act re-*
21 *sulting from or related to an act of terrorism that*
22 *caused the insured losses resulting in the triggering*
23 *determination.*

24 (f) *SATISFACTION OF JUDGMENTS FROM SEIZED AS-*
25 *SETS OF TERRORISTS.*—*All assets of terrorists or terrorist*

1 *organizations seized or frozen by the United States in ac-*
2 *cordance with law shall be liable for satisfaction of judg-*
3 *ments rendered for acts of terrorism, in proportions deter-*
4 *mined by the courts.*

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

7 (a) *ESTABLISHMENT.*—Not later than 30 days after
8 the date of enactment of this Act, the President shall estab-
9 lish a commission (in this section referred to as the “Com-
10 mission”) to study and report on the potential effects of an
11 act or acts of terrorism on the life insurance industry in
12 the United States and the markets served by such industry.

13 (b) *MEMBERSHIP AND OPERATIONS.*—

14 (1) *APPOINTMENT.*—The Commission shall con-
15 sist of 7 members, as follows:

16 (A) *The Secretary of the Treasury or the*
17 *designee of the Secretary.*

18 (B) *The Chairman of the Board of Gov-*
19 *ernors of the Federal Reserve System or the des-*
20 *ignee of the Chairman.*

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

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

1 (i) a representative of direct under-
2 writers of life insurance within the United
3 States;

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

6 (iii) an officer of the NAIC; and

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

9 (2) *OPERATIONS.*—The chairperson of the Com-
10 mission shall determine the manner in which the
11 Commission shall operate, including funding, staffing,
12 and coordination with other governmental entities.

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

16 (1) possible actions to encourage, facilitate, and
17 sustain provision by the life insurance industry in
18 the United States of coverage for losses due to death
19 or disability resulting from an act or acts of ter-
20 rorism, including in the face of threats of such acts;
21 and

22 (2) possible actions or mechanisms to sustain or
23 supplement the ability of the life insurance industry
24 in the United States to cover losses due to death or

1 *disability resulting from an act or acts of terrorism*
2 *in the event that—*

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

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

9 *(C) other consequences from such acts occur,*
10 *as determined by the Commission, that may sig-*
11 *nificantly affect the ability of the life insurance*
12 *industry in the United States to independently*
13 *cover such losses.*

14 *(d) RECOMMENDATIONS.—The Commission may make*
15 *a recommendation pursuant to subsection (c) only upon the*
16 *concurrence of a majority of the members of the Commis-*
17 *sion.*

18 *(e) REPORT.—Not later than 120 days after the date*
19 *of enactment of this Act, the Commission shall submit to*
20 *the House of Representatives and the Senate a report de-*
21 *scribing the results of the study and any recommendations*
22 *developed under subsection (c).*

23 *(f) TERMINATION.—The Commission shall terminate*
24 *60 days after submission of the report as provided for in*
25 *subsection (e).*

1 **SEC. 17. RAILROAD INSURANCE STUDY.**

2 *The Secretary of the Treasury shall conduct a study*
3 *to determine how the Federal Government can address a*
4 *possible crisis in the availability and affordability of rail-*
5 *road insurance by making such insurance for acts of ter-*
6 *rorism available on commercially reasonable terms. Not*
7 *later than 120 days after the date of the enactment of this*
8 *Act the Secretary shall submit to the Congress a report re-*
9 *garding the results and conclusions of the study.*

10 **SEC. 18. STUDY OF REINSURANCE POOL SYSTEM FOR FU-**
11 **TURE ACTS OF TERRORISM.**

12 *(a) STUDY.—The Secretary of the Treasury, the Board*
13 *of Governors of the Federal Reserve System, and the Comp-*
14 *troller General of the United States shall jointly conduct*
15 *a study on—*

16 *(1) the advisability and effectiveness of estab-*
17 *lishing a reinsurance pool system relating to future*
18 *acts of terrorism to replace the Program provided for*
19 *under this Act; and*

20 *(2) the potential effects of the amendments made*
21 *by section 11 of this Act on the availability of ter-*
22 *rorism insurance coverage.*

23 *(b) CONSULTATION.—In conducting the study under*
24 *subsection (a), the Secretary of the Treasury, the Board of*
25 *Governors of the Federal Reserve System, and the Comp-*
26 *troller General shall consult with (1) academic experts, (2)*

1 *the United Nations Secretariat for Trade and Development,*
2 *(3) representatives from the property and casualty insur-*
3 *ance industry, (4) representatives from the reinsurance in-*
4 *dustry, (5) the NAIC, and (6) such consumer organizations*
5 *as the Secretary considers appropriate.*

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

11 **SEC. 19. DEFINITIONS.**

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

14 (1) *ACT OF TERRORISM.*—

15 (A) *IN GENERAL.*—*The term “act of ter-*
16 *rorism” means any act that the Secretary deter-*
17 *mines meets the requirements under subpara-*
18 *graph (B), as such requirements are further de-*
19 *finied and specified by the Secretary in consulta-*
20 *tion with the NAIC.*

21 (B) *REQUIREMENTS.*—*An act meets the re-*
22 *quirements of this subparagraph if the act—*

23 (i) *is unlawful;*

24 (ii) *causes harm to a person, property,*
25 *or entity, in the United States, or in the*

1 *case of a domestic United States air carrier*
2 *or a United States flag vessel, in or outside*
3 *the United States;*

4 *(iii) is committed by a person or group*
5 *of persons or associations who are recog-*
6 *nized, either before or after such act, by the*
7 *Department of State or the Secretary as a*
8 *terrorist group or have conspired with such*
9 *a group or the group's agents or surrogates;*

10 *(iv) has as its purpose to overthrow or*
11 *destabilize the government of any country*
12 *or to influence the policy or affect the con-*
13 *duct of the government of the United States*
14 *by coercion; and*

15 *(v) is not considered an act of war.*

16 (2) *AFFILIATE.*—*The term “affiliate” means,*
17 *with respect to an insurer, any company that con-*
18 *trols, is controlled by, or is under common control*
19 *with the insurer.*

