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(Original Signature of Member)

107TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. LAFALCE introduced the following bill; which was referred to the Committee on _____

A BILL

To establish an Office of the National Insurers within the Department of the Treasury to authorize the issuance of Federal charters for carrying out the underwriting and sale of insurance or any other insurance operations, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Insurance Industry Modernization and Consumer Protec-
4 tion Act".

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

Sec. 1. Short title and table of contents.

TITLE I—PURPOSE AND DEFINITIONS

Sec. 101. Purposes.
Sec. 102. Definitions.

TITLE II—DIRECTOR OF THE OFFICE OF NATIONAL INSURERS

Sec. 201. Director of the Office of National Insurers.
Sec. 202. Supervision of national insurers.
Sec. 203. Authority to prescribe regulations.
Sec. 204. Examination, assessments, and fees.
Sec. 205. Enforcement.
Sec. 206. Insurance fraud.
Sec. 207. International regulatory support.

TITLE III—NATIONAL INSURERS

Subtitle A—Organization, Licensing, and Operations

Sec. 301. Organization, operation, and regulation of national insurers.
Sec. 302. U.S branches of non-U.S. insurers.
Sec. 303. Federal licensing of national insurers.
Sec. 304. Corporate governance.
Sec. 305. Main office.
Sec. 306. Conversion of State insurer to national insurer.
Sec. 307. Conversion of national insurer to State insurer.

Subtitle B—Powers

Sec. 321. Powers of national insurers.
Sec. 322. Separate accounts.
Sec. 323. Protected cells.

Subtitle C—Financial Regulation

Sec. 331. Accounting principles and auditing standards.
Sec. 332. Investments.
Sec. 333. Asset valuation and rating.
Sec. 334. Valuation of liabilities.
Sec. 335. Continuing and alternate benefits.
Sec. 336. Actuarial opinion.
Sec. 337. Risk-based capital standards.
Sec. 338. Dividends to shareholders.

Subtitle D—Reinsurance

Sec. 351. Definitions.
Sec. 352. Reserve credit.
Sec. 353. Risk transfer regulation.
Sec. 354. International standards; host country reserves.
Sec. 355. Reinsurance contract terms.
Sec. 356. Licensing of federally qualified reinsurers.
Sec. 357. Transition.
Sec. 358. Applicability of other subtitles and laws.

Subtitle E—Insurance Business

Sec. 361. Product regulation.
Sec. 362. Underwriting standards for life insurers.
Sec. 363. Group, blanket, and franchise insurance.
Sec. 364. Insurable interests under life insurance policies.
Sec. 365. Law applicable to life insurance policies or other products of national life insurers.

Subtitle F—Market Conduct

Sec. 371. Purposes and regulations.
Sec. 372. Unfair or deceptive practices.
Sec. 373. Replacement of life insurance policies.
Sec. 374. Unfair discrimination, unfair claims settlement practices, and unlawful inducements.
Sec. 375. HIV written informed consent, discrimination against abuse victims, and Holocaust victims claims.
Sec. 376. Minimum national standards.

Subtitle G—Acquisitions of Control, Mergers, Bulk Transfers, and Domestication

Sec. 381. Acquisition of control.
Sec. 382. Mergers, consolidations, and acquisitions.
Sec. 383. Bulk transfers.
Sec. 384. Domestication of U.S. branch of a non-U.S. insurer.

Subtitle H—Health Insurance

Sec. 391. Recommendations for health insurance.

TITLE IV—STATE TAXATION

Sec. 401. State taxation.

TITLE V—TREATMENT OF MCCARRAN-FERGUSON ACT

Sec. 501. Repeal of antitrust exemption for business of insurance.

TITLE VI—HOLDING COMPANIES

Sec. 601. Definitions
Sec. 602. Registration.
Sec. 603. Standards and management of national insurer within an insurance holding company system.
Sec. 604. Conflict with other Federal laws.

TITLE VII—RELATIONSHIPS WITH STATE LAW

Sec. 701. Definitions.
Sec. 702. General prohibition.
Sec. 703. State license not required.
Sec. 704. State insurance law.
Sec. 705. Prohibition of discrimination.
Sec. 706. Permissible State regulation.
Sec. 707. Sales activities by State-licensed insurance producers.

TITLE VIII—CONFORMING AMENDMENTS AND OTHER PROVISIONS

Sec. 801. Federal court jurisdiction.
Sec. 802. Federal court venue.
Sec. 803. Judicial review.
Sec. 804. Amendment to Freedom of Information Act.
Sec. 805. Amendments to Internal Revenue Code of 1986.
Sec. 806. Amendments to Federal securities laws.
Sec. 807. Amendments to Employee Retirement Income Security Act of 1974.
Sec. 608. Amendments to Gramm-Leach-Bliley Act.
Sec. 809. Amendment to Act of October 28, 1974.
Sec. 810. Amendments to Federal Deposit Insurance Act.
Sec. 811. Amendments to Bank Holding Company Act of 1956.
Sec. 812. Amendments to title 18, United States Code.
Sec. 813. Amendments to Americans With Disabilities Act of 1990.

TITLE IX—RECEIVERSHIP

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Sec. 901. Definitions.
Sec. 902. Construction.

Subtitle B—The Court

Sec. 903. Jurisdiction.
Sec. 904. Powers.
Sec. 905. Appeals.
Sec. 906. Appeal pendency plans.

Subtitle C—General Provisions

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Sec. 908. Cooperation of officers, owners, and employees.
Sec. 909. Right to appear and be heard.

Subtitle D—Administration

Sec. 910. Entities subject to this title.
Sec. 911. Commencement of receivership.
Sec. 912. Grounds for entry of a rehabilitation or liquidation order.
Sec. 913. Service of summons and return.
Sec. 914. Automatic stay.
Sec. 915. Answer and hearing.
Sec. 916. Notice of entry of order of rehabilitation or liquidation.
Sec. 917. Contents of notice of receivership.

Sec. 918. Initial status hearing.
Sec. 919. Dismissal of receivership proceeding.
Sec. 920. Receivership proceedings for non-U.S. States insurers.
Sec. 921. Trusteed assets of a United States branch of a non-U.S. insurer.
Sec. 922. Trust fund claims.
Sec. 923. Limited appearance.
Sec. 924. Advisory committees.
Sec. 925. Ex parte orders of conservation and seizure.
Sec. 926. Confidentiality of hearings.
Sec. 927. Modification of orders.
Sec. 928. Authority to operate and restructure insurer's business.
Sec. 929. Conversion to liquidation.
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Subtitle E—Office of the Receiver

Sec. 932. Appointment of receiver.
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Sec. 948. Turnover of property to receiver.
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Sec. 952. Preferences.
Sec. 953. Fraudulent transfers and obligations.
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Sec. 958. Setoff.
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Sec. 964. Claims filing; late filing.
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Sec. 970. Preliminary notice of claims determination.
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Sec. 981. Partial and final distributions or dividends.
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Sec. 984. Commutations.
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Sec. 988. Unclaimed and undistributed funds.
Sec. 989. Termination of receivership proceedings and discharge of receiver.
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TITLE X—INSOLVENCY PROTECTION

Subtitle A—Life Insurance

Sec. 1001. Definitions.
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Sec. 1015. Miscellaneous provisions.
Sec. 1016. Examination of the corporation; annual report.
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Sec. 1020. Definitions.
Sec. 1021. National insurer participation in qualified State associations.
Sec. 1022. Qualified State defined.
Sec. 1023. Transition rules when association preempted.
Sec. 1024. Establishment of National Property and Casualty Insurance Guaranty Corporation; protection for residents in preempted States.
Sec. 1025. Protections against insolvency; coverage and limitations.
Sec. 1026. Board of directors.
Sec. 1027. Powers and duties of the corporation.
Sec. 1028. Duties and powers of Director.
Sec. 1029. Effect of paid claim.
Sec. 1030. Exhaustion of other coverage.
Sec. 1031. Cooperation between Director and State commissioners.
Sec. 1032. Prohibited discrimination in tax treatment.
Sec. 1033. Examination of the corporation; annual report.
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Sec. 1035. Stay of proceedings

TITLE XI—EFFECTIVE DATE

Sec. 1101. Effective date.

TITLE I—PURPOSE AND DEFINITIONS

SEC. 101. PURPOSES.

The purposes of this Act are to—

(1) provide for the chartering of national insurers;

(2) provide for the licensing of national insurers;

(3) provide for the regulation of the underwriting and sale of insurance and other insurance operations as conducted by national insurers and insurance producers; and

(4) provide for the establishment of the Office of National Insurers and the position of Director of the Office of National Insurers with responsibility for administering and enforcing this Act, including with respect to such chartering, licensing, and regulatory activities.

SEC. 102. DEFINITIONS.

For purposes of this Act:

(1) ACQUIRING AND/OR ASSUMING INSURER.—The term ''acquiring and/or assuming insurer'' means a national insurer that is the acquiring and/or assuming insurer in an acquisition of assets and/or an assumption of liabilities pursuant to subsection (a) of section 382.

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

(3) BUSINESS ENTITY.—The term ''business entity'' means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(4) CONDUCT.—The term ''conduct'' includes acts, action, omissions, and inaction.

(5) CONTROL.—The terms ''control'', ''controlling'', ''controlled by'', and ''under common control with'', means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a business entity, whether through the ownership of voting securities, by contract or otherwise, unless the power is the result of an official position with or corporate office held by a person. For purposes of section 381 and title VI, control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person.

(6) CORPORATE FORM.—The term ''corporate form'' means, with respect to an insurer, stock, mutual, or fraternal form.

(7) DIRECTOR.—The term ''Director'' means the Director of the Office of National Insurers.

(8) DOMESTICATION.—The term ''domestication'' means the reorganization pursuant to subtitle G of the U.S. branch of a non-U.S. insurer whereby a national insurer succeeds to all business and assets and assumes all liabilities of such U.S. branch.

(9) FEDERAL BANKING AGENCIES.—The term ''Federal banking agencies'' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

(10) FEDERAL LICENSE.—The term ''federal license'' means a license issued under section 303.

(11) FOREIGN GOVERNMENTAL AUTHORITY.—The term ''foreign governmental authority'' means a governmental authority of a foreign jurisdiction.

(12) FOREIGN JURISDICTION.—The term ''foreign jurisdiction'' means any jurisdiction other than the United States or a State.

(13) INSURANCE.—Except as specifically provided otherwise in this Act, the term ''insurance'' includes life insurance and property and casualty insurance. Such term does not include health insurance.

(14) INSURANCE OPERATIONS.—The term ''insurance operations'' includes the business of insurance.

(15) INSURANCE PRODUCER.—The term ''insurance producer'' means any person that sells, solicits or negotiates policies of insurance, except that none of the following is an insurance producer:

(A) A national insurer.

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

(i) the officer, director or employee does not receive any commission or other compensation on insurance policies written or sold by the national insurer which commission or other compensation is directly dependent upon the amount of insurance policies written or sold; and

(ii)(I) the officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance;

(II) the officer, director or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a policy of insurance; or

(III) the officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance

1 producers where the person's activities are
2 limited to providing technical advice and
3 assistance to State licensed insurance pro-
4 ducers and do not include the sale, solicita-
5 tion or negotiation of insurance.
6 (C) A person who secures and furnishes in-
7 formation for the purpose of group insurance
8 policies; or for the purpose of enrolling individ-
9 uals under plans, or issuing certificates under
10 plans or otherwise assisting in administering
11 plans, where no commission or other compensa-
12 tion directly dependent upon the amount of in-
13 surance policies written or sold is paid to the
14 person for the service.
15 (D) An employer or association or its offi-
16 cers, directors, employees, or the trustees of an
17 employee trust plan, to the extent that the em-
18 ployer, officer, employee, director or trustee is
19 engaged in the administration or operation of a
20 program of employee benefits for the employer's
21 or association's own employees or the employees
22 of its subsidiaries or affiliates, which program
23 involves the use of insurance written by the na-
24 tional insurer, as long as the employers, asso-
25 ciations, officers, directors, employees or trust-

ees are not in any manner compensated, directly or indirectly, by the national insurer.

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

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

(G) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission or other compensation directly dependent upon the amount of insurance policies written or sold.

(H) A person that sells, solicits or negotiates a funding agreement.

(I) Any other kind of person identified by the Director, by regulation, as not being an insurance producer within the meaning of this paragraph.

(16) INSURANCE SECURITIZATION.—The term ''insurance securitization'' means the issuance of debt instruments, the proceeds from which support the exposures attributed to a protected cell, by a national insurer where repayment of principal or interest, or both, to investors pursuant to the transaction terms is contingent upon the occurrence or non-occurrence of an event with respect to which the national insurer is exposed to loss under insurance policies or reinsurance contracts it has written.

(17) INSURER-AFFILIATED PARTY.—The term ''insurer-affiliated party'' means—

(A) any director, officer, employee, or controlling shareholder (other than a holding company) of, or agent for, a national insurer;

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

(C) any shareholder (other than a holding company), consultant, joint venture partner, and any other person as determined by the Di-

rector (by regulation or case-by-case) who participates in the conduct of the affairs of a national insurer; and

(D) any independent contractor (including any attorney, actuary, or accountant) of a national insurer who in that capacity knowingly or recklessly participates in—

(i) any violation of any law or regulation;

(ii) any breach of fiduciary duty; or

(iii) any conduct that involves an undue risk of loss to a national insurer's policyholders as a whole, which violation, breach or conduct caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, a national insurer or the policyholders of a national insurer.

(18) LIFE INSURANCE.—

(A) IN GENERAL.—The term ''life insurance'' means insurance for which the probabilities of the duration of human life or the rate of mortality are an element or condition of insurance.

(B) INCLUDED INSURANCE.—Life insurance includes the granting of—

(i) endowment benefits;

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

(iii) disability income benefits;

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

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

(vi) burial insurance; and

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

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

(19) MAIN OFFICE.—The term ''main office'' means the office of a national insurer designated as its main office in accordance with section 305.

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

(21) NATIONAL INSURER.—The term ''national insurer'' means an insurer chartered under section 301 and the regulations thereunder.

(22) NATIONAL LIFE INSURER.—The term ''national life insurer'' means a life insurer chartered under section 301 and the regulations thereunder.