20 (3) *AGGREGATE WRITTEN PREMIUM.*—*The term*
21 *“aggregate written premium” means, with respect to*
22 *a year, the aggregate premium amount of all commer-*
23 *cial property and casualty insurance coverage written*
24 *during such year for persons or properties in the*

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

3 (4) *COMMERCIAL INSURER.—The term “commer-*
4 *cial insurer” means any corporation, association, so-*
5 *ciety, order, firm, company, mutual, partnership, in-*
6 *dividual, aggregation of individuals, or any other*
7 *legal entity that provides commercial property and*
8 *casualty insurance. Such term includes any affiliates*
9 *of a commercial insurer.*

10 (5) *COMMERCIAL PROPERTY AND CASUALTY IN-*
11 *SURANCE.—*

12 (A) *IN GENERAL.—The term “commercial*
13 *property and casualty insurance” means insur-*
14 *ance or reinsurance, or retrocessional reinsur-*
15 *ance, for persons or properties in the United*
16 *States against—*

17 (i) *loss of or damage to property;*

18 (ii) *loss of income or extra expense in-*
19 *curring because of loss of or damage to prop-*
20 *erty;*

21 (iii) *third party liability claims*
22 *caused by negligence or imposed by statute*
23 *or contract, including workers compensa-*
24 *tion; or*

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

3 (B) *EXCLUSIONS.*—Such term does not
4 include—

5 (i) insurance for homeowners, tenants,
6 private passenger nonfleet automobiles, mo-
7 bile homes, or other insurance for personal,
8 family, or household needs;

9 (ii) insurance for professional liability,
10 including medical malpractice, errors and
11 omissions, or directors' and officers' liabil-
12 ity; or

13 (iii) health or life insurance.

14 (6) *CONTROL.*—A company has control over an-
15 other company if—

16 (A) the company directly or indirectly or
17 acting through one or more other persons owns,
18 controls, or has power to vote 25 percent or more
19 of any class of voting securities of the other com-
20 pany;

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

24 (C) the Secretary determines, after notice
25 and opportunity for hearing, that the company

1 *directly or indirectly exercises a controlling in-*
2 *fluence over the management or policies of the*
3 *other company.*

4 (7) *COVERED PERIOD.*—*The term “covered pe-*
5 *riod” has the meaning given such term in section*
6 *5(b).*

7 (8) *INDUSTRY-WIDE LOSSES.*—*The term “indus-*
8 *try-wide losses” means the aggregate insured losses*
9 *sustained by all insurers, from coverage written for*
10 *persons or properties in the United States under all*
11 *lines of commercial property and casualty insurance.*

12 (9) *INSURED LOSS.*—*The term “insured loss”*
13 *means any loss in the United States covered by com-*
14 *mercial property and casualty insurance.*

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

17 (11) *NET PREMIUM.*—*The term “net premium”*
18 *means, with respect a commercial insurer and a year,*
19 *the aggregate premium amount collected by such com-*
20 *mercial insurer for all commercial property and cas-*
21 *ualty insurance coverage written during such year for*
22 *persons or properties in the United States under all*
23 *lines of commercial property and casualty insurance*
24 *by such commercial insurer, less any premium paid*

1 *by such commercial insurer to other commercial in-*
2 *surers to insure or reinsure those risks.*

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

5 (13) *STATE.*—*The term “State” means the States*
6 *of the United States, the District of Columbia, the*
7 *Commonwealth of Puerto Rico, the Commonwealth of*
8 *the Northern Mariana Islands, Guam, the Virgin Is-*
9 *lands, American Samoa, and any other territory or*
10 *possession of the United States.*

11 (14) *STATE INSURANCE REGULATOR.*—*The term*
12 *“State insurance regulator” means, with respect to a*
13 *State, the principal insurance regulatory authority of*
14 *the State.*

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

18 (16) *TRIGGERING EVENT.*—*The term “triggering*
19 *event” means, with respect to a triggering determina-*
20 *tion, the occurrence of an act of terrorism, or the oc-*
21 *currence of such acts, that caused the insured losses*
22 *resulting in such triggering determination.*

23 (17) *UNITED STATES.*—*The term “United*
24 *States” means, collectively, the States (as such term*
25 *is defined in this section).*

1 **SEC. 20. EXTENSION OF PROGRAM.**

2 (a) *AUTHORITY.*—*If the Secretary determines that ac-*
3 *tion under this section is necessary to ensure the adequate*
4 *availability in the United States of commercial property*
5 *and casualty insurance coverage for acts of terrorism, the*
6 *Secretary may, subject to subsection (c), provide that the*
7 *provisions of this Act shall continue to apply with respect*
8 *to calendar year 2003. If the Secretary extends such appli-*
9 *cability to 2003, the Secretary may, in addition, extend*
10 *such applicability to calendar year 2004.*

11 (b) *COVERED PERIOD.*—*If the Secretary exercises the*
12 *authority under subsection (a), notwithstanding section*
13 *5(b) and 19(7), each of the calendar years to which the Sec-*
14 *retary extends the applicability of this Act shall be consid-*
15 *ered to be a covered period for purposes of this Act.*

16 (c) *REPORT.*—*The Secretary may exercise the author-*
17 *ity under subsection (a) to extend the applicability of this*
18 *Act to 2003 or 2004 only if the Secretary submits a report*
19 *to the Congress providing notice of and setting forth the*
20 *reasons for such extension for such specific year.*

21 **SEC. 21. REGULATIONS.**

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

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

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

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

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

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

4 **The Congress finds that—**

- 5 (1) the terrorist attacks on the World
6 Trade Center and the Pentagon of Sep-
7 tember 11, 2001, resulted in a large num-
8 ber of deaths and injuries, the destruc-
9 tion and damage to buildings, and inter-
10 ruption of business operations;
- 11 (2) the attacks have inflicted possibly
12 the largest losses ever incurred by insur-
13 ers and reinsurers;
- 14 (3) while the insurance and reinsur-
15 ance industries have committed to pay

1 **the losses arising from the September 11**
2 **attacks, the resulting disruption has cre-**
3 **ated widespread market uncertainties**
4 **with regard to the risk of losses arising**
5 **from possible future terrorist attacks;**

6 **(4) such uncertainty threatens the**
7 **continued availability of United States**
8 **commercial property casualty insurance**
9 **for terrorism risk at meaningful coverage**
10 **levels;**

11 **(5) the unavailability of affordable**
12 **commercial property and casualty insur-**
13 **ance for terrorist acts threatens the**
14 **growth and stability of the United States**
15 **economy, including impeding the ability**
16 **of financial services providers to finance**
17 **commercial property acquisitions and**
18 **new construction;**

19 **(6) in the past, the private insurance**
20 **markets have shown a remarkable resil-**
21 **iency in adapting to changed cir-**
22 **cumstances;**

23 **(7) given time, the private markets**
24 **will diversify and develop risk spreading**
25 **mechanisms to increase capacity and**

1 **guard against possible future losses in-**
2 **curred by terrorist attacks;**

3 **(8) it is necessary to create a tem-**
4 **porary industry risk sharing loan pro-**
5 **gram to ensure the continued availability**
6 **of commercial property and casualty in-**
7 **surance and reinsurance for terrorism-re-**
8 **lated risks;**

9 **(9) such action is necessary to limit**
10 **immediate market disruptions, encourage**
11 **economic stabilization, and facilitate a**
12 **transition to a viable market for private**
13 **terrorism risk insurance; and**

14 **(10) in addition, it is necessary**
15 **promptly to conduct a study of whether**
16 **there is a need for reserves for property**
17 **and casualty insurance for terrorist or**
18 **other catastrophic events.**

19 **SEC. 3. DESIGNATION OF ADMINISTRATORS.**

20 **(a) IN GENERAL.—Not later than December**
21 **1, 2001, the President shall designate a Fed-**
22 **eral officer or officers to act as the Adminis-**
23 **trator or Administrators responsible for car-**
24 **rying out this Act and the responsibilities**

1 under this Act to be carried out by each such
2 officer.

3 (b) SENSE OF CONGRESS.—It is the sense of
4 the Congress that in determining the Admin-
5 istrator responsible for making any deter-
6 minations, for purposes of this Act, as to
7 whether a loss was caused by an act of ter-
8 rorism and whether such loss was caused by
9 one or multiple such events, pursuant to sec-
10 tion 5(b), the President should consider the
11 appropriate role of the Assistant to the Presi-
12 dent for Homeland Security.

13 SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO AD-
14 MINISTRATOR.

15 To the extent such information is not oth-
16 erwise available to the Administrators, the
17 appropriate Administrator may require each
18 insurer to submit, to the appropriate Admin-
19 istrator or to the NAIC, a statement specifying
20 the aggregate premium amount of coverage
21 written by such insurer for properties and
22 persons in the United States under each line
23 of commercial property and casualty insur-
24 ance sold by such insurer during such periods

1 as the appropriate Administrator may pro-
2 vide.

3 SEC. 5. TRIGGERING DETERMINATION AND COVERED PE-
4 RIOD.

5 (a) IN GENERAL.—For purposes of this Act,
6 a “triggering determination” is a determina-
7 tion by the appropriate Administrator that
8 the insured losses resulting from the event of
9 an act of terrorism occurring during the cov-
10 ered period (as such term is defined in sub-
11 section (b)), or the aggregate insured losses
12 resulting from multiple events of acts of ter-
13 rorism all occurring during the covered pe-
14 riod, meet the requirements under either of
15 the following paragraphs:

16 (1) INDUSTRY-WIDE LOSS TEST.—Such
17 industry-wide losses exceed
18 \$1,000,000,000.

19 (2) CAPITAL SURPLUS AND INDUSTRY AG-
20 GREGATE TEST.—Such industry-wide losses
21 exceed \$100,000,000 and some portion of
22 such losses for any single commercial in-
23 surer exceed—

24 (A) 10 percent of the capital sur-
25 plus of such commercial insurer (as

1 such term is defined by the appro-
2 priate Administrator); and

3 **(B) 10 percent of the commercial**
4 **property and casualty premiums**
5 **written by such commercial insurer;**
6 **except that this paragraph shall not**
7 **apply to any commercial insurer that has**
8 **been making commercial property and**
9 **casualty insurance coverage available for**
10 **less than 4 years as of the date of the de-**
11 **termination under this subsection.**

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

16 **(c) DETERMINATIONS REGARDING EVENTS.—**
17 **For purposes of subsection (a), the appro-**
18 **priate Administrator shall have the sole au-**
19 **thority for determining whether—**

20 **(1) an occurrence or event was**
21 **caused by an act of terrorism;**

22 **(2) insured losses from acts of ter-**
23 **rorism were caused by one or multiple**
24 **events or occurrences; and**

1 **(3) whether an act of terrorism oc-**
2 **curred during the covered period.**

3 **SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSUR-**
4 **ERS.**

5 **(a) IN GENERAL.—Pursuant to a triggering**
6 **determination, the appropriate Administrator**
7 **shall provide financial assistance to commer-**
8 **cial insurers in accordance with this section**
9 **to cover insured losses resulting from acts of**
10 **terrorism, which shall be repaid in accord-**
11 **ance with subsection (e).**

12 **(b) AMOUNT.—Subject to subsection (c),**
13 **with respect to a triggering determination,**
14 **the amount of financial assistance made avail-**
15 **able under this section to each commercial in-**
16 **surer shall be equal to 90 percent of the**
17 **amount of the insured losses of the insurer as**
18 **a result of the triggering event involved.**

19 **(c) AGGREGATE LIMITATION.—The aggre-**
20 **gate amount of financial assistance provided**
21 **pursuant to this section may not exceed**
22 **\$100,000,000,000.**