(23) NATIONAL PROPERTY AND CASUALTY INSURER.—The term ''national property and casualty insurer'' means a property and casualty insurer chartered under section 301 and the regulations thereunder.

(24) NEGOTIATE.—The term ''negotiate'' means, with respect to a policy of insurance, to engage in the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular policy of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(25) NON-U.S. INSURER.—The term ''non-U.S. insurer'' means an insurer organized under the laws of a foreign jurisdiction.

(26) OFFICE.—The term ''Office'' means the Office of National Insurers.

(27) PARENT.—The term ''parent'' means a business entity that, directly or indirectly, controls another business entity.

(28) PERSON.—The term ''person'' means any natural person and any corporation, partnership, limited liability company, limited liability partnership, trust, association, governmental body or entity, voluntary organization or similar organization.

(29) PERSON ASSOCIATED WITH A MEMBER.—The term ''person associated with a member'' means any director, officer, employee, controlling shareholder, agent, or independent contractor (including any attorney, actuary or accountant) of a national insurer that is a member of an insurance self-regulatory organization.

(30) POLICY OF INSURANCE.—The term ''policy of insurance'' or ''insurance policy'' means a policy, contract, or certificate or evidence of insurance, an annuity contract, and a funding agreement.

(31) POLICYHOLDER.—The term ''policyholder'' of an insurance policy means the person who is identified as the legal owner under the terms of the insurance policy or who is otherwise vested with legal title to the insurance policy through an assignment, absolute on its face, completed in accordance with

the terms of the insurance policy and properly recorded as the policyholder on the books of the insurer. Such term does not include a person with a mere beneficial interest in an insurance policy or a person to which an insurance policy is assigned for collateral security purposes.

(32) PROPERTY AND CASUALTY INSURANCE.—

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

(i) loss of or damage to property;

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

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

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

(B) EXCLUSIONS.—Such term does not include health or life insurance, including group life insurance;

(33) PROTECTED CELL.—The term ''protected cell'' means an identified pool of assets and liabil-

ities of a national insurer segregated and insulated from the remainder of the national insurer's assets and liabilities. The remainder of the national insurer's assets and liabilities includes general account assets and liabilities, separate account assets and liabilities and assets and liabilities of other protected cells.

(34) PROTECTED CELL ACCOUNT.—The term ''protected cell account'' means a specifically identified bank or custodial account established by a national insurer for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the national insurer's general account and separate accounts.

(35) RELEVANT STATE LAW.—The term ''relevant State law'' means, with respect to a national insurer, the law of the relevant State applicable to an insurer that is chartered under the law of such State and that is of the same corporate form as the national insurer.

(36) RESULTING INSURER.—The term ''resulting insurer'' means a national insurer resulting from a merger or consolidation pursuant to subsection (a) of section 382.

(37) SELL.—The term ''sell'' means, with respect to a policy of insurance, to exchange by any means, for money or its equivalent, on behalf of an insurer.

(38) SEPARATE ACCOUNT.—The term ''separate account'' means an account established and maintained by a national insurer under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the national insurer.

(39) SOLICIT.—The term ''solicit'' means, with respect to a policy of insurance, attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

(40) STATE.—The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(41) STATE INSURER.—The term ''State insurer'' means an insurer incorporated or organized under the laws of a State.

(42) STATE LICENSED INSURANCE PRODUCER.—The term ''State licensed insurance producer'' means a person that is an insurance producer licensed by a State, but only in those circumstances in which such person is acting, in any respect, with regard to a insurance policy or other product of a national insurer; and such person shall not be subject to the provisions of this Act when acting in any other circumstances.

(43) SUBSIDIARY.—The term ''subsidiary'' means a business entity controlled, directly or indirectly, by another business entity. For purposes of this paragraph—

(A) a business entity is conclusively presumed to be controlled by a person that, directly or indirectly, with power to vote, owns, controls or holds a majority of the outstanding voting securities of such business entity;

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

(C) absence of control is presumed if such ownership, control or holding of voting securities is 5 percent or less; and

(D) in determining control, voting securities held in separate accounts of a business entity shall be deemed to be owned by the business entity, but voting securities in an investment advisory account that are not owned by a business entity but are held in an account as to which the business entity is an investment adviser shall not be deemed to be controlled or held by such business entity.

(44) TRANSITION COMMENCEMENT DATE.—The term ''transition commencement date'' means the date on which the first national insurer is granted a federal license by the Director under this Act.

(45) TRANSITION TERMINATION DATE.—The term ''transition termination date'' means the 5th anniversary of the transition commencement date.

(46) TRUSTEED ASSETS.—The term ''trusteed assets'' means assets required or permitted by this Act to be deposited by a non-U.S. insurer with a qualified trustee for the security of its policyholders and creditors in the United States.

(47) TRUSTEED SURPLUS.—The term ''trusteed surplus'' means, with respect to a U.S. branch, the value of the insurer's trusteed assets deposited with a trustee in compliance with subsection (b) of section 302, plus accrued investment income thereon where such interest is collected by the States trustees, less the aggregate net amount of all of its reserves and other liabilities in the United States as determined in accordance with subsection (b) of section 302.

(48) U.S. BRANCH.—The term ''U.S. branch'' means the business unit through which business is transacted within the United States by a non-U.S. insurer and the assets and liabilities of the insurer within the United States pertaining to such business.

(49) VIOLATION.—The term ''violation'' includes any action or inaction (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(50) VOTING SECURITIES.—The term ''voting securities'' means securities of any class or any ownership interest having voting power for the election of directors, trustees or management of a business

entity, other than securities having such power only by reason of the happening of a contingency.

TITLE II—DIRECTOR OF THE OFFICE OF NATIONAL INSURERS

SEC. 201. DIRECTOR OF THE OFFICE OF NATIONAL INSURERS.

(a) ESTABLISHMENT OF OFFICE.—There is established the Office of National Insurers, which shall be an office in the Department of the Treasury.

(b) ESTABLISHMENT OF POSITION OF DIRECTOR.—There is established the position of the Director of the Office of National Insurers, who shall be the head of the Office of National Insurers and shall be subject to the general oversight of the Secretary of the Treasury.

(c) AUTONOMY OF DIRECTOR.—The Secretary of the Treasury may not intervene in any matter or proceeding before the Director (including agency enforcement actions) unless otherwise specifically provided by law.

(d) APPOINTMENT; TERM.—

(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) TERM.—The Director shall be appointed for a term of 4 years that begins on August 1 of the

year following the year in which a Presidential election occurs. The term of the first Director appointed pursuant to this section shall terminate at the end of July 31 of the year following the first Presidential election occurring after confirmation of such Director to the office of Director.

(3) VACANCY.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (1) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(4) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed.

(e) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any national insurer or State licensed insurance producer, except that the Director may own, directly or indirectly, or may have a direct or indirect beneficial interest in any insurance policy underwritten or sold by a national insurer.

(f) ANNUAL REPORT REQUIRED.—The Director shall make an annual report to the Congress. Such report shall

1 include a description of any changes the Director has
2 made or is considering making in any district offices of
3 the Office, including a description of the geographic allo-
4 cation of the Office's resources and personnel used to
5 carry out examination and supervision functions.

6 (g) STAFF.—

7 (1) APPOINTMENT AND COMPENSATION.—The
8 Director shall fix the compensation and number of,
9 and appoint and direct, all employees of the Office
10 of National Insurers notwithstanding section
11 301(f)(1) of title 31, United States Code, without
12 regard to the provisions of title 5, United States
13 Code, governing appointments in the competitive
14 service (except such provisions that relate to dis-
15 crimination), and without regard to the provisions of
16 chapter 51 and subchapter III of chapter 53 of that
17 title relating to classification and General Schedule
18 pay rates.

19 (2) RATES OF BASIC PAY.—Rates of basic pay
20 for employees of the Office may be set and adjusted
21 by the Director without regard to the provisions of
22 chapter 51 or subchapter III of chapter 53 of title
23 5, United States Code.

24 (3) ADDITIONAL COMPENSATION AND BENE-
25 FITS.—The Director may provide additional com-

1 pensation and benefits to employees of the Office if
2 the same type of compensation or benefits are then
3 being provided by any Federal banking agency or, if
4 not then being provided, could be provided by such
5 an agency under applicable provisions of law, rule or
6 regulation. In setting and adjusting the total amount
7 of compensation and benefits for employees of the
8 Office, the Director shall consult, and seek to main-
9 tain comparability with, the Federal banking agen-
10 cies.

11 (4) DELEGATION AUTHORITY.—Except to the
12 extent expressly prohibited by the provisions of this
13 Act, the Director may—

14 (A) designate who shall act as Director in
15 the Director's absence; and

16 (B) delegate to any employee, representa-
17 tive, or agent any power conferred on the Direc-
18 tor by this Act.

19 (h) LITIGATION AUTHORITY.—The Director shall
20 have authority to sue and be sued, complain and defend,
21 and otherwise litigate, in the Director's own name and
22 through the Director's own attorney, in any court, State
23 or Federal.

24 (i) FUNDING THROUGH ASSESSMENTS.—The com-
25 pensation of the Director and employees of the Office and

all other expenses of the Office may be paid from assessments levied under section 204.

(j) GAO AUDIT.—The Director shall make available to the Comptroller General of the United States all books and records necessary to audit all of the activities of the Office of National Insurers.

(k) AUTHORITY TO ESTABLISH DISTRICT OFFICES.—The Director shall have the authority to establish, in his discretion, such district offices of the Office, at such locations, as the Director deems necessary to perform the Office's duties.

(l) DIVISION OF CONSUMER AFFAIRS.—The Director shall establish a Division of Consumer Affairs within the Office.

SEC. 202. SUPERVISION OF NATIONAL INSURERS.

(a) EXAMINATIONS.—

(1) IN GENERAL.—The Director shall provide for the examination of national insurers. The Director shall, not less than once during each 12-month period, conduct an on-site financial examination and an onsite market conduct examination of each national insurer.

(2) EXEMPTION.—The Director may exempt a national insurer from the requirement under paragraph (1) of an annual on-site financial examination

if the Director determines that the financial condition of the national insurer warrants such an exemption. The Director may not exempt any national insurer from such requirement for 2 successive years.

(b) REPORTS.—

(1) IN GENERAL.—The Director may require national insurers to make such reports, containing such information and in such form, as the Director may prescribe by regulation. Every national insurer that holds a federal license shall file with the Director annual and quarterly financial statements at such times and in such form as the Director may require by regulation. Financial statements shall follow the accounting principles specified pursuant to section 331. The Director shall by regulation require that annual financial statements be audited and accompanied by a report thereon of independent accountants. The regulations shall specify the information that must be disclosed in the financial statements and accompanying notes and may specify additional schedules that need not be filed with the financial statements but must be available for examination by the Director upon request for a period of time specified in the regulations.

(2) PUBLIC DISCLOSURE.—

1 (A) The Director shall, by regulation, pre-
2 scribe the extent to which the following shall, in
3 whole or in part, be made available to the pub-
4 lic upon request—
5 (i) reports of examinations conducted
6 pursuant to subsection (a), and the infor-
7 mation contained in such reports;
8 (ii) reports by national insurers pur-
9 suant to paragraph (1), and the informa-
10 tion contained in such reports;
11 (iii) information reported pursuant to
12 section 602 or 603 (or regulations there-
13 under); and
14 (iv) any workpapers or other materials
15 of a national insurer that the Director ob-
16 tains in connection with an examination
17 conducted pursuant to subsection (a), a re-
18 port pursuant to paragraph (1), a submis-
19 sion pursuant to section 602 or 603 (or
20 regulations thereunder) or otherwise and
21 that are in the Director's possession at the
22 time of the request, and the information
23 contained in such workpapers or other ma-
24 terials, except that neither the provision of
25 such workpapers or other materials of a

national insurer to the Director nor anything in this Act or in any regulations issued under this Act shall constitute a waiver of, or otherwise affect, any privilege or other form of legal protection or exemption from public disclosure to which such workpapers or other materials, and the information contained in such workpapers or other materials, are otherwise subject.

(B) Except to the extent prescribed in regulations issued by the Director in accordance with subparagraph (A) and subject to clause (iv) of subparagraph (A), reports of examination conducted pursuant to subsection (a), reports by national insurers pursuant to paragraph (1), information reported pursuant to section 602 or 603 (or regulations thereunder), and any workpapers or other materials of a national insurer that the Director obtains in connection with an examination conducted pursuant to subsection (a), a report pursuant to paragraph (1), a submission pursuant to section 602 or 603 (or regulations thereunder) or otherwise and that are in the Director's possession at the time of the request, and all information

1 contained in such reports, workpapers or other
2 materials, shall be made available to the public
3 upon request unless the Director determines—
4 (i) that a particular item or classifica-
5 tion of information should not be made
6 public in order to protect the insurer or in-
7 surers concerned, or the policyholders of
8 such insurer or insurers; or
9 (ii) that public disclosure would other-
10 wise not be in the public interest.
11 (C) Any determination made by the Direc-
12 tor under subparagraph (B) not to permit the
13 public disclosure of information shall be made
14 in writing, and if the Director restricts any
15 item of information for national insurers gen-
16 erally, the Director shall disclose the reason in
17 detail in the Federal Register.
18 (3) Access by certain parties.—
19 (A) Notwithstanding paragraph (2), the
20 persons described in subparagraph (B) shall not
21 be denied access to any information contained
22 in a report required under paragraph (1), sub-
23 ject to reasonable requirements of confiden-
24 tiality. Those requirements shall not prevent
25 such information from being transmitted to the

Comptroller General of the United States for analysis.

(B) The following persons are described in this subparagraph for purposes of subparagraph (A)—

(i) the Chairman or ranking minority member of the Committee on Commerce, Science and Transportation of the Senate and their designees; and

(ii) the Chairman or ranking minority member of the Committee on Financial Services of the House of Representatives and their designees.

(c) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) COMPLIANCE PROCEDURES REQUIRED.—The Secretary of the Treasury shall prescribe regulations requiring national insurers to establish and maintain procedures reasonably designed to ensure and monitor the compliance of such national insurers with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF NATIONAL INSURERS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(A) In general.—Each examination of a national insurer by the Director shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) EXAMINATION REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the national insurer.

(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Director determines that a national insurer—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such national insurer that was previously reported to the national insurer by the Director, the Director shall issue an order in the manner prescribed in section 205 requiring such national insurer to cease and desist from its violation of this subsection or regulations implementing this subsection.