23 **(d) LIMITATIONS.—The appropriate Admin-**
24 **istrator may establish such limitations as may**
25 **be necessary to ensure that payments under**

1 **this section in connection with a triggering**
2 **determination are made only to commercial**
3 **insurers that are not in default of any obliga-**
4 **tion under section 7 to pay assessments or**
5 **under section 8 to collect surcharges.**

6 **(e) REPAYMENT.—Financial assistance**
7 **made available under this section shall be re-**
8 **paid through assessments under section 7 col-**
9 **lected by the appropriate Administrator and**
10 **surcharges remitted to the appropriate Ad-**
11 **ministrator under section 8. Any such**
12 **amounts collected or remitted shall be depos-**
13 **ited into the general fund of the Treasury.**

14 **(f) EMERGENCY DESIGNATION.—Congress**
15 **designates the amount of new budget author-**
16 **ity and outlays in all fiscal years resulting**
17 **from this section as an emergency require-**
18 **ment pursuant to section 252(e) of the Bal-**
19 **anced Budget and Emergency Deficit Control**
20 **Act of 1985 (2 U.S.C. 901(e)). Such amount**
21 **shall be available only to the extent that a re-**
22 **quest, that includes designation of such**
23 **amount as an emergency requirement as de-**
24 **finied in such Act, is transmitted by the Presi-**
25 **dent to Congress.**

1 **SEC. 7. ASSESSMENTS.**

2 **(a) IN GENERAL.—**In the case of a trig-
3 **gering determination, each commercial in-**
4 **surer shall be subject to assessments under**
5 **this section for the purpose of repaying finan-**
6 **cial assistance made available under section**
7 **6 in connection with such determination.**

8 **(b) AGGREGATE ASSESSMENT.—**Pursuant to
9 **a triggering determination, the appropriate**
10 **Administrator shall determine the aggregate**
11 **amount to be assessed among all commercial**
12 **insurers, which shall be equal to 90 percent**
13 **of the lesser of—**

14 **(1) the amount of industry-wide losses**
15 **resulting from the triggering event in-**
16 **volved; and**

17 **(2) \$20,000,000,000.**

18 **(c) ALLOCATION OF ASSESSMENT.—**

19 **(1) IN GENERAL.—**The appropriate Ad-
20 **ministrator shall allocate the aggregate**
21 **assessment amount determined under**
22 **subsection (b) among all commercial in-**
23 **surers. The portion of the aggregate as-**
24 **essment amount that is allocated as an**
25 **assessment on each commercial insurer**
26 **shall be based on the percentage, written**

1 by that insurer, of the aggregate written
2 premium, for all commercial insurers, for
3 the calendar year preceding the assess-
4 ment.

5 (2) PAYMENT REQUIREMENT.—Upon no-
6 tification by the appropriate Adminis-
7 trator of an assessment under this sec-
8 tion, each commercial insurer shall be re-
9 quired to pay to the appropriate Adminis-
10 trator, in the manner provided under sec-
11 tion 9 by the appropriate Administrator,
12 the amount equal to the assessment on
13 such commercial insurer (subject to the
14 limitation under paragraph (3)).

15 (3) ANNUAL LIMITATION ON AMOUNT AL-
16 LOCATED TO EACH COMMERCIAL INSURER.—

17 (A) IN GENERAL.—Of any assess-
18 ments under this section on a com-
19 mercial insurer, the portion required
20 to be paid by any commercial insurer
21 during a calendar year shall not ex-
22 ceed the amount that is equal to 3
23 percent of the aggregate written pre-
24 mium for such insurer for the pre-
25 ceding calendar year.

1 **(B) MULTIPLE PAYMENTS.—**If any
2 amounts required to be repaid under
3 this section for a calendar year are
4 limited by operation of subparagraph
5 (A), the appropriate Administrator
6 shall provide that all such remaining
7 amounts shall be reallocated among
8 all commercial insurers (in the man-
9 ner provided in paragraph (1)) over
10 such immediately succeeding cal-
11 endar years, and repaid over such
12 years, as may be necessary to provide
13 for full payment of such remaining
14 amounts, except that the limitation
15 under subparagraph (A) shall apply
16 to the amounts paid in any such suc-
17 cessive calendar years.

18 **(C) ADMINISTRATIVE FLEXIBILITY.—**

19 **(i) TIMING OF ASSESSMENTS.—**
20 Assessments under this section in
21 connection with a triggering dem-
22 onstration shall be made, to the
23 extent that the appropriate Ad-
24 ministrator considers practicable
25 and appropriate, at the beginning

1 of the calendar year immediately
2 following the triggering deter-
3 mination.

4 (ii) ESTIMATES AND CORREC-
5 TIONS.—If the appropriate Admin-
6 istrator makes an assessment at a
7 time other than provided under
8 clause (i), the appropriate Admin-
9 istrator may—

10 (I) require commercial in-
11 surers to estimate their aggre-
12 gate written premiums for the
13 year in which the assessment
14 is made; and

15 (II) make a subsequent re-
16 fund or require additional
17 payments to correct such esti-
18 mation at the end of the cal-
19 endar year.