(d) ANCILLARY PROVISIONS.—

1 (1) In making examinations of national insur-
2 ers, examiners appointed by the Director shall have
3 power—
4 (A) to require an affiliate of a national in-
5 surer to make such reports and provide such
6 material as the examiners may direct, but only
7 to the extent necessary to disclose information
8 concerning activities of the affiliate that may
9 affect the operations, management or financial
10 condition of the national insurer; and
11 (B) to make examinations of the affairs of
12 an affiliate of a national insurer, but—
13 (i) only if the examiners have reason-
14 able cause to believe that the activities of
15 the affiliate may affect the operations,
16 management or financial condition of the
17 national insurer;
18 (ii) only if the examiners are unable
19 to obtain the necessary information from
20 the national insurer; and
21 (iii) only to the extent necessary to
22 disclose information concerning the activi-
23 ties of the affiliate that may affect the op-
24 erations, management or financial condi-
25 tion of the national insurer.

(2) In the course of any examination of any national insurer, prompt and complete access shall be given to national insurer officers, directors, employees, and agents, and to relevant books, records, or documents of any type.

(3) Upon request made in the course of supervision or oversight of any national insurer, for the purpose of acting on any application or determining the condition of any national insurer, including whether operations are being conducted in a manner that does not involve undue risk of loss to the national insurer's policyholders as a whole, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the Director shall be given prompt and complete access to national insurer officers, directors, employees, and agents, and to relevant books, records, or documents of any type.

(4) If prompt and complete access upon request is not given as required in this subsection, the Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which the main office of the national insurer is located, or in which the person de-

1 nying such access resides or carries on business, or
2 in the United States District Court for the District
3 of Columbia, for an order requiring that such infor-
4 mation be promptly provided.
5 (5) In connection with examinations of national
6 insurers and affiliates thereof, the Director may—
7 (A) administer oaths and affirmations and
8 examine and take and preserve testimony under
9 oath as to any matter in respect of the affairs
10 or ownership of any such national insurer or af-
11 filiate; and
12 (B) issue subpoenas and, for the enforce-
13 ment thereof, apply to the United States dis-
14 trict court for the judicial district (or the
15 United States court in any territory) in which
16 the main office of the national insurer or affil-
17 iate is located, or in which the witness resides
18 or carries on business, or in the United States
19 District Court for the District of Columbia.
20 Such courts shall have jurisdiction and power to
21 order and require compliance with any such
22 subpoena.
23 (6) Any national insurer and any affiliate of
24 any national insurer shall provide the Director with
25 complete access to any information or report with

respect to any examination made by any other State or federal regulatory authority and furnish any additional information with respect thereto as the Director may reasonably require.

SEC. 203. AUTHORITY TO PRESCRIBE REGULATIONS.

(a) IN GENERAL.—The Director may prescribe such regulations and issue such orders and interpretations as the Director may determine to be appropriate to carry out this Act and all other laws within the Director's jurisdiction.

(b) SCOPE OF AUTHORITY.—The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Director.

SEC. 204. EXAMINATION, ASSESSMENTS, AND FEES.

(a) EXAMINATION OF NATIONAL INSURERS.—The cost of conducting examinations of national insurers pursuant to section 202, implementing this Act, and repaying amounts provided to the Director pursuant to subsection (k) of this section, shall be assessed by the Director against each such national insurer as the Director deems necessary or appropriate.

(b) EXAMINATION OF AFFILIATES.—The costs of conducting examinations of affiliates of national insurers pursuant to section 202, implementing this Act, and repaying amounts provided to the Director pursuant to sub-

1 section (k) of this section, may be assessed by the Director
2 against each affiliate that is examined as the Director
3 deems necessary or appropriate.

4 (c) ASSESSMENT AGAINST NATIONAL INSURER IN
5 CASE OF AFFILIATE'S REFUSAL TO PAY.—

6 (1) IN GENERAL.—Subject to paragraph (2), if
7 any affiliate of a national insurer—

8 (A) refuses to pay any assessment under
9 subsection (b) of this section; or

10 (B) fails to pay any such assessment be-
11 fore the end of the 60-day period beginning on
12 the date of the assessment, the Director may
13 assess such cost against, and collect such cost
14 from, such national insurer.

15 (2) AFFILIATE OF MORE THAN ONE NATIONAL
16 INSURER.—If any affiliate referred to in paragraph
17 (1) is an affiliate of more than one national insurer,
18 the assessment with respect to the affiliate may be
19 assessed against, and collected from, any affiliated
20 national insurer in such proportions as the Director
21 may prescribe.

22 (d) CIVIL MONEY PENALTY FOR AFFILIATE'S RE-
23 FUSAL TO COOPERATE.—

24 (1) PENALTY IMPOSED.—If any affiliate of any
25 national insurer—

(A) refuses to permit any examiner appointed by the Director to make an examination; or

(B) refuses to provide any information required to be disclosed in the course of any examination, the national insurer shall forfeit and pay a civil penalty of not more than $25,000 for each day that any such refusal continues.

(2) ASSESSMENT AND COLLECTION..—Any penalty imposed under paragraph (1) shall be assessed and collected by the Director, in the manner provided in subsection (g)(1) of section 205.

(e) REGULATIONS.—The Director may prescribe regulations with respect to—

(1) the computation of, and the assessment for, the cost of conducting examinations pursuant to this section; and

(2) the collection and use of such assessments and any fees under this section.

Such regulations may establish formulas to determine a fee or schedule of fees to cover the costs of examinations and also to cover the cost of processing applications, filings, statements, notices, and requests for approvals by the Director or the Director's designee.

(f) TREATMENT OF EXAMINATION ASSESSMENTS.—

(1) DEPOSITS.—Amounts received by the Director from assessments under this section (other than an assessment under subsection (d)(2) of this section) may be deposited in the manner provided in section 5234 of the Revised Statutes of the United States (12 U.S.C. 192), with respect to assessments by the Comptroller of the Currency.

(2) ASSESSMENTS ARE NOT SUBJECT TO APPORTIONMENT OF FUNDS.—Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section (other than an assessment under subsection (d)(2) of this section) shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(g) PROCESSING FEE.—The Director shall assess against any person that submits to the Office an application, filing, statement, notice, or request for approval a fee for processing such submission.

(h) ADDITIONAL FEES FOR EXPENSES OF THE OFFICE.—The Director may assess against national insurers such additional fees to fund the direct and indirect expenses of the Office as the Director deems necessary or appropriate. Such fees may be imposed more frequently than annually at the discretion of the Director.

(i) WORKING CAPITAL.—The Director may impose fees and assessments pursuant to subsections (a), (b), (e) and (h) of this section, in excess of actual expenses for any given year, to permit the Director to maintain a working capital fund. The Director shall remit to the payers of such fees and assessments any funds collected in excess of what he deems necessary to maintain such working capital fund.

(j) USE OF FUNDS.—The Director may use the combined resources retained through fees and assessments imposed pursuant to this section to pay all direct and indirect salary and administrative expenses of the Office, including contracts and purchases of property and services, and the direct and indirect expenses of the examinations and supervisory activities of the Office.

(k) START-UP FUNDING.—

(1) IN GENERAL.—For purposes of carrying out the responsibilities of the Office and the Director under this Act, the Secretary of the Treasury shall pay to the Director a one-time payment of $10,000,000 on the date of the enactment of this Act. Thereafter, expenses of the Office shall be funded through the collection of fees as provided under this section.

(2) ADDITIONAL FUNDS.—Except as provided in this section, funds in addition to the funds provided under paragraph (1) may be made available to the Director only if authorized and appropriated by law.

(3) REPAYMENT OF TREASURY LOAN.—Not later than the expiration of the 5-year period beginning on the date of the enactment of this act, the Director shall repay to the Secretary of the Treasury the unpaid portion of the $10,000,000 paid to the Director pursuant to paragraph (1).

SEC. 205. ENFORCEMENT.

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

(1) INVOLUNTARY REVOCATION OR RESTRICTION.—

(A) NOTICE TO THE NATIONAL INSURER.—If the Director determines that—

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

(ii) a national insurer is in a financial or other condition that is not consistent

with the continuation of its operations as presently conducted by the insurer; or

(iii) a national insurer or its board of directors has violated any applicable law, regulation, order, condition imposed in writing by the Director in connection with the approval of an application, filing, statement, notice or other request by the national insurer, or written agreement entered into between the national insurer and the Director, the Director may determine that such conduct, condition, or violation requires revocation or restriction of (including restrictions on the lines of insurance covered by) the national insurer's federal license.

(B) If the Director determines that any conduct, condition, or violation specified in subparagraph (A) requires revocation or restriction of a national insurer's federal license, the Director shall—

(i) serve written notice on the national insurer of the Director's intention to revoke the federal license of such national insurer;

(ii) provide the national insurer with a statement of the basis for the determination to revoke or restrict the insurer's Federal license; and

(iii) notify the national insurer of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Director (or any person designated by the Director) with respect to the revocation or restriction of the national insurer's federal license.

(2) HEARING; REVOCATION OR RESTRICTION.—If, on the basis of the evidence presented at a hearing before the Director (or any person designated by the Director for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Director (or such designated person) with respect to such evidence (which shall be conclusive), the Director finds that any conduct, condition, or violation specified in the notice to a national insurer under paragraph (1)(B) has been established, the Director may issue an order revoking or restricting the federal license of the national in-

1 surer effective as of a date subsequent to such find-
2 ing.
3 (3) APPEARANCE; CONSENT TO REVOCATION OR
4 RESTRICTION.—Unless the national insurer shall ap-
5 pear at the hearing by a duly authorized representa-
6 tive, it shall be deemed to have consented to the rev-
7 ocation or restriction of its federal license, and rev-
8 ocation or restriction of its federal license thereupon
9 may be ordered by the Director.
10 (4) JUDICIAL REVIEW.—Any national insurer
11 whose federal license has been revoked or restricted
12 by order of the Director under this subsection shall
13 have the right of judicial review of such order only
14 to the same extent as provided for the review of or-
15 ders under subsection (f).
16 (5) PUBLICATION OF NOTICE OF REVOCATION
17 OR RESTRICTION.—The Director may publish notice
18 of such revocation or restriction and the national in-
19 surer shall give notice of such revocation or restric-
20 tion to each of its policyholders at the policyholder's
21 last address of record on the books of the national
22 insurer, in such manner and at such time as the Di-
23 rector may find to be necessary and may order for
24 the protection of policyholders.

(6) TEMPORARY SUSPENSION OR RESTRICTION.—

(A) IN GENERAL.—If the Director initiates a revocation or restriction proceeding under paragraph (1) with respect to a national insurer, and the Director finds that the national insurer poses an immediate threat to its policyholders or the public, the Director may issue a temporary order suspending or restricting the national insurer's Federal license.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any temporary order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the national insurer and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Director under paragraph (2) or (3) becomes final or until the Director dismisses the proceedings under paragraph (2).

(C) JUDICIAL REVIEW.—Before the close of the 10-day period beginning on the date any temporary order has been served upon a national insurer under subparagraph (A), such

national insurer may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the main office of the insurer is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

(D) PUBLICATION OF ORDER.—The national insurer shall give notice of a temporary order issued under this paragraph in such manner and at such times as the Director may find to be necessary and may order for the protection of policyholders and the public.

(7) NOTICE BY THE DIRECTOR.—If the Director shall determine that a national insurer has not given notice of an order under this subsection substantially in the manner and at the times ordered by the Director, the Director may provide such notice in such manner as the Director may find to be necessary and proper.

(8) DECISION TO REVOKE, SUSPEND, OR RESTRICT.—Any decision by the Director to—

(A) issue a temporary order suspending or restricting a national insurer's Federal license; or

(B) issue a final order revoking or restricting a national insurer's Federal license, shall be made by the Director and may not be delegated, except that the Director may, by order, designate an employee of the Office that may make such decision in the event that the Director is not able to act by reason of recusal or is otherwise disqualified from acting.

(b) CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—If, in the opinion of the Director, any national insurer, any State licensed insurance producer, or any insurer-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that any national insurer, any State licensed insurance producer, or any insurer-affiliated party is about to engage, in conduct involving an undue risk of loss to such national insurer's policyholders as a whole, or is violating or has violated, or the Director has reasonable cause to believe that any national insurer, any State licensed insurance producer, or any insurer-affiliated party is about to violate, a law, rule, or regulation, or any

1 condition imposed in writing by the Director in con-
2 nection with the granting of any application, filing,
3 statement, notice or other request by the national in-
4 surer or the State licensed insurance producer or
5 any written agreement entered into with the Direc-
6 tor, the Director may issue and serve upon such na-
7 tional insurer, producer or party a notice of charges
8 in respect thereof. The notice shall contain a state-
9 ment of the facts constituting the alleged violation
10 or violations or the conduct, and shall fix a time and
11 place at which a hearing will be held to determine
12 whether an order to cease and desist therefrom
13 should issue against the national insurer, the State
14 licensed insurance producer or the insurer-affiliated
15 party. Such hearing shall be fixed for a date not ear-
16 lier than 30 days nor later than 60 days after serv-
17 ice of such notice unless an earlier or a later date
18 is set by the Director at the request of any party so
19 served. Unless the party or parties so served shall
20 appear at the hearing personally or by a duly au-
21 thorized representative, they shall be deemed to have
22 consented to the issuance of the cease-and-desist
23 order. In the event of such consent, or if upon the
24 record made at any such hearing, the Director shall
25 find that any violation or conduct specified in the

notice of charges has been established, the Director may issue and serve upon the national insurer, the State licensed insurance producer or the insurer-affiliated party, as the case may be, an order to cease and desist from any such violation or conduct. Such order may, by provisions which may be mandatory or otherwise, require the national insurer, the State licensed insurance producer or the insurer-affiliated party to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or conduct.

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

(3) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR CONDUCT.—The authority under this subsection and

subsection (c) to issue an order that requires a national insurer, a State licensed insurance producer or an insurer-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or conduct with respect to which such order is issued includes the authority to require such national insurer, producer or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss;

(B) restrict the growth of the national insurer;

(C) dispose of any asset or insurance contract (including any insurance policy);

(D) rescind any other agreements or contracts, other than insurance contracts (including insurance policies) as to which the national insurer is the issuer; and

(E) employ qualified officers or employees (who may be subject to approval by the Director in his direction); and

(F) take such other action as the Director determines to be appropriate.