20 (4) DEFERRAL OF CONTRIBUTIONS.—The
21 appropriate Administrator may defer the
22 payment of part or all of the assessment
23 required under paragraph (2) to be paid
24 by a commercial insurer, but only to the
25 extent that the appropriate Adminis-

1 **trator determines that such deferral is**
2 **necessary to avoid the likely insolvency**
3 **of the commercial insurer.**

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

5 **(a) IMPOSITION AND COLLECTION.—If, pursu-**
6 **ant to a triggering determination, the appro-**
7 **priate Administrator determines that the ag-**
8 **gregate amount of industry-wide losses result-**
9 **ing from the triggering event involved ex-**
10 **ceeds \$20,000,000,000, the appropriate Admin-**
11 **istrator shall—**

12 **(1) establish and impose a policy-**
13 **holder premium surcharge, as provided**
14 **under this section, on commercial prop-**
15 **erty and casualty insurance written after**
16 **such determination, for the purpose of**
17 **repaying financial assistance made avail-**
18 **able under section 6 in connection with**
19 **such triggering determination; and**

20 **(2) provide for commercial insurers to**
21 **collect such surcharge and remit**
22 **amounts collected to the appropriate Ad-**
23 **ministrator.**

24 **(b) AMOUNT AND DURATION.—The sur-**
25 **charge under this section shall be established**

1 in such amount, and shall apply to commer-
2 cial property and casualty insurance written
3 during such period, as the appropriate Ad-
4 ministrator determines is necessary to re-
5 cover the aggregate amount of financial as-
6 sistance provided under section 6 to cover in-
7 sured losses resulting from the triggering
8 event that exceed \$20,000,000,000.

9 (c) OTHER TERMS.—The surcharge under
10 this section shall—

11 (1) be based on a percentage of the
12 amount of commercial property and cas-
13 ualty insurance coverage that a policy
14 provides; and

15 (2) be imposed with respect to all
16 commercial property and casualty insur-
17 ance coverage written during the period
18 referred to in subsection (b).

19 SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SUR-
20 CHARGES.

21 (a) MANNER AND METHOD.—The appro-
22 priate Administrator shall provide for the
23 manner and method of carrying out assess-
24 ments under section 7 and surcharges under
25 section 8, including the timing and proce-

1 **dures of making assessments and surcharges,**
2 **notifying commercial insurers of assessments**
3 **or surcharge requirements, collecting pay-**
4 **ments from and surcharges through commer-**
5 **cial insurers, and refunding of any excess**
6 **amounts paid or crediting such amounts**
7 **against future assessments.**

8 **(b) TIMING OF COVERAGES AND ASSESS-**
9 **MENTS.—The appropriate Administrator may**
10 **adjust the timing of coverages and assess-**
11 **ments provided under this Act to provide for**
12 **equivalent application of the provisions of**
13 **this Act to commercial insurers and policies**
14 **that are not based on a calendar year.**

15 **(c) APPLICATION TO SELF-INSURANCE AR-**
16 **RANGEMENTS.—The appropriate Administrator**
17 **may, in consultation with the NAIC, apply the**
18 **provisions of this Act, as appropriate, to self-**
19 **insurance arrangements by municipalities**
20 **and other entities, but only if such applica-**
21 **tion is determined before the occurrence of a**
22 **triggering event and all of the provisions of**
23 **this Act are applied uniformly to such enti-**
24 **ties.**

1 **(d) ADJUSTMENT.—The appropriate Admin-**
2 **istrator may adjust the assessments charged**
3 **under section 7 or the percentage imposed**
4 **under the surcharge under section 8 at any**
5 **time, as the appropriate Administrator con-**
6 **siders appropriate to protect the national in-**
7 **terest, which may include avoiding unreason-**
8 **able economic disruption or excessive market**
9 **instability.**

10 **SEC. 10. STUDY OF RESERVES FOR PROPERTY AND CAS-**
11 **UALTY INSURANCE FOR TERRORIST OR**
12 **OTHER CATASTROPHIC EVENTS.**

13 **(a) IN GENERAL.—The Secretary of the**
14 **Treasury shall conduct a study of issues relat-**
15 **ing to permitting property and casualty insur-**
16 **ance companies to establish deductible re-**
17 **serves against losses for future acts of ter-**
18 **rorism, including—**

19 **(1) whether such tax-favored reserves**
20 **would promote (A) insurance coverage of**
21 **risks of terrorism and (B) the accumula-**
22 **tion of additional resources needed to**
23 **satisfy potential claims resulting from**
24 **such risks,**

1 **(2) the lines of business for which**
2 **such reserves would be appropriate, in-**
3 **cluding whether such reserves should be**
4 **applied to personal or commercial lines**
5 **of business,**

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

8 **(4) how such reserves would be ad-**
9 **ministered,**

10 **(5) a comparison of the Federal tax**
11 **treatment of such reserves with other in-**
12 **surance reserves permitted under Fed-**
13 **eral tax laws,**

14 **(6) an analysis of the use of tax-fa-**
15 **vored reserves for catastrophic events,**
16 **including acts of terrorism, under the tax**
17 **laws of foreign countries, and**

18 **(7) whether it would be appropriate**
19 **to permit similar reserves for other fu-**
20 **ture catastrophic events, such as natural**
21 **disasters, taking into account the factors**
22 **under the preceding paragraphs.**

23 **(b) REPORT.—Not later than 4 months after**
24 **the date of the enactment of this Act, the Sec-**
25 **retary of the Treasury shall submit a report**

1 to Congress on the results of the study under
2 subsection (a), together with recommenda-
3 tions for amending the Internal Revenue
4 Code of 1986 or other appropriate action.

5 SEC. 11. STATE PREEMPTION.

6 (a) COVERED PERILS.—A commercial in-
7 surer shall be considered to have complied
8 with any State law that requires or regulates
9 the provision of insurance coverage for acts
10 of terrorism if the insurer provides coverage
11 in accordance with the definitions regarding
12 acts of terrorism under the regulations issued
13 by the Administrators.

14 (b) RATE LAWS.—If any provision of any
15 State law prevents an insurer from increasing
16 its premium rates in an amount necessary to
17 recover any assessments pursuant to section
18 7, such provision is preempted only to the ex-
19 tent necessary to provide for such insurer to
20 recover such losses.

21 (c) FILE AND USE.—With respect only to
22 commercial property and casualty insurance
23 covering acts of terrorism, any provision of
24 State law that requires, as a condition prece-
25 dent to the effectiveness of rates or policies

1 for such insurance that is made available by
2 an insurer licensed to transact such business
3 in the State, any action (including prior ap-
4 proval by the State insurance regulator for
5 such State) other than filing of such rates and
6 policies and related information with such
7 State insurance regulator is preempted to the
8 extent such law requires such additional ac-
9 tions for such insurance coverage. This sub-
10 section shall not be considered to preempt a
11 provision of State law solely because the law
12 provides that rates and policies for such in-
13 surance coverage are, upon such filing, sub-
14 ject to subsequent review and action, which
15 may include actions to disapprove or dis-
16 continue use of such rates or policies, by the
17 State insurance regulator.

18 SEC. 12. CONSISTENT STATE GUIDELINES FOR COVERAGE

19 FOR ACTS OF TERRORISM.

20 (a) SENSE OF CONGRESS REGARDING COV-
21 ERED PERILS.—It is the sense of the Congress
22 that—

23 (1) the NAIC, in consultation with the
24 appropriate Administrator, should de-
25 velop appropriate definitions for acts of

1 **terrorism and appropriate standards for**
2 **making determinations regarding events**
3 **or occurrences of acts of terrorism;**

4 **(2) each State should adopt the defi-**
5 **nitions and standards developed by the**
6 **NAIC for purposes of regulating insur-**
7 **ance coverage made available in that**
8 **State;**

9 **(3) in consulting with the NAIC, the**
10 **appropriate Administrator should advo-**
11 **cate and promote the development of**
12 **definitions and standards that are appro-**
13 **priate for purposes of this Act; and**

14 **(4) after consultation with the NAIC,**
15 **the appropriate Administrator should**
16 **adopt definitions for acts of terrorism**
17 **and standards for determinations that**
18 **are appropriate for this Act.**

19 **(b) INSURANCE RESERVE GUIDELINES.—**

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

23 **(A) the NAIC should develop ap-**
24 **propriate guidelines for commercial**
25 **insurers and pools regarding mainte-**

1 **nance of reserves against the risks of**
2 **acts of terrorism; and**

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

7 **(2) CONSIDERATION OF ADOPTION OF NA-**
8 **TIONAL GUIDELINES.—Upon the expiration**
9 **of the 6-month period beginning on the**
10 **date of the enactment of this Act, the ap-**
11 **propriate Administrator shall make a de-**
12 **termination of whether the guidelines re-**
13 **ferred to in paragraph (1) have, by such**
14 **time, been developed and adopted by**
15 **nearly all States in a uniform manner. If**
16 **the appropriate Administrator deter-**
17 **mines that such guidelines have not been**
18 **so developed and adopted, the appro-**
19 **priate Administrator shall consider**
20 **adopting, and may adopt, such guidelines**
21 **on a national basis in a manner that**
22 **would supercede any State law regarding**
23 **maintenance of reserves against such**
24 **risks.**

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

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

13 **(2) ADOPTION OF NATIONAL GUIDE-**
14 **LINES.—If the appropriate Administrator**
15 **determines that the States have not en-**
16 **acted laws or adopted regulations ade-**
17 **quately providing for the disclosures de-**
18 **scribed in paragraph (1) within a reason-**
19 **able period of time after the date of the**
20 **enactment of this Act, the appropriate**
21 **Administrator shall, after consultation**
22 **with the NAIC, adopt guidelines on a na-**
23 **tional basis requiring such disclosure in**
24 **a manner that supercedes any State law**
25 **regarding such disclosure.**

1 SEC. 13. CONSULTATION WITH STATE INSURANCE REGU-
2 LATORS AND NAIC.

3 **The Administrators shall consult with the**
4 **State insurance regulators and the NAIC in**
5 **carrying out this Act. The Administrators may**
6 **take such actions, including entering into**
7 **such agreements and providing such tech-**
8 **nical and organizational assistance to insur-**
9 **ers and State insurance regulators, as may be**
10 **necessary to provide for the distribution of fi-**
11 **nancial assistance under section 6 and the**
12 **collection of assessments under section 7 and**
13 **surcharges under section 8.**

14 SEC. 14. SOVEREIGN IMMUNITY PROTECTIONS.

15 **(a) FEDERAL CAUSE OF ACTION FOR DAM-**
16 **AGES FROM TERRORIST ACTS RESULTING IN**
17 **TRIGGERING DETERMINATION.—**

18 **(1) IN GENERAL.—If a triggering deter-**
19 **mination occurs requiring an assessment**
20 **under section 7 or a surcharge under sec-**
21 **tion 8, there shall exist a Federal cause of**
22 **action, which shall be the exclusive rem-**
23 **edy, for damages claimed pursuant to, or**
24 **in connection with, any acts of terrorism**
25 **that caused the insured losses resulting**
26 **in such triggering determination.**

1 **(2) SUBSTANTIVE LAW.—**The sub-
2 stantive law for decision in any such ac-
3 tion shall be derived from the law, in-
4 cluding choice of law principles, of the
5 State in which such act of terrorism oc-
6 curred, unless such law is inconsistent
7 with or preempted by Federal law.

8 **(3) JURISDICTION.—**Pursuant to each
9 triggering determination, the Judicial
10 Panel on Multidistrict Litigation shall
11 designate one or more district courts of
12 the United States which shall have origi-
13 nal and exclusive jurisdiction over all ac-
14 tions brought pursuant to this subsection
15 that arise out of the triggering event in-
16 volved.

17 **(4) OFFSET FOR RELIEF PAYMENTS.—**Any
18 recovery by a plaintiff in an action under
19 this subsection shall be offset by the
20 amount, if any, received by the plaintiff
21 from the United States pursuant to any
22 emergency or disaster relief program, or
23 from any other collateral source, for com-
24 pensation of losses related to the act of
25 terrorism involved.