(4) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or

subsection (c) includes the authority to place limitations on the activities or functions of a national insurer, a State licensed insurance producer or an insurer-affiliated party.

(5) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any insurer-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the Director meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

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

(1) IN GENERAL.—Whenever the Director shall determine that the violation or threatened violation or the conduct specified in the notice of charges served upon a national insurer, a State licensed insurance producer or an insurer-affiliated party pursuant to subsection (b)(1), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of a national insurer, or is likely to weaken the condition of a national insurer or otherwise prejudice the interests of the pol-

1 icyholders of a national insurer prior to the comple-
2 tion of the proceedings conducted pursuant to sub-
3 section (b)(1), the Director may issue a temporary
4 order requiring such national insurer, producer or
5 party to cease and desist from any such violation or
6 conduct and to take affirmative action to prevent or
7 remedy such insolvency, dissipation, condition, or
8 prejudice pending completion of such proceedings.
9 Such order may include any requirement authorized
10 under subsection (b)(3)(B). Such order shall become
11 effective upon service upon the national insurer, pro-
12 ducer or party and, unless set aside, limited, or sus-
13 pended by a court in proceedings authorized by
14 paragraph (2), shall remain effective and enforceable
15 pending the completion of the administrative pro-
16 ceedings pursuant to such notice and until such time
17 as the Director shall dismiss the charges specified in
18 such notice or, if a cease-and-desist order is issued
19 against such national insurer, producer or party,
20 until the effective date of such order.
21 (2) INJUNCTION.—Within 10 days after a na-
22 tional insurer, a State licensed insurance producer
23 or an insurer-affiliated party has been served with a
24 temporary cease-and-desist order, the national in-
25 surer, producer or party may apply to the United

States district court for the judicial district in which the main office of the national insurer is located or in which the producer of party is located, as the case may be, or to the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the national insurer or such party under subsection (b)(1), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) specifies, on the basis of particular facts and circumstances, that a national insurer's books and records are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of that national insurer or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that national insurer, the Director may issue a temporary order requiring—

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

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

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

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (a)(1) in connection with the notice of charges; or

(II) the date the Director determines, by examination or otherwise, that the national insurer's books and records are accurate and reflect the fi-

1 nancial condition of the national in-
2 surer.
3 (d) REMOVAL AND PROHIBITION AUTHORITY.—
4 (1) AUTHORITY TO ISSUE ORDER.—Whenever
5 the Director determines that—
6 (A) any insurer-affiliated party has, di-
7 rectly or indirectly—
8 (i) violated—
9 (I) any law or regulation;
10 (II) any cease-and-desist order
11 issued under this section which has
12 become final;
13 (III) any condition imposed in
14 writing by the Director in connection
15 with the grant of any application, fil-
16 ing, statement, notice or other request
17 by such national insurer; or
18 (IV) any written agreement be-
19 tween such national insurer and the
20 Director;
21 (ii) engaged or participated in any
22 conduct involving undue risk of loss to
23 such national insurer's policyholders as a
24 whole; or

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

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

(i) such national insurer has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the national insurer's policyholders have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

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

(ii) demonstrates willful or continuing disregard by such party for the condition of such national insurer or the interests of the national insurer's policyholders, the Director may serve upon such party a written notice of the Director's intention to suspend or remove such party from office or

to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any national insurer.

(2) TEMPORARY SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Director serves written notice under paragraph (1) on any insurer-affiliated party of the Director's intention to issue an order under such paragraph, the Director may issue a temporary order suspending such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the national insurer, if the Director—

(i) determines that such action is necessary for the protection of the national insurer or of the interests of the national insurer's policyholders; and

(ii) serves such party with the temporary order of suspension or prohibition.

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

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under paragraph (5), shall remain in effect and enforceable until—

(I) the date the Director dismisses the charges contained in the notice served under paragraph (1) with respect to such party; or

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

(C) COPY OF ORDER.—If the Director issues a temporary order under subparagraph (A) to any insurer-affiliated party, the Director shall serve a copy of such order on any national insurer with which such party is associated at the time such order is issued.

(3) PROCEDURES.—A notice of intention to remove an insurer-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of a national insurer that is served under paragraph (1), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after

the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (A) such party, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the national insurer, as the Director may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such national insurer and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(4) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to any order issued under this subsection or subsection (e), has been removed or suspended from office in a national insurer or prohibited from participating in the conduct of the affairs of a national insurer may not, while such order is in effect—

(i) continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of any national insurer;

(ii) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any national insurer;

(iii) act as an insurer-affiliated party; or

(iv) act as a State licensed insurance producer.

(B) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any insurer-af-

filiated party or prohibits such party from participating in the conduct of the affairs of a national insurer, such party receives the written consent of the Director, subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the national insurer described in each written consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(5) STAY OF SUSPENSION AND/OR PROHIBITION OF INSURER-AFFILIATED PARTY.—Within 10 days after any insurer-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a national insurer by a temporary order issued under subsection (d)(2), such party may apply to the United States district court for the judicial district in which the main office of the national insurer is located, or the United States District Court for the District of Columbia, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under sub-

1 section (d)(1), and such court shall have jurisdiction
2 to stay such suspension or prohibition.
3 (e) SUSPENSION OR REMOVAL OF INSURER-AFFILI-
4 ATED PARTY CHARGED WITH FELONY.—
5 (1) SUSPENSION OR PROHIBITION.—
6 (A) IN GENERAL.—Whenever any insurer-
7 affiliated party is charged in any information,
8 indictment, or complaint, with the commission
9 of or participation in—
10 (i) a crime involving dishonesty or
11 breach of trust which is punishable by im-
12 prisonment for a term exceeding 1 year
13 under State or federal law, or
14 (ii) a criminal violation of section
15 1956, 1957, or 1960 of title 18, United
16 States Code, or section 5322 or 5324 of
17 title 31, United States Code, the Director
18 may, if continued service or participation
19 by such party may pose a threat to the na-
20 tional insurer or the interests of the na-
21 tional insurer's policyholders, by written
22 notice served upon such party, suspend
23 such party from office or prohibit such
24 party from further participation in any

1 manner in the conduct of the affairs of the
2 national insurer.
3 (B) PROVISIONS APPLICABLE TO NO-
4 TICE.—
5 (i) COPY.—A copy of any notice under
6 subparagraph (A) shall also be served upon
7 the national insurer.
8 (ii) EFFECTIVE PERIOD.—A suspen-
9 sion or prohibition under subparagraph (A)
10 shall remain in effect until the informa-
11 tion, indictment, or complaint referred to
12 in such subparagraph is finally disposed of
13 or until terminated by the Director.
14 (2) REMOVAL OR PROHIBITION.—
15 (A) IN GENERAL.—If a judgment of con-
16 viction or an agreement to enter a pretrial di-
17 version or other similar program is entered
18 against an insurer-affiliated party in connection
19 with a crime described in paragraph (1)(A)(i),
20 at such time as such judgment is not subject to
21 further appellate review, the Director may, if
22 continued service or participation by such party
23 may pose a threat national insurer or the to the
24 interests of the national insurer's policyholders,
25 issue and serve upon such party an order re-

1 moving such party from office or prohibiting
2 such party from further participation in any
3 manner in the conduct of the affairs of the na-
4 tional insurer without the prior written consent
5 of the Director.

6 (B) REQUIRED FOR CERTAIN OFFENSES.—
7 In the case of a judgment of conviction or
8 agreement against an insurer-affiliated party in
9 connection with a violation described in para-
10 graph (1)(A)(ii), the Director shall issue and
11 serve upon such party an order removing such
12 party from office or prohibiting such party from
13 further participation in any manner in the con-
14 duct of the affairs of the national insurer with-
15 out the prior written consent of the Director.

16 (C) COPY.—A copy of any order under this
17 paragraph shall also be served upon the na-
18 tional insurer, whereupon the insurer-affiliated
19 party who is subject to the order (if a director
20 or an officer) shall cease to be a director or of-
21 ficer of such national insurer.

22 (D) EFFECT OF ACQUITTAL.—A finding of
23 not guilty or other disposition of the charge
24 shall not preclude the Director from instituting
25 proceedings after such finding or disposition to

1 remove such party from office or to prohibit
2 further participation in national insurer affairs,
3 pursuant to paragraphs (1) or (2) of subsection
4 (d).
5 (E) EFFECTIVE PERIOD.—Any notice of
6 suspension or order of removal issued under
7 this paragraph or paragraph (1) shall remain
8 effective and outstanding until the completion
9 of any hearing or appeal authorized under para-
10 graph (3) unless terminated by the Director.
11 (3) Within 30 days from service of any notice
12 of suspension or order of removal issued pursuant to
13 paragraph (1) or (2) of this subsection, the insurer-
14 affiliated party concerned may request in writing an
15 opportunity to appear before the Director to show
16 that the continued service to or participation in the
17 conduct of the affairs of the national insurer by such
18 party does not, or is not likely to, pose a threat ei-
19 ther to the national insurer or to the interests of the
20 national insurer's policyholders. Upon receipt of any
21 such request, the Director shall fix a time (not more
22 than 30 days after receipt of such request, unless
23 extended at the request of such party) and place at
24 which such party may appear, personally or through
25 counsel, before one or more designated employees of

the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the notice of suspension or prohibition from participation in any manner in the conduct of the affairs of the national insurer will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the national insurer will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party.

(f) EFFECT ON BOARD OF DIRECTORS.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national insurer less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national insurer are suspended pursuant to this section, the Director shall appoint persons to serve tempo-

1 rarily as directors in their place and stead pending the
2 termination of such suspensions, or until such time as
3 those who have been suspended cease to be directors of
4 the national insurer and their respective successors take
5 office.

6 (g) HEARINGS AND JUDICIAL REVIEW.—

7 (1) Any hearing provided for in this section
8 (other than the hearing provided for in subsection
9 (e)(3) of this section) shall be held in the federal ju-
10 dicial district in which the main office of the na-
11 tional insurer is located or in which the State li-
12 censed insurance producer or the insurer-affiliated
13 party is located, as the case may be, unless the party
14 afforded the hearing consents to another place, and
15 shall be conducted in accordance with the provisions
16 of chapter 5 of title 5, United States Code. After
17 such hearing, and within 90 days after the Director
18 has notified the parties that the case has been sub-
19 mitted to the Director for final decision, the Direc-
20 tor shall render a decision (which shall include find-
21 ings of fact upon which the Director's decision is
22 predicated) and shall issue and serve upon each
23 party to the proceeding an order or orders consistent
24 with the provisions of this section. Judicial review of
25 any such order shall be exclusively as provided in

this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the national insurer, the State licensed insurance producer or the insurer-affiliated party concerned, or an order issued under paragraph (e)(1) or (e)(2)) by the filing in the court of appeals of the United States for the circuit in which the main office of the national insurer is located or in which the State licensed insurance producer or the insurer-affiliated party is located, as the case may be, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of

the Office be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Office. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(h) JURISDICTION AND ENFORCEMENT.—The Director may in his discretion apply to the United States district court for the judicial district in which the main office

1 of the national insurer is located or in which the State
2 licensed insurance producer or the insurer-affiliated party
3 is located, as the case may be, for the enforcement of any
4 effective and outstanding notice or order issued under this
5 section, and such court shall have jurisdiction and power
6 to order and require compliance therewith; but except as
7 otherwise provided in this section no court shall have juris-
8 diction to affect by injunction or otherwise the issuance
9 or enforcement of any notice or order under any such sec-
10 tion, or to review, modify, suspend, terminate, or set aside
11 any such notice or order.

12 (i) PENALTIES.—

13 (1) CIVIL MONEY PENALTY.—

14 (A) FIRST TIER.—Any national insurer
15 which, State licensed insurance producer or in-
16 surer-affiliated party that—

17 (i) violates any law or regulation;

18 (ii) violates any final order or tem-
19 porary order issued pursuant to subsection
20 (b), (c), (d) or (e) of this section or sub-
21 section (e) of section 201;

22 (iii) violates any written agreement
23 between such national insurer, producer or
24 party and the Office,

1 shall forfeit and pay a civil penalty of not more
2 than $5,000 for each day during which such
3 violation continues.
4 (B) SECOND TIER.—Notwithstanding sub-
5 paragraph (A), any national insurer, any State
6 licensed insurance producer or any insurer-af-
7 filiated party that—
8 (i)(I) commits any violation described
9 in any clause of subparagraph (A);
10 (II) recklessly engages in any conduct
11 involving an undue risk of loss to such na-
12 tional insurer's policyholders as a whole; or
13 (III) breaches any fiduciary duty; and
14 (ii) which violation, practice, or
15 breach—
16 (I) is part of a pattern of mis-
17 conduct;
18 (II) causes or is likely to cause
19 more than a minimal loss to such na-
20 tional insurer; or
21 (III) results in pecuniary gain or
22 other benefit to such party,
23 shall forfeit and pay a civil penalty of not more
24 than $25,000 for each day during which such
25 violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any national insurer, State licensed insurance producer or any insurer-affiliated party that—

(i) knowingly—

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

(II) engages in any conduct involving an undue risk of loss to such national insurer's policyholders as a whole; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such national insurer or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is an amount to not exceed $1,000,000.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the Director by written notice. Such notice shall contain a statement of the facts constituting the basis for assessment of any penalty imposed under subparagraph (A), (B), or (C).

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Director may compromise,

1 modify, or remit any penalty which the Director
2 may assess or had already assessed under sub-
3 paragraph (A), (B), or (C).
4 (G) HEARING.—The national insurer or
5 other person against whom any penalty is as-
6 sessed under this paragraph shall be afforded a
7 hearing by the Director if such national insurer
8 or person submits a request for such hearing
9 within 20 days after the issuance of the notice
10 of assessment.
11 (H) COLLECTION.—
12 (i) REFERRAL.—If any national in-
13 surer or other person fails to pay an as-
14 sessment after any penalty assessed under
15 this paragraph has become final, the Di-
16 rector shall recover the amount assessed by
17 action in the appropriate United States
18 district court.
19 (ii) APPROPRIATENESS OF PENALTY
20 NOT REVIEWABLE.—In any civil action
21 under clause (i), the validity and appro-
22 priateness of the penalty shall not be sub-
23 ject to review.
24 (I) DISBURSEMENT AND USE.—All pen-
25 alties collected under authority of this para-

graph shall be deposited into the Treasury, and shall not be used to fund the compensation of the Director or employees of the Office or the expenses of the Office.