1 **(b) DAMAGES IN ACTIONS REGARDING INSUR-**
2 **ANCE CLAIMS.—In an action brought under**
3 **this section for damages claimed by an in-**
4 **sured pursuant to, or in connection with, any**
5 **commercial property and casualty insurance**
6 **providing coverage for acts of terrorism that**
7 **resulted in a triggering determination:**

8 **(1) PROHIBITION OF PUNITIVE DAM-**
9 **AGES.—No punitive damages intended to**
10 **punish or deter may be awarded.**

11 **(2) NONECONOMIC DAMAGES.—**

12 **(A) IN GENERAL.—Each defendant**
13 **in such an action shall be liable only**
14 **for the amount of noneconomic dam-**
15 **ages allocated to the defendant in di-**
16 **rect proportion to the percentage of**
17 **responsibility of the defendant for**
18 **the harm to the claimant.**

19 **(B) DEFINITION.—For purposes of**
20 **subparagraph (A), the term “non-**
21 **economic damages” means damages**
22 **for losses for physical and emotional**
23 **pain, suffering, inconvenience, phys-**
24 **ical impairment, mental anguish, dis-**
25 **figurement, loss of enjoyment of life,**

1 loss of society and companionship,
 2 loss of consortium, hedonic damages,
 3 injury to reputation, and any other
 4 nonpecuniary losses of any kind or
 5 nature.

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

10 **(d) PROTECTIVE ORDERS.**—The United
 11 States or any appropriate Administrator car-
 12 rying out responsibilities under this Act may
 13 seek protective orders or assert privileges or-
 14 dinarily available to the United States to pro-
 15 tect against the disclosure of classified infor-
 16 mation, including the invocation of the mili-
 17 tary and State secrets privilege

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

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

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

3 **(b) MEMBERSHIP AND OPERATIONS.—**

4 **(1) APPOINTMENT.—The Commission**
5 **shall consist of 5 members, as follows:**

6 **(A) The appropriate Adminis-**
7 **trator, as designated by the Presi-**
8 **dent.**

9 **(B) 4 members appointed by the**
10 **President, who shall be—**

11 **(i) a representative of direct**
12 **underwriters of life insurance**
13 **within the United States;**

14 **(ii) a representative of rein-**
15 **surers of life insurance within the**
16 **United States;**

17 **(iii) an officer of the NAIC;**
18 **and**

19 **(iv) a representative of insur-**
20 **ance agents for life underwriters.**

21 **(2) OPERATIONS.—The chairperson of**
22 **the Commission shall determine the man-**
23 **ner in which the Commission shall oper-**
24 **ate, including funding, staffing, and co-**

1 **ordination with other governmental enti-**
2 **ties.**

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

7 **(1) possible actions to encourage, fa-**
8 **cilitate, and sustain provision by the life**
9 **insurance industry in the United States**
10 **of coverage for losses due to death or dis-**
11 **ability resulting from an act or acts of**
12 **terrorism, including in the face of threats**
13 **of such acts; and**

14 **(2) possible actions or mechanisms to**
15 **sustain or supplement the ability of the**
16 **life insurance industry in the United**
17 **States to cover losses due to death or dis-**
18 **ability resulting from an act or acts of**
19 **terrorism in the event that—**

20 **(A) such acts significantly affect**
21 **mortality experience of the popu-**
22 **lation of the United States over any**
23 **period of time;**

24 **(B) such loses jeopardize the cap-**
25 **ital and surplus of the life insurance**

1 **industry in the United States as a**
2 **whole; or**

3 **(C) other consequences from such**
4 **acts occur, as determined by the**
5 **Commission, that may significantly**
6 **affect the ability of the life insurance**
7 **industry in the United States to inde-**
8 **pendently cover such losses.**

9 **(d) RECOMMENDATIONS.—The Commission**
10 **may make a recommendation pursuant to**
11 **subsection (c) only upon the concurrence of a**
12 **majority of the members of the Commission.**

13 **(e) REPORT.—Not later than 120 days after**
14 **the date of enactment of this Act, the Commis-**
15 **sion shall submit to the House of Representa-**
16 **tives and the Senate a report describing the**
17 **results of the study and any recommendations**
18 **developed under subsection (c).**

19 **(f) TERMINATION.—The Commission shall**
20 **terminate 60 days after submission of the re-**
21 **port as provided for in subsection (e).**

22 **SEC. 16. DEFINITIONS.**

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

25 **(1) ACT OF TERRORISM.—**

1 **(A) IN GENERAL.—**The term “act of
2 terrorism” means any act that the ap-
3 propriate Administrator determines
4 meets the requirements under sub-
5 paragraph (B), as such requirements
6 are further defined and specified by
7 the appropriate Administrator in con-
8 sultation with the NAIC.

9 **(B) REQUIREMENTS.—**An act meets
10 the requirements of this subpara-
11 graph if the act—

12 (i) is unlawful;

13 (ii) causes harm to a person,
14 property, or entity, in the United
15 States;

16 (iii) is committed by a group
17 of persons or associations who—

18 (I) are not a government
19 of a foreign country or the de
20 facto government of a foreign
21 country; and

22 (II) are recognized by the
23 Department of State or the
24 appropriate Administrator as
25 a terrorist group or have con-

1 spired with such a group or
2 the group's agents or surro-
3 gates; and

4 (iv) has as its purpose to over-
5 throw or destabilize the govern-
6 ment of any country or to influ-
7 ence the policy or affect the con-
8 duct of the government of the
9 United States by coercion.

10 (2) **APPROPRIATE ADMINISTRATORS.—**

11 The term “appropriate Administrator”
12 means, with respect to any function or
13 responsibility of the Federal Government
14 under this Act, the Federal officer des-
15 ignated by the President pursuant to sec-
16 tion 3 as responsible for carrying out
17 such function or responsibility.

18 (3) **AFFILIATE.—**The term “affiliate”

19 means, with respect to an insurer, any
20 company that controls, is controlled by,
21 or is under common control with the in-
22 surer.