(2) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an insurer-affiliated party (including a separation caused by the closing of a national insurer) shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be an insurer-affiliated party with respect to such national insurer.

(3) PREJUDGMENT ATTACHMENT.—

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

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

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

(B) STANDARD.—

(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A), without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State.

(j) CRIMINAL PENALTY.—Whoever, being subject to an order in effect under subsection (d) or (e), without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any national insurer shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.

(k) NOTICE OF SERVICE.—Any service required or authorized to be made by the Director under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

(l) ANCILLARY PROVISIONS; SUBPOENA POWER, ETC..—In the course of or in connection with any proceeding or other action under this section, the Director, or any employee or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Director is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, investigations, or other actions. The attendance of witnesses and the produc-

1 tion of documents provided for in this subsection may be
2 required from any place in any State or other place subject
3 to the jurisdiction of the United States at any designated
4 place where such proceeding or other action is being con-
5 ducted. The Director or any party to proceedings under
6 this section may apply to the United States District Court
7 for the District of Columbia, or the United States district
8 court for the judicial district in which such proceeding or
9 other action is being conducted, or where the witness re-
10 sides or carries on business, for enforcement of any sub-
11 poena or subpoena duces tecum issued pursuant to this
12 subsection, and such courts shall have jurisdiction and
13 power to order and require compliance therewith. Wit-
14 nesses subpoenaed under this subsection shall be paid the
15 same fees and mileage that are paid witnesses in the dis-
16 trict courts of the United States. Any court having juris-
17 diction of any proceeding or other action instituted under
18 this section by a national insurer, a State licensed insur-
19 ance producer or an insurer-affiliated party thereof, may
20 allow to any such party such reasonable expenses and at-
21 torneys' fees as it deems just and proper; and such ex-
22 penses and fees shall be paid by the national insurer or
23 from its assets. Any person who willfully shall fail or
24 refuse to attend and testify or to answer any lawful in-
25 quiry or to produce books, papers, correspondence, memo-

1 randa, contracts, agreements, or other records, if in such
2 person's power so to do, in obedience to the subpoena of
3 the Director, shall be guilty of a misdemeanor and, upon
4 conviction, shall be subject to a fine of not more than
5 $1,000 or to imprisonment for a term of not more than
6 1 year or both.

7 (m) NON-U.S. INSURER.—

8 (1) APPLICABILITY.—Except as otherwise spe-
9 cifically provided in this section, the provisions of
10 this section shall be applied to non-U.S. insurers in
11 accordance with this subsection.

12 (2) ACTIONS.—Any conduct or practice outside
13 the United States on the part of a non-U.S. insurer
14 or any officer, director, employee, or agent thereof
15 may not constitute the basis for any action by the
16 Director under this section, unless the Director al-
17 leges a belief that such conduct or practice has been,
18 is, or is likely to be a cause of or carried on in con-
19 nection with or in furtherance of an act or practice
20 within any one or more States which, in and of
21 itself, would constitute an appropriate basis for ac-
22 tion by the Director under this section.

23 (3) TERMINATION OF BUSINESS.—In any case
24 in which any action or proceeding is brought pursu-
25 ant to an allegation under paragraph (2) for the

1 suspension or removal of any officer, director, or
2 other person associated with a non-U.S. insurer, and
3 such person fails to appear promptly as a party to
4 such action or proceeding and to comply with any ef-
5 fective order or judgment therein, any failure by the
6 non-U.S. insurer to secure his removal from any of-
7 fice he holds in such insurer and from any further
8 participation in its affairs shall, in and of itself, con-
9 stitute grounds for ordering the non-U.S. insurer to
10 terminate all underwriting and sale of insurance in
11 the United States and all other insurance operations
12 in the United States.

13 (4) VENUE.—Where the venue of any judicial
14 or administrative proceeding under this section is to
15 be determined by reference to the location of the
16 main office of a national insurer, the venue of such
17 a proceeding with respect to a non-U.S. insurer hav-
18 ing one or more offices in not more than one judicial
19 district or other relevant jurisdiction shall be within
20 such jurisdiction. Where such a national insurer has
21 offices in more than one such jurisdiction, the venue
22 shall be in the jurisdiction within which the office or
23 offices involved in the proceeding are located, and if
24 there is more than one such jurisdiction, the venue
25 shall be proper in any such jurisdiction in which the

1 proceeding is brought or to which it may appro-
2 priately be transferred.
3 (5) SERVICE.—Any service required or author-
4 ized to be made on a non-U.S. insurer may be made
5 on any office located within any State, but if such
6 service is in connection with an action or proceeding
7 involving one or more offices located in any State,
8 service shall be made on at least one office so in-
9 volved.
10 (n) PUBLIC DISCLOSURES OF FINAL ORDERS AND
11 AGREEMENTS.—
12 (1) IN GENERAL.—The Director shall publish
13 and make available to the public on a monthly
14 basis—
15 (A) any written agreement or other written
16 statement for which a violation may be enforced
17 by the Director;
18 (B) any final order issued with respect to
19 any administrative enforcement proceeding ini-
20 tiated by the Director under this section or any
21 other law; and
22 (C) any modification to or termination of
23 any order or agreement made public pursuant
24 to this paragraph, unless the Director, in the
25 Director's discretion, determines that publica-

tion of any such agreement, statement, order, modification or termination would be contrary to the public interest.

(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(3) TRANSCRIPT OF HEARING.—A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (g) of this section. A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(4) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Director may file any document or part of a document under seal in any administrative hearing commenced by the Director if the Director, in the Director's discretion, determines that disclosure of the document, in whole or in part, would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from

1 the transcript of the hearing required by paragraph
2 (2).
3 (5) RETENTION OF DOCUMENTS.—The Director
4 shall keep and maintain a record, for a period of at
5 least 6 years, of all documents described in para-
6 graph (1) and all informal enforcement agreements
7 and other supervisory actions and supporting docu-
8 ments issued with respect to or in connection with
9 any administrative enforcement proceeding initiated
10 by the Director under this section or any other laws.
11 (6) DISCLOSURES TO CONGRESS.—No provision
12 of this subsection may be construed to authorize the
13 withholding, or to prohibit the disclosure, of any in-
14 formation to the Congress or any committee or sub-
15 committee of the Congress.
16 (p) FOREIGN INVESTIGATIONS.—
17 (1) REQUESTING ASSISTANCE FROM FOREIGN
18 GOVERNMENTAL AUTHORITIES.—In conducting any
19 investigation, examination, or enforcement action
20 under this Act, the Director may—
21 (A) request the assistance of any foreign
22 governmental authority; and
23 (B) maintain an office outside the United
24 States.

(2) PROVIDING ASSISTANCE TO FOREIGN GOVERNMENTAL AUTHORITIES.—

(A) IN GENERAL.—The Director may, at the request of any foreign governmental authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to insurance matters or currency transactions administered or enforced by the requesting authority.

(B) INVESTIGATION BY THE DIRECTOR.—The Director may, in his discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the Director.

(C) FACTORS TO CONSIDER.—In deciding whether to provide assistance under this paragraph, the Director shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance

with respect to insurance matters within the jurisdiction of the Director; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(3) RULE OF CONSTRUCTION.—Paragraphs (1) and (2) shall not be construed to limit the authority of the Director or any other federal agency to provide or receive assistance or information to or from any foreign governmental authority with respect to any matter.

SEC. 206. INSURANCE FRAUD.

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

(1) FRAUDULENT INSURANCE ACT.—The term ''fraudulent insurance act'' shall have the meaning given such term in section 1036(d) of title 18, United States Code.

(2) INSURANCE PERSON.—The term ''insurance person'' shall have the meaning given such term in section 1036(d) of title 18, United States Code.

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

1 (c) INVESTIGATIVE AUTHORITY OF DIRECTOR.—The
2 Director may investigate suspected fraudulent insurance
3 acts and insurance persons engaged in insurance oper-
4 ations.
5 (d) MANDATORY REPORTING OF FRAUDULENT IN-
6 SURANCE ACTS.—A national insurer or an insurance per-
7 son engaged in insurance operations having knowledge or
8 a reasonable belief that a fraudulent insurance act is
9 being, will be, or has been committed, shall provide to the
10 Director the information required by, and in a manner
11 prescribed by, the Director.
12 (e) IMMUNITY FROM LIABILITY.—
13 (1) IN GENERAL.—There shall be no civil liabil-
14 ity imposed on, and no cause of action shall arise
15 from, a person's furnishing information concerning
16 suspected, anticipated, or completed fraudulent in-
17 surance acts, if the information is provided to or re-
18 ceived from—
19 (A) the Director or the Director's employ-
20 ees, agents, or representatives;
21 (B) Federal, State, or local law enforce-
22 ment or regulatory officials or their employees,
23 agents, or representatives;
24 (C) a person involved in the prevention and
25 detection of fraudulent insurance acts or that

1 person's agents, employees, or representatives;
2 or
3 (D) the NAIC or its employees, agents, or
4 representatives.
5 (2) EXCEPTION FOR FALSE STATEMENTS.—
6 Paragraph (1) shall not apply to false statements
7 made with actual malice. In an action brought
8 against a person for filing a report or furnishing
9 other information concerning a fraudulent insurance
10 act, the party bringing the action shall plead specifi-
11 cally any allegation that paragraph (1) does not
12 apply because the person filing the report or fur-
13 nishing the information did so with actual malice.
14 (3) SAVINGS PROVISION.—This subsection does
15 not abrogate or modify common law or statutory
16 privileges or immunities enjoyed by a person de-
17 scribed in paragraph (1).
18 (f) CONFIDENTIALITY.—
19 (1) IN GENERAL.—Documents, materials or
20 other information in the possession or control of the
21 Director that is provided pursuant to subsection (d)
22 or obtained by the Director in an investigation of
23 suspected or actual fraudulent insurance acts shall
24 be confidential by law and privileged, shall not be
25 made available to the public, shall not be subject to

1 subpoena, and shall not be subject to discovery or
2 admissible in evidence in any private civil action.
3 However, the Director may use the documents, ma-
4 terials, or other information in the furtherance of
5 any regulatory or legal action brought as a part of
6 the Director's official duties.

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

15 (3) AUTHORIZED DISCLOSURE.—In order to as-
16 sist in the performance of the Director's duties, the
17 Director may—

18 (A) share documents, materials, or other
19 information, including the confidential and priv-
20 ileged documents, materials, or information
21 subject to paragraph (1) with other State, fed-
22 eral, and international regulatory agencies, with
23 the NAIC and its affiliates and subsidiaries,
24 and with local, State, federal, and international
25 law enforcement authorities, but only if the re-

1 cipient agrees to and has the authority to main-
2 tain the confidentiality and privileged status of
3 the document, material, or other information;
4 (B) receive documents, materials, or infor-
5 mation, including otherwise confidential and
6 privileged documents, materials, or information,
7 from the NAIC and its affiliates and subsidi-
8 aries, and from regulatory and law enforcement
9 officials of State or other foreign or domestic
10 jurisdictions, and shall maintain as confidential
11 or privileged any document, material, or infor-
12 mation received with notice or the under-
13 standing that it is confidential or privileged
14 under the laws of the jurisdiction that is the
15 source of the document, material, or informa-
16 tion; and
17 (C) enter into agreements governing shar-
18 ing and use of information, including the fur-
19 therance of any regulatory or legal action
20 brought as part of the recipient's official duties.
21 (4) NO WAIVER.—No waiver of any applicable
22 privilege or claim of confidentiality in the docu-
23 ments, materials, or information shall occur as a re-
24 sult of disclosure to the Director under this sub-

1 section or as a result of sharing as authorized in
2 paragraph (3).
3 (g) DIVISION OF INSURANCE FRAUD.—
4 (1) ESTABLISHMENT.—The Director shall es-
5 tablish a Division of Insurance Fraud within the Of-
6 fice.
7 (2) POWERS.—The Division of Insurance Fraud
8 shall have all powers and authority necessary for the
9 enforcement of this section, except power to execute
10 search warrants and arrest warrants.
11 (h) PENALTIES.—If the person committing an of-
12 fense under subsection (a) or (c) of section 1036(a) of title
13 18, United States Code, is a national insurer, an insurer-
14 affiliated party, or a State licensed insurance producer,
15 the Director may, in addition to the punishment set forth
16 in such section 1036—
17 (1) revoke, suspend or restrict the federal li-
18 cense of such national insurer pursuant to section
19 204 of this Act; and
20 (2) order such national insurer, insurer-affili-
21 ated party, or State licensed insurance producer to
22 make restitution to persons aggrieved by such of-
23 fenses.

SEC. 207. INTERNATIONAL REGULATORY SUPPORT.

(a) IN GENERAL.—To ensure the effectiveness of the Director's licensing and supervision of national insurers, the Director may engage in international efforts to secure improved bilateral and multilateral cooperation, as appropriate, with respect to improved insurance regulation in global markets that promotes competition and allows foreign participation. Such authority includes provision of appropriate technical assistance to and cooperation with individual overseas national regulators and regional and global regulatory organizations in matters, including development and implementation of international regulatory standards, and development of bilateral and multilateral mutual recognition agreements on licensing, registration, and professional standards with the objective of improving the quality and uniformity of insurance regulation in all countries.

(b) COOPERATION WITH STATE INSURANCE REGULATORS.—Whenever possible, the provisions of subsection (a) shall be implemented in cooperation with State insurance regulators. In matters of representation, the Director and any interested State insurance regulators shall jointly represent the United States market.

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

services, the United States Trade Representative shall have responsibility for the negotiation of international trade agreements associated with trade in insurance. The United States Trade Representative shall develop relevant negotiating strategies and appropriate concessions in close consultation with the Director and State insurance regulators.

TITLE III—NATIONAL INSURERS

Subtitle A—Organization, Licensing, and Operations

SEC. 301. ORGANIZATION, OPERATION, AND REGULATION OF NATIONAL INSURERS.

(a) IN GENERAL.—Subject to the provisions of this Act, the Director may, under such regulations as the Director may prescribe—

(1) provide for the organization, incorporation, operation and regulation of national insurers; and

(2) issue charters therefor.

Such regulations shall permit the organization of national insurers in stock, mutual, or fraternal form.

(b) CHARTERING CRITERIA.—In determining whether to issue a charter for a national insurer, the Director shall consider factors which shall include—

(1) the character and competency of the parties seeking the charter;

(2) and the financial resources and future prospects of the proposed national insurer; and

(3) whether the chartering of the insurer is likely to be hazardous to the insurance-buying public.

(c) FRATERNAL BENEFIT SOCIETIES.—Any charter granted to a national insurer in fraternal form in connection with a conversion from a State charter shall include provisions that allow the national insurer to operate as a fraternal benefit society in a manner consistent with the requirements of its former State charter.

(d) AMENDMENT OF CHARTER.—The Director may, under such regulations as the Director may prescribe, provide for the amendment of charters issued to national insurers.

SEC. 302. U.S BRANCHES OF NON-U.S. INSURERS.

(a) AUTHORIZATION OF ENTRY OF NON-U.S. INSURER.—A non-U.S. insurer may use this section as a port of entry to transact insurance in the United States through a U.S. branch by qualifying the U.S. branch as a national insurer licensed by the Director to do business under this Act under such regulations as the Director may prescribe.

(b) TRUST ACCOUNT.—

(1) ESTABLISHMENT.—The Director shall not license the U.S. branch until the non-U.S. insurer establishes a trust account, pursuant to a deed of trust that meets the requirements of this subsection.

(2) TRUSTEED ASSETS.—The trusteed assets of a U.S. branch shall be held pursuant to a deed of trust with a U.S. bank that meets such requirements as the Director may prescribe, in trust for the exclusive benefit, security and protection of the policyholders, or policyholders and creditors, of the U.S. branch in the United States maintained as long as there is outstanding any liability of the U.S. branch arising out of its insurance transactions in the United States.

(3) TRUSTEED SURPLUS.—The trusteed surplus of a U.S. branch shall be subject to the same solvency standards required of national insurers, including the risk-based capital standards under section 337.

(4) CERTIFIED STATEMENTS.—The Director may from time to time require a U.S. branch to file a statement, in such form as the Director may prescribe, certified by the trustee.

(c) APPLICABILITY OF LAWS.—Except as otherwise provided, a U.S. branch established under this section

shall be subject to all laws applicable to a national insurer and shall be treated as a national insurer for all purposes of this Act, including subtitle D of this title.

SEC. 303. FEDERAL LICENSING OF NATIONAL INSURERS.

(a) IN GENERAL.—Notwithstanding any provision of State law, a national insurer may underwrite and sell in any State any line of insurance for which it holds a federal license. A national insurer may not underwrite or sell any line of insurance for which it does not hold a federal license.

(b) ISSUANCE OF FEDERAL LICENSES.—The Director may, under such regulations as the Director may prescribe—

(1) provide for licensing of national insurers to underwrite and sell lines of insurance; and

(2) issue to national insurers federal licenses specifying the lines of insurance they may underwrite and sell.

(c) DURATION.—A federal license issued by the Director pursuant to this section shall remain in effect until surrendered by the national insurer or until revoked or suspended by the Director in accordance with the provisions of this Act.

(d) REINSURANCE.—

(1) LIMITATION.—A national insurer may reinsure only the lines of insurance that it is licensed to underwrite and sell under its federal license or which it is otherwise permitted to reinsure by the terms of its federal license.

(2) AUTHORITY TO SELL ONLY REINSURANCE.—A national insurer may confine its business to reinsurance.

(e) NATIONAL TREATMENT REQUIRED.—

(1) FAIR TREATMENT OF SUBSIDIARIES AND BRANCHES.—Except as provided in section 302, the Director may not impose any condition to the granting of a federal license under this section to a national insurer or the supervision of a national insurer granted a federal license under this section solely because the national insurer is a subsidiary of a non-U.S. person, is partially owned by a non-U.S. person, or is a U.S. branch of a non-U.S. insurer.

(2) PERMISSIBLE CONDITIONS.—Notwithstanding paragraph (1), the Director may impose conditions to the granting of a federal license or the supervision of a national insurer that are different from those imposed on other national insurers if—

(A) the conditions attached are imposed on the legal form in which the national insurer chooses to operate; or

(B) the Director makes a written finding that the conditions are related to the protection of policyholders and are the minimum necessary to achieve the purposes of this Act.

SEC. 304. CORPORATE GOVERNANCE.

(a) IN GENERAL.—With respect to corporate governance procedures, a national insurer shall comply with applicable provisions of this Act and applicable regulations issued by the Director under this Act.

(b) OTHER PROCEDURES.—To the extent not inconsistent with provisions of this Act or regulations issued by the Director under this Act, a national insurer shall adhere to corporate governance procedures of the relevant State law of either the State in which its main office is located or the State in which its holding company is incorporated, except that the Director may determine that any provision of such State law is discriminatory as applied to national insurers (in which event a national insurer shall not be obligated to follow such a provision of the relevant State law and may follow such other provision of law as the Director deems appropriate). A national in-

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

3 **SEC. 305. MAIN OFFICE.**

4 (a) IN GENERAL.—The charter of a national insurer
5 shall specify the State in which its main office is located.
6 Subject to the approval of the Director, a national insurer
7 may designate any office at which it conducts insurance
8 operations as its main office.

9 (b) CHANGE IN MAIN OFFICE.—With the approval
10 of the Director, a national insurer may change the des-
11 ignation of its main office, including to another existing
12 office of the national insurer.

13 (c) CITIZENSHIP.—A national insurer shall, for pur-
14 poses of jurisdiction, be deemed a citizen of the State in
15 which its main office is located and of the State in which
16 it has its principal place of business.

17 **SEC. 306. CONVERSION OF STATE INSURER TO NATIONAL**
18 **INSURER.**

19 (a) IN GENERAL.—Notwithstanding any other provi-
20 sion of law, a State insurer may, with the approval of the
21 Director, convert into a national insurer, and in doing so
22 an insurer may retain a corporate form permitted by sec-
23 tion 301(a) or change directly to another corporate form
24 that is so permitted.

25 (b) CONVERSION PROCEDURES.—

1 (1) AUTHORITY.—The Director may, under
2 such regulations as the Director may prescribe, pro-
3 vide for the conversion of State insurers into na-
4 tional insurers and the issuance of charters to such
5 converted insurers. Any such conversion shall be car-
6 ried out solely in accordance with such regulations
7 as the Director may prescribe.
8 (2) TERMS.— The regulations issued by the Di-
9 rector under this section shall—
10 (A) be consistent with the regulations
11 issued by the Director under section 301;
12 (B) in the case of a change of form ef-
13 fected at the time of a conversion of a State in-
14 surer into a national insurer, shall be consistent
15 with the provisions of section 382 and any reg-
16 ulations issued by the Director thereunder and
17 shall require compliance with State laws and
18 procedures regarding the demutualization of
19 State insurers; and
20 (C) prohibit any conversion that, in the de-
21 termination of the Director, would substantially
22 prejudice the interests of policyholders and
23 shareholders of the State insurer.
24 (c) EFFECT OF CONVERSION.—Upon conversion
25 from a State insurer to a national insurer in accordance

1 with this section and the regulations issued by the Direc-
2 tor hereunder, a national insurer shall be subject to the
3 provisions of this Act and to examination and regulation
4 under this Act to the same extent as other national insur-
5 ers incorporated pursuant to this Act, and such national
6 insurer shall be deemed to be a continuation of the cor-
7 porate existence of the State insurer and shall, by oper-
8 ation of law and without further action, hold and be sub-
9 ject to all rights, privileges, liabilities, property interests,
10 and other interests and obligations that the State insurer
11 held or was subject to immediately prior to the conversion,
12 except that the national insurer shall not be subject to
13 any requirement applicable to the State insurer to main-
14 tain deposits with State insurance regulatory authorities,
15 shall not hold any State license to underwrite and sell in-
16 surance that was held by the State insurer, and shall ob-
17 tain, in accordance with section 303 and the regulations
18 issued by the Director thereunder, a federal license for all
19 lines of insurance that it underwrites and sells.
20 (d) SPECIAL AUTHORITY.—The Director may, in the
21 Director's discretion and subject to such conditions as the
22 Director may prescribe, permit a national insurer result-
23 ing from the conversion of a State life insurer, upon such
24 conversion, to retain for up to 5 years such assets, liabil-
25 ities, and powers and authorities of the State insurer that

do not conform to the legal requirements otherwise applicable to national insurers as the Director deems appropriate.

SEC. 307. CONVERSION OF NATIONAL INSURER TO STATE INSURER.

(a) IN GENERAL.—Subject to subsection (b) and such notification procedures as the Director may prescribe by regulation, a national insurer may convert into a State insurer, as permitted by the relevant provisions of applicable State law. Nothing in this section or in the conversion of a national insurer into a State insurer shall operate to abrogate any rights, privileges, liabilities, property interests, or other interests or obligations that such insurer held or was subject to immediately prior to the conversion.

(b) LIMITATION.—The Director shall not permit any conversion of a national insurer into a State insurer that, in the determination of the Director, would substantially prejudice the interests of policyholders and shareholders of the national insurer.

Subtitle B—Powers

SEC. 321. POWERS OF NATIONAL INSURERS.

Upon issuance of its charter, a national insurer shall have the power, subject to the provisions of this Act and in accordance with such regulations as the Director may prescribe—

(1) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, impressing or affixing it or in any other manner reproducing it;

(2) to have perpetual succession until such time as it is liquidated, dissolved, merged or otherwise wound up in accordance with applicable law and regulation;

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

(4) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the national insurer), and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(5) to purchase, receive, subscribe for or otherwise acquire, own, hold, vote, improve, employ, use, and otherwise deal in and with real and personal property or other assets, or any interest therein, and to sell, convey, mortgage, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all

1 or any of its property and assets, or any interest
2 therein;
3 (6) to lend money, invest and reinvest its funds
4 and receive and hold real and personal property as
5 security for repayment;
6 (7) to be a promoter, partner, member, asso-
7 ciate or manager of any partnership, joint venture,
8 trust or other entity;
9 (8) to participate with others in any corpora-
10 tion, partnership, limited partnership, joint venture,
11 or other association of any kind, or in any trans-
12 action, undertaking, or arrangement which the par-
13 ticipating national insurer would have power to con-
14 duct by itself, whether or not such participation in-
15 volves sharing or delegation of control with or to
16 others;
17 (9) to elect or appoint directors, officers, em-
18 ployees, and agents of the national insurer, define
19 their duties, fix their compensation and lend them
20 money and credit;
21 (10) to pay pensions and establish pension
22 plans, pension trusts, profit sharing plans, share
23 bonus plans, share option plans, and other benefit or
24 incentive plans for any or all current or former di-

1 rectors, officers, employees, and agents of the na-
2 tional insurer, its subsidiaries, or its affiliates;
3 (11) to provide insurance for its benefit on the
4 life of any of its directors, officers, or employees, or
5 on the life of any shareholder for the purpose of ac-
6 quiring at such shareholder's death shares of its
7 stock owned by such shareholder;
8 (12) to adopt, amend and repeal bylaws;
9 (13) to engage in the underwriting and sale of
10 insurance; to establish and maintain one or more
11 separate accounts and to allocate amounts to such
12 accounts (including, without limitation, proceeds ap-
13 plied under optional modes of settlement or under
14 dividend options) to provide for insurance; to estab-
15 lish and maintain one or more protected cells in con-
16 nection with an insurance securitization and at-
17 tribute to such cells insurance and reinsurance obli-
18 gations with respect to its general account, obliga-
19 tions relating to the insurance securitization and as-
20 sets to fund such obligations; to hold and accumu-
21 late funds pursuant to funding agreements; to pro-
22 vide investment advice and investment management
23 services; to engage in all other insurance operations;
24 and to exercise all such incidental powers as shall be
25 necessary to carry on insurance operations;

(14) to provide benefits or payments to directors, officers, and employees of the national insurer, its subsidiaries, or its affiliates, and to their estates, families, dependents, or beneficiaries, in recognition of the past services of the directors, officers, and employees to the national insurer, its subsidiaries, or its affiliates;

(15) to make donations and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes;

(16) to be a promoter, partner, member, associate, or manager of any business entity;

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

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

SEC. 322. SEPARATE ACCOUNTS.

Amounts allocated by a national life insurer to a separate account shall be owned by the national life insurer, the assets therein shall be the property of the national life insurer, and no national insurer by reason of such account shall be or hold itself out to be a trustee. If and to the extent so provided in the applicable agreements, the assets in a separate account shall not be chargeable with liabil-

ities arising out of any other business of the national insurer.

SEC. 323. PROTECTED CELLS.

(a) ESTABLISHMENT OF PROTECTED CELLS.—A national insurer may establish one or more protected cells with the approval of the Director. The Director shall by regulation adopt standards for protected cells established by national insurers.

(b) PROTECTED CELL ASSETS.—Amounts attributed to a protected cell, including assets transferred to a protected cell account, are owned by the national insurer and the national insurer may not be, nor hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. The assets of a protected cell may not be charged with liabilities arising out of any other business the national insurer may conduct.

(c) SECURITY INTERESTS PERMITTED.—A national insurer may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(d) REACH OF CREDITORS AND OTHER CLAIMANTS.—

(1) CLAIMS TO CERTAIN PROTECTED CELLS ASSETS.—Protected cell assets shall only be available

to the creditors of a national insurer that are creditors in respect to that protected cell, and such creditors shall have recourse only to the protected cell assets attributable to that protected cell.

(2) NO RECOURSE TO OTHER PROTECTED CELL ASSETS.—Creditors with respect to a protected cell shall have no recourse against the protected cell assets of other protected cells or the general account assets of the national insurer.

(3) TREATMENT OF PROTECTED CELLS.—The establishment of a protected cell by a national insurer shall not, in and of itself, constitute or be deemed to be a fraudulent conveyance, an intent by the national insurer to defraud creditors, or the carrying out of business by a national insurer for any other fraudulent purpose.