23 (4) **AGGREGATE WRITTEN PREMIUM.—**

24 The term “aggregate written premium”
25 means, with respect to a year, the aggre-

1 **gate premium amount of all commercial**
2 **property and casualty insurance cov-**
3 **erage written during such year for per-**
4 **sons or properties in the United States**
5 **under all lines of commercial property**
6 **and casualty insurance.**

7 **(5) COMMERCIAL INSURANCE.—The term**
8 **“commercial insurance” means property**
9 **and casualty insurance that is not insur-**
10 **ance for homeowners, tenants, private**
11 **passenger nonfleet automobiles, mobile**
12 **homes, or other insurance for personal,**
13 **family, or household needs.**

14 **(6) COMMERCIAL INSURER.—The term**
15 **“commercial insurer” means any corpora-**
16 **tion, association, society, order, firm,**
17 **company, mutual, partnership, indi-**
18 **vidual, aggregation of individuals, or any**
19 **other legal entity that is engaged in the**
20 **business of providing commercial prop-**
21 **erty and casualty insurance for persons**
22 **or properties in the United States. Such**
23 **term includes any affiliates of a commer-**
24 **cial insurer.**

1 **(7) COMMERCIAL PROPERTY AND CAS-**
2 **UALTY INSURANCE.—The term “commercial**
3 **property and casualty insurance” means**
4 **property and casualty insurance that is**
5 **commercial insurance.**

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

8 **(A) the company directly or indi-**
9 **rectly or acting through one or more**
10 **other persons owns, controls, or has**
11 **power to vote 25 percent or more of**
12 **any class of voting securities of the**
13 **other company;**

14 **(B) the company controls in any**
15 **manner the election of a majority of**
16 **the directors or trustees of the other**
17 **company; or**

18 **(C) the appropriate Administrator**
19 **determines, after notice and oppor-**
20 **tunity for hearing, that the company**
21 **directly or indirectly exercises a con-**
22 **trolling influence over the manage-**
23 **ment or policies of the other com-**
24 **pany.**

1 **(9) COVERED PERIOD.**—The term “cov-
2 **ered period**” has the meaning given such
3 **term in section 5(b).**

4 **(10) INDUSTRY-WIDE LOSSES.**—The term
5 **“industry-wide losses”** means the aggre-
6 **gate insured losses sustained by all insur-**
7 **ers, from coverage written for persons or**
8 **properties in the United States, under all**
9 **lines of commercial property and cas-**
10 **ualty insurance.**

11 **(11) INSURED LOSS.**—The term “in-
12 **sured loss”** means any loss in the United
13 **States covered by commercial property**
14 **and casualty insurance.**

15 **(12) INSURER.**—The term “insurer”
16 **means any corporation, association, soci-**
17 **ety, order, firm, company, mutual, part-**
18 **nership, individual, aggregation of indi-**
19 **viduals, or any other legal entity that is**
20 **engaged in the business of providing**
21 **property and casualty insurance for per-**
22 **sons or properties in the United States.**
23 **Such term includes any affiliates of an in-**
24 **surer.**

1 **(13) NAIC.**—The term “NAIC” means
2 **the National Association of Insurance**
3 **Commissioners.**

4 **(14) PROPERTY AND CASUALTY INSUR-**
5 **ANCE.**—The term “property and casualty
6 **insurance” means insurance against—**

7 **(A) loss of or damage to property;**

8 **(B) loss of income or extra ex-**
9 **pense incurred because of loss of or**
10 **damage to property; and**

11 **(C) third party liability claims**
12 **caused by negligence or imposed by**
13 **statute or contract.**

14 **Such term does not include health or life**
15 **insurance.**

16 **(15) STATE.**—The term “State” means
17 **the States of the United States, the Dis-**
18 **trict of Columbia, the Commonwealth of**
19 **Puerto Rico, the Commonwealth of the**
20 **Northern Mariana Islands, Guam, the Vir-**
21 **gin Islands, American Samoa, and any**
22 **other territory or possession of the**
23 **United States.**

24 **(16) STATE INSURANCE REGULATOR.**—
25 **The term “State insurance regulator”**

1 means, with respect to a State, the prin-
2 cipal insurance regulatory authority of
3 the State.

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

7 (18) TRIGGERING EVENT.—The term
8 “triggering event” means, with respect to
9 a triggering determination, the event of
10 an act of terrorism, or the events of such
11 acts, that caused the insured losses re-
12 sulting in such triggering determination.

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

17 SEC. 17. EXTENSION OF PROGRAM.

18 (a) AUTHORITY.—If the appropriate Admin-
19 istrator determines that action under this sec-
20 tion is necessary to ensure the adequate avail-
21 ability in the United States of commercial
22 property and casualty insurance coverage for
23 acts of terrorism, the appropriate Adminis-
24 trator may provide that the provisions of this
25 Act shall continue to apply with respect to a

1 period or periods, as established by the Ad-
2 ministrator, that begin after the expiration of
3 the covered period specified in section 5(b)
4 and end before January 1, 2005.

5 (b) COVERED PERIOD.—If the appropriate
6 Administrator exercises the authority under
7 subsection (a), notwithstanding section 5(b)
8 and section 16(9), the period or periods estab-
9 lished by the appropriate Administrator shall
10 be considered to be the covered period for
11 purposes of this Act.

12 SEC. 18. REGULATIONS.

13 The appropriate Administrators shall
14 issue any regulations necessary to carry out
15 this Act.

Union Calendar No. 181

107TH CONGRESS
1ST SESSION

H. R. 3210

[Report No. 107-300, Parts I and II]

A BILL

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

NOVEMBER 19, 2001

Reported from the Committee on Financial Services with
an amendment

Referral to the Committee on the Budget extended for a
period ending not later than November 26, 2001

Referred to the Committee on the Judiciary for a period
ending not later than November 26, 2001, for consid-
eration of such provisions of the bill and amendment
as fall within the jurisdiction of that committee pursu-
ant to clause 1(k), rule X

Reported from the Committee on Ways and Means with
an amendment

NOVEMBER 26, 2001

Committees on the Budget and the Judiciary discharged;
committed to the Committee of the Whole House on
the State of the Union and ordered to be printed