(e) EFFECT ON STATE LAW.—No State may, by law, regulation, order, interpretation or otherwise, require licensing or otherwise regulate in any manner—

(1) an investor in an insurance securitization, solely by reason of its investment, as an insurer, reinsurer or other person transacting insurance; or

(2) an underwriter or selling agent (or its partners, directors,officers, members, managers, employees, agents, representatives, and advisors) in an in-

surance securitization as an insurance or reinsurance agent, broker, producer, intermediary, advisor, consultant or similar capacity by virtue of its activities in connection with the insurance securitization.

Subtitle C—Financial Regulation

SEC. 331. ACCOUNTING PRINCIPLES AND AUDITING STANDARDS.

(a) REGULATIONS.—

(1) IN GENERAL.—The Director shall, by regulation, specify the accounting principles and auditing standards to be followed by a national insurer in preparing financial statements to be filed with the Director pursuant to section 202(b)(1).

(2) INITIAL REGULATIONS.—The initial regulations under paragraph (1) shall be promulgated on or before the transition commencement date and shall require that—

(A) except as provided in section 333, national insurers shall follow statutory accounting practices as promulgated by the NAIC in its Accounting Practices and Procedures Manual; and

(B) audited financial statements shall be in accordance with guidance prescribed by the

NAIC in its Model Regulation Requiring Annual Audited Financial Reports;

each as in effect as of January 1, 2001, and as amended by the NAIC and in effect thereafter from time to time prior to the transition termination date, except that the Director may by regulation specify that any such amendment by the NAIC shall, in whole or in part, be inapplicable to national insurers.

(3) AMENDMENT OF NAIC STANDARDS.—The accounting principles and auditing standards for national insurers in effect on the transition termination date pursuant to paragraph (2) may thereafter be amended by regulations promulgated pursuant to paragraph (1).

(b) STUDY AND HEARINGS.—The Director shall conduct a study and hold hearings prior to the transition termination date and shall determine whether modification of the accounting principles and auditing standards for national insurers established pursuant to subsection (a) would be consistent with the public interest and the protection of policyholders.

SEC. 332. INVESTMENTS.

(a) IN GENERAL.—

(1) INVESTMENTS.—A national insurer may loan or invest its funds, and may buy, sell, hold title

1 to, possess, occupy, pledge, convey, manage, protect,
2 insure and deal with its investments, property and
3 other assets. Such investments shall be of sufficient
4 value, liquidity, and diversity to ensure the national
5 insurer's ability to meet its outstanding obligations
6 based on reasonable assumptions as to its business.
7 (2) SUBSIDIARIES.—A national insurer may in-
8 vest in, or otherwise acquire, subsidiaries engaged or
9 organized to engage in any business lawful under the
10 laws of the jurisdictions in which such subsidiaries
11 are organized.
12 (b) INVESTMENT POLICY.—In acquiring, investing,
13 exchanging, holding, selling, and managing investments,
14 a national insurer shall establish and follow a written in-
15 vestment policy that shall be reviewed and approved by
16 the national insurer's board of directors at least annually.
17 The content and format of a national insurer's investment
18 policy shall be at the national insurer's discretion, but
19 shall include written guidelines appropriate to the national
20 insurer's business as to the following issues:
21 (1) The general investment policy of the na-
22 tional insurer, with guidelines and specifications in-
23 tended to assure that its investments are appro-
24 priate for the business conducted by the national in-
25 surer, its liquidity needs and its capital and surplus.

1 (2) Goals and objectives regarding the composi-
2 tion of classes of investments, including maximum
3 internal limits.
4 (3) Requirements for periodic evaluation of the
5 investment portfolio as to its risk and reward char-
6 acteristics, and for adoption and oversight of imple-
7 mentation of procedures and controls covering all as-
8 pects of the investment function.
9 (c) STANDARD OF CARE.—In reviewing and approv-
10 ing the investment policy established pursuant to sub-
11 section (b), the directors of a national insurer shall per-
12 form their duties in good faith and with that degree of
13 care that an ordinarily prudent individual in a like position
14 would use under similar circumstances. Among the factors
15 that the board of directors may consider are the following:
16 (1) The national insurer's business.
17 (2) General economic conditions.
18 (3) The possible effect of inflation or deflation.
19 (4) The expected tax consequences of invest-
20 ment decisions or strategies.
21 (5) The fairness and reasonableness of the
22 terms of an investment considering its probable risk
23 and reward characteristics and relationship to the
24 investment portfolio as a whole.

(6) The extent of the diversification of the national insurer's investments among—

(A) individual investments;

(B) classes of investments;

(C) industry concentrations; and

(D) geographic areas.

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

(8) The investment exposure to—

(A) liquidity risk;

(B) credit and default risk;

(C) systemic (market) risk;

(D) interest rate risk;

(E) call, prepayment, and extension risk;

(F) currency risk; and

(G) foreign sovereign risk.

(9) The amount of the national insurer's assets, capital and surplus, premium writings, and insurance in force.

(10) The amount and adequacy of the national insurer's reported and unreported liabilities.

(11) The relationship of the expected cash flows of the national insurer's assets and liabilities, and the risk of adverse changes in the national insurer's assets and liabilities.

(12) The adequacy of the national insurer's capital and surplus to support the risks and liabilities of the national insurer.

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

(d) INTERNAL CONTROLS.—A national insurer shall establish and implement internal controls and procedures to ensure compliance with its investment policy. In this respect, an evaluation and monitoring process shall occur periodically for assessing the effectiveness of such controls and procedures. Additionally, the national insurer shall assess management's success in meeting the stated objectives within the investment policy.

(e) MINIMUM FINANCIAL SECURITY BENCHMARK.—

(1) ESTABLISHMENT.—The Director shall by regulation or order establish what portion of the surplus of an individual national insurer or any category of national insurers shall constitute a minimum financial security benchmark that will provide reasonable security against contingencies affecting a national insurer's financial position that are not fully covered by reserves or by reinsurance.

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

thorized control level risk-based capital (or, absent an authorized control level risk-based capital, another comparable risk-based capital level established by the Director) applicable to the national insurer as established under section 337 less any asset valuation reserve and voluntary investment reserves that may be required.

(3) FAILURE TO COMPLY.—Notwithstanding the provisions of subsection (c), if a national insurer fails to meet the minimum financial security benchmark applicable to it, the national insurer shall be subject to such investment standards as the Director shall establish by regulation or order.

SEC. 333. ASSET VALUATION AND RATING.

The Director shall establish such standards and means to recognize risk factors appropriate to the valuation and rating of assets held by a national insurer for purposes pertinent to the supervision of national insurers other than risk-based capital. The initial standards and means shall be promulgated on or before the transition commencement date.

SEC. 334. VALUATION OF LIABILITIES.

(a) REGULATIONS.—The Director shall, by regulation, establish standards for the valuation of insurer obligations and liabilities for national insurers. The regula-

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

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

23 (c) REGULATIONS AFTER TRANSITION PERIOD.—
24 The standards for the valuation of insurer obligations and
25 liabilities for national insurers in effect on the transition

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

4 **SEC. 335. CONTINUING AND ALTERNATE BENEFITS.**

5 (a) REGULATIONS.—The Director shall, by regula-
6 tion, establish standards applicable to national life insur-
7 ers for the determination of continuing and alternate ben-
8 efits available at the election of the policyholder or upon
9 insurance policy termination that are reflective of the ac-
10 cumulated remaining value in the insurance policy.

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

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

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

10 **SEC. 336. ACTUARIAL OPINION.**

11 The Director shall, by regulation, require each na-
12 tional insurer to file an annual written opinion from a
13 qualified actuary on the adequacy of the national insurer's
14 assets to meet its reasonably expected obligations and li-
15 abilities. The opinion shall be based on analysis consistent
16 with the nature of the national insurer's obligations and
17 liabilities.

18 **SEC. 337. RISK-BASED CAPITAL STANDARDS.**

19 (a) REGULATIONS.—

20 (1) ESTABLISHMENT.—The Director shall, by
21 regulation, establish risk-based capital standards for
22 national insurers that recognize risk factors appro-
23 priate to the business of national insurers and rem-
24 edies for failure to meet such standards.

(2) REGULATIONS DURING TRANSITION PERIOD.—The initial regulations under paragraph (1) shall be promulgated on or before the transition commencement date and shall provide that the standards be based on NAIC risk-based capital calculations and remedies in the form adopted by the NAIC, each as in effect as of January 1, 2001, and as amended by the NAIC and in effect thereafter from time to time prior to the transition termination date, except that the Director may by regulation specify that any such amendment by the NAIC shall, in whole or in part, be inapplicable to national insurers.

(3) REGULATIONS AFTER TRANSITION PERIOD.—The risk-based capital standards for national insurers and the remedies for failure to meet such standards in effect on the transition termination date pursuant to paragraph (2) may thereafter be amended by regulations promulgated pursuant to paragraph (1).

(b) DISCLOSURE.—Except as may be required or permitted under the regulations promulgated pursuant to subsection (a), a national insurer shall not disclose its risk-based capital ratio to the general public for any purpose.

SEC. 338. DIVIDENDS TO SHAREHOLDERS.

(a) SHAREHOLDER DIVIDENDS PERMITTED.—A national insurer may declare and pay dividends or make other distributions in cash or its bonds or its property on its outstanding shares, except when the national insurer is insolvent or would thereby be made insolvent, or when the declaration, payment or distribution would be contrary to any restrictions contained in its charter or any order issued by the Director.

(b) SOURCE OF SHAREHOLDER DIVIDENDS.—Dividends may be declared or paid and other distributions may be made out of surplus only, so that the assets of the national insurer remaining after such declaration, payment, or distribution shall at least equal the amount of its capital.

Subtitle D—Reinsurance

SEC. 351. DEFINITIONS.

For purposes of this subtitle:

(1) FEDERALLY QUALIFIED REINSURER.—The term ''federally qualified reinsurer'' means a State chartered reinsurer or a reinsurer chartered in a foreign jurisdiction that holds a license issued by the Director pursuant to section 356.

(2) FEDERAL REINSURER.—The term ''federal reinsurer'' means a reinsurer that—

(A) is a national insurer that holds a federal license under this title;

(B) is a federally qualified reinsurer; or

(C) maintains a trust fund pursuant to section 352(b).

(3) QUALIFIED FINANCIAL INSTITUTION.—The term ''qualified financial institution'' means an institution that is organized or licensed under the laws of the United States or any State and that is regulated, supervised, and examined by United States Federal or State authorities having regulatory authority over banks and trust companies. Such term includes a foreign branch of a qualified United States financial institution and any other foreign institution as determined by the Director, consistent with the purposes of this subtitle.

(4) REINSURER.—The term ''reinsurer'' means an insurer that is in or proposes to enter the business of providing wholesale insurance risk management and related financial management products and services to insurers or other entities that are in the business of providing insurance risk management and related financial management products and services in wholesale and retail markets.

(5) RISK TRANSFER PRODUCT.—The term ''risk transfer product'' means any agreement between or among parties in which a party contractually assumes a specified financial uncertainty from another party, for consideration.

SEC. 352. RESERVE CREDIT.

(a) IN GENERAL.—Credit for reinsurance shall be allowed under this Act solely under the provisions of this subtitle to a national insurer, federally qualified reinsurer, and a State insurer that cedes any risk to a federal reinsurer.

(b) TRUST FUNDS.—

(1) REQUIRED ACTIONS.—If the assuming insurer secures all its liabilities attributable to reinsurance ceded by State insurers and U.S. branches entered through a State or established pursuant to section 302 with a trust, the assuming insurer shall—

(A) file annually with the Director a copy of its most recent audited financial statement and a copy of its annual financial statement in substantially similar format as those required to be filed by a national insurer under this Act;

(B) file with the Director evidence of its submission to the jurisdiction of the Director;

(C) submit to examination of its books and records and bear the expense of the examination;

(D) file with the Director the form of the trust and any trust amendments;

(E) deposit in the trust such reasonable amount in excess of its liabilities for risks resident or located in the United States, net of reinsurance, as shall be determined in rules to be promulgated by the Director; and

(F) comply with such other regulations as the Director may issue.

(2) AMOUNTS.—Such a trust may be funded only with—

(A) cash;

(B) securities qualifying as admitted assets of a national insurer;

(C) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified financial institution, effective no later than December 31 of the year for which the filing is being made, and in trust for the ceding insurer on or before the filing date of its annual financial statement; except that letters of credit issued or confirmed by institutions that subse-

1 quently fail to meet applicable standards shall
2 continue to be acceptable as security under this
3 subsection until the earliest of their expiration,
4 extension, renewal, modification, or amendment;
5 or
6 (D) any other form of security acceptable
7 to the Director.
8 (c) OTHER ASSET OR REDUCTION FROM LIABIL-
9 ITY.—In addition to the reserve credit permitted under
10 subsections (a) and (b), a national insurer and a federally
11 qualified reinsurer may establish an asset or reduce its
12 liabilities, in an amount not exceeding its liabilities, for
13 reinsurance ceded and secured in accordance with this
14 subsection. The reduction shall be in the amount of funds
15 held by or on behalf of the ceding insurer, including funds
16 held in trust for the ceding insurer, under a reinsurance
17 contract with the assuming insurer as security for the pay-
18 ment of obligations thereunder, if the security is subject
19 to withdrawal solely by, and under the exclusive control
20 of, the ceding insurer; or in the case of a trust, held in
21 a qualified financial institution. This security may be in
22 the form only of—
23 (1) cash;
24 (2) securities qualifying as admitted assets of a
25 national insurer;

(3) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified financial institution, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual financial statement; except that letters of credit issued or confirmed by institutions that subsequently fail to meet applicable standards shall continue to be acceptable as security under this subsection until the earliest of their expiration, extension, renewal, modification, or amendment; or

(4) any other form of security acceptable to the Director.

(d) REQUIRED REINSURANCE.—Notwithstanding other provisions of this section or any regulation promulgated pursuant to this section, credit shall be allowed for reinsurance ceded to government-owned or controlled insurers or reinsurers or to pools or to guaranty associations or to residual market mechanisms, as may be required under applicable law or regulation in any jurisdiction, unless the Director determines otherwise, after notice and hearing.

SEC. 353. RISK TRANSFER REGULATION.

The Director shall issue regulations that—

(1) allow a ceding insurer to establish an asset or to reduce its liability for reinsurance of risk, whether the risk is mortality, morbidity, lapse, credit, investment, timing, or expense and whether such risks are proportional or nonproportional;

(2) provides that a federal reinsurer may assume any risk described in paragraph (1) from any regulated financial entity, as long as those risks originated in one or more financial undertakings by the entity; and

(3) implements the purposes of this subtitle so that functionally equivalent risk-spreading financial arrangements should be treated similarly.

SEC. 354. INTERNATIONAL STANDARDS; HOST COUNTRY RESERVES.

(a) INTERNATIONAL STANDARDS AND RECIPROCITY.—The Director shall have the responsibility, and shall take such actions as may be necessary, to—

(1) improve the United States reinsurers' ability to compete internationally;

(2) promote the development, by the transition termination date, of international accounting standards for reinsurance and functionally equivalent risk-transfer products;

(3) work toward international mutual recognition on a bilateral or multilateral basis; and

(4) ensure that federal regulation of reinsurers imposes no substantial competitive disadvantage on United States operations of reinsurers.

(b) HOST COUNTRY RESERVES.—By the transition termination date, the Director shall, by regulation, establish valuation rules that allow federal reinsurers to use the reserving rules of the country where the reinsured risk originates for any such non-United States risks to the extent the Director deems necessary or appropriate to protect the federal reinsurer's solvency. Such regulations may require segregation of assets and liabilities for any such reinsured non-United States risks.

SEC. 355. REINSURANCE CONTRACT TERMS.

The Director shall adopt regulations governing the provisions of reinsurance contracts that will be required in order for an insurer ceding insurance risk to the reinsurer to establish an asset or to reduce a liability.

SEC. 356. LICENSING OF FEDERALLY QUALIFIED REINSURERS.

(a) IN GENERAL.—The Director may license reinsurers to provide reinsurance for insurance and prescribe, by regulation, the standards and procedures for granting licenses under this Act to entities to provide reinsurance

1 for insurance. Such standards shall give due consideration
2 to the public interest in providing secure and sufficient
3 reinsurance capacity in the United States and to the need
4 for promoting effective, fair competition.

5 (b) DETERMINATION AND FINDING.—Upon submis-
6 sion of an application, the Director shall examine the in-
7 formation submitted and conduct such further examina-
8 tion and investigation, as the Director finds necessary, to
9 determine whether the applicant satisfies the standards
10 for a license to provide reinsurance under this section.
11 Upon conclusion of the examination and investigation, the
12 Director shall publish the findings and determination of
13 the examination. Upon a determination that the applicant
14 has satisfied the applicable requirements of this section,
15 the Director shall issue the license.

16 (c) ANNUAL REPORTS.—The Director shall require
17 each reinsurer that holds a license to provide reinsurance
18 under this section to submit an annual report of its finan-
19 cial condition and an annual report on the condition of
20 any trust fund regulated under this subtitle in a form pre-
21 scribed by the Director.

22 **SEC. 357. TRANSITION.**

23 (a) CONGRESSIONAL INTENT.—The Congress intends
24 to ensure the protection of the American insurance-pur-

1 chasing public and the fair and reciprocal national treat-
2 ment for regulated entities.
3 (b) TRANSITION.—For the period of the transition
4 under subsection (c) of this section, the Director may not,
5 pursuant to section 356, license any entity that is not a
6 State insurer.
7 (c) PERIOD OF TRANSITION.—
8 (1) IN GENERAL.—The period of transition
9 under this subsection shall be the period that—
10 (A) is determined by the Director in con-
11 sultation with the United States Trade Rep-
12 resentative;
13 (B) ends no earlier than the transition ter-
14 mination date; and
15 (C) is terminated on a country-by-country
16 basis, depending on the determination pursuant
17 to subparagraph (A).
18 (2) TERMINATION.—Notwithstanding para-
19 graph (1), the transition period shall not be termi-
20 nated with respect to any country unless the United
21 States Trade Representative advises that such coun-
22 try has a mutual recognition agreement with the
23 United States.

SEC. 358. APPLICABILITY OF OTHER SUBTITLES AND LAWS.

(a) IN GENERAL.—No State law, regulation, or practice relating to any matter addressed in this subtitle or in regulations implementing any provisions of this subtitle shall apply, directly or indirectly, to—

(1) any federal reinsurer; or

(2) any State insurer purchasing a risk transfer product from a federal reinsurer.

(b) INAPPLICABILITY OF SUBTITLE E.—A federal reinsurer shall be exempt from subtitle E of this title with respect to its reinsurance operations.

(c) APPLICABILITY OF OTHER LAWS.—No provision of law of any State, political subdivision, or agency thereof, or franchising authority, and no provision of any franchise granted by such authority, which is inconsistent with or more restrictive than, any provision of this subtitle shall apply to—

(1) any federal reinsurer; or

(2) any State insurer purchasing a risk transfer product from a federal reinsurer.

Subtitle E—Insurance Business

SEC. 361. PRODUCT REGULATION.

(a) DEFINITION OF POLICY.—For purposes of this section, the term ''policy'' means a policy, contract, certificate, or evidence of insurance, or an annuity contract, and a rider or endorsement thereto, but does not include a

1 funding agreement or a reinsurance contract and does not
2 include an agreement, special rider or endorsement relat-
3 ing only to the manner of distributing benefits or to the
4 reservation of rights and benefits used at the request of
5 the individual policyholder.

6 (b) STANDARDS.—The Director shall, by regulation,
7 establish standards for policies as to policy provisions. The
8 standards may include general requirements as to policy
9 provisions generally and requirements as to particular
10 classes of policies. All policies when written by a national
11 insurer shall comply with the applicable standards then
12 in effect.

13 (c) PRODUCT FILINGS.—No national insurer may
14 issue a policy until the form of the policy has been filed
15 with and approved by the Director. Pursuant to regula-
16 tions promulgated by the Director, any filing of a policy
17 form shall be accompanied by a certificate of an officer
18 of the national insurer as to compliance of the policy form
19 for the standards applicable to the policy form.

20 (d) INTERPRETIVE RULINGS.—

21 (1) PROCEDURES.—The Director shall by regu-
22 lation establish procedures by which national insur-
23 ers may obtain interpretive rulings from the Office
24 regarding the interpretation and application of the
25 standards established pursuant to this section.

1 (2) CONFIDENTIALITY.—Neither the request by
2 a national insurer for an interpretative ruling nor
3 the complete text of the interpretative ruling of the
4 Office shall be made available to the public.
5 (3) SUMMARIES.—Notwithstanding paragraph
6 (2), the Director shall make summaries of interpre-
7 tive opinions public, without the name of the na-
8 tional insurer or other identifying information,
9 promptly after issuance of the opinions or after such
10 delay as the Director may determine at the request
11 of the national insurer.
12 (e) STATE REGULATION OF RATES.—Notwith-
13 standing any other provision of this Act or any other law,
14 each national insurer and each insurance policy issued by
15 a national insurer shall be subject to State laws, rules,
16 regulations, orders, and actions that regulate the rates for
17 insurance.

18 **SEC. 362. UNDERWRITING STANDARDS FOR LIFE INSUR-**
19 **ERS.**

20 A national life insurer may classify or underwrite
21 risks, except that any decision to—
22 (1) refuse to insure or to continue to insure,
23 (2) limit the amount, extent or kind of cov-
24 erage, or

(3) charge a different rate for the same coverage,

shall be—

(A) based on sound actuarial principles; or

(B) related to actual or reasonably anticipated experience.

SEC. 363. GROUP, BLANKET, AND FRANCHISE INSURANCE.

(a) AUTHORITY.—A national insurer may—

(1) underwrite and sell group, blanket, and franchise policies for insurance; and

(2) extend group, blanket, or franchise policies for insurance to insure the dependents of employees or members, or any class or classes thereof.

(b) REGULATION.—The Director shall, by regulation, establish standards for kinds and qualifications of permissible groups for group and franchise policies for insurance.

(c) PERMISSIBLE GROUPS.—The regulations issued under subsection (b) shall provide that the permissible groups shall include the following groups:

(1) Employees, including retired employees, former employees, and officers, and directors of an employer.

(2) Union members.

(3) Creditors or vendors insuring debtors or purchasers.

(4) Holders of a credit card, charge card, or payment card that can be used to buy goods or services issued by a bank, retailer, or other issuer.

(5) Depositors, account holders, or members of a bank, savings and loan association, credit union, mutual fund, money market fund, stockbroker, or other similar financial institution regulated under State or Federal law.

(6) Multiple employers trusts insuring employees or union members.

(7) Employer trade associations insuring employees.

(8) Professional or trade association members.

(9) Association members.

(10) A group for which there is a common enterprise or economic or social affinity or relationship.

(11) A group of individuals or businesses located in underserved communities.

(12) Any other group as the Director may provide.

SEC. 364. INSURABLE INTERESTS UNDER LIFE INSURANCE POLICIES.

(a) DEFINITIONS AND EXCEPTIONS.—

1 (1) DEFINITIONS.—For purposes of subsections
2 (c)(4), (d)(1)(D), (d)(1)(E), and (d)(1)(F) of this
3 section, the term ''employee'' shall include—
4 (A) any and all directors, officers, part-
5 ners, employees, retired employees, or the de-
6 pendents of such persons; and
7 (B) any former employee not included in
8 subparagraph (A), but only for the purpose of
9 replacing existing life insurance with new life
10 insurance in an amount not exceeding the in-
11 surance being replaced.
12 (2) EXCEPTIONS.—This section shall not apply
13 to—
14 (A) an annuity contract;
15 (B) a funding agreement; or
16 (C) any other life insurance policy the Di-
17 rector by regulation excepts from the require-
18 ments of this section.
19 (b) INSURABLE INTEREST REQUIRED; VIOLATION.—
20 (1) REQUIREMENT.—No person shall procure
21 or cause to be procured any life insurance policy
22 written by a national life insurer upon the person of
23 another individual unless such person has, at the
24 time when such life insurance policy is made, an in-
25 surable interest in the individual insured, or unless

1 the benefits under such life insurance policy are pay-
2 able to the individual insured or his or her personal
3 representatives, or to a person having, at the time
4 when such life insurance policy is made, an insurable
5 interest in the individual insured, except that an in-
6 surable interest need not exist at the time loss oc-
7 curs under the life insurance policy.

8 (2) VIOLATION.—If the beneficiary, assignee or
9 other payee under any life insurance policy made in
10 violation of this subsection receives from the na-
11 tional life insurer any benefits thereunder accruing
12 upon the death, disablement, or injury of the indi-
13 vidual insured, the individual insured or his executor
14 or administrator may maintain an action to recover
15 such benefits from the person receiving them.

16 (c) DEFINITION OF INSURABLE INTEREST.—

17 (1) IN GENERAL.—For purposes of this section,
18 the term ''insurable interest'' means an interest
19 based upon a reasonable expectation of pecuniary
20 advantage through the continued life, health, or bod-
21 ily safety of another individual and consequent loss
22 by reason of such individual's death or disability or
23 a substantial interest engendered by love and affec-
24 tion in the case of individuals closely related by
25 blood or by law.

(2) INSURABLE INTEREST OF SELF.—An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out an insurance policy on his own life, health, or bodily safety and have the insurance policy made payable to whomsoever such individual pleases, regardless of whether the beneficiary designated has an insurable interest.

(3) INSURABLE INTEREST OF PARTY TO CONTRACT FOR SALE OF A BUSINESS INTEREST.—A party to a contract or option for the purchase or sale, including a redemption, of an interest in a business proprietorship, partnership or firm, or of shares of stock of a business entity or of an interest in these shares, has an insurable interest in the life, body and health of each individual party to that contract or option, and for the purposes of that contract or option only, in addition to any insurable interest that may otherwise exist as to that individual.

(4) INSURABLE INTEREST OF A BUSINESS ENTITY OR TRUST ESTABLISHED BY A BUSINESS ENTITY.—

(A) BUSINESS ENTITY.—A business entity has an insurable interest in the life or physical or mental ability of any of its employees or the

1 employees of any of its affiliates or any other
2 person whose death or physical or mental dis-
3 ability might cause financial loss to the business
4 entity; or, pursuant to any contractual arrange-
5 ment with any shareholder concerning the reac-
6 quisition of shares owned by him or her at the
7 time of his or her death or disability, on the life
8 or physical or mental ability of that shareholder
9 for the purpose of carrying out such contractual
10 arrangement; or, pursuant to any contract obli-
11 gating the business entity as part of compensa-
12 tion arrangements or pursuant to a contract ob-
13 ligating the business entity as guarantor or sur-
14 ety, on the life of the principal obligor.
15 (B) TRUST.—
16 (i) The trustee of a trust established
17 by a business entity substantially for the
18 benefit of the business entity has the same
19 insurable interest in the life or physical or
20 mental ability of any person as does the
21 business entity.
22 (ii) The trustee of a trust established
23 by a business entity providing life, health,
24 disability, retirement, or similar benefits to
25 some or all of the employees of the busi-

1 ness entity or its affiliates in which such
2 business entity has an insurable interest or
3 the beneficiaries of such employees, and
4 acting in a fiduciary capacity with respect
5 to such employees or their beneficiaries,
6 has the same insurable interest in the life
7 of such employees as does the business en-
8 tity.
9 (C) CONVEYANCE.—The insurable interest
10 of a business entity or trustee which has been
11 established pursuant to subparagraph (B) shall
12 be conveyed automatically to another business
13 entity or to the trustee of a trust established by
14 such other business entity for its sole benefit
15 which has acquired by purchase, merger, or oth-
16 erwise all or part of the first business entity's
17 business. A business entity or the trustee of a
18 trust established pursuant to subparagraph (B)
19 may exchange any insurance policy issued to
20 itself or to another business entity or the trust-
21 ee of a trust established pursuant to subpara-
22 graph (B) from which the exchanging business
23 entity has acquired by purchase, merger, or
24 otherwise all or part of such other business en-
25 tity's business for a new insurance policy issued

1 to itself without establishing a new insurable in-
2 terest at the time of such exchange.
3 (5) CHARITABLE INSTITUTIONS.—A charitable
4 institution as defined under section 501(c)(3),
5 501(c)(6), 501(c)(8), or 501(c)(9) of the Internal
6 Revenue Code of 1986 shall have an insurable inter-
7 est in the life of any donor.
8 (d) APPLICATION AND CONSENT OF INSURED.—
9 (1) REQUIRED CONSENT.—No life insurance
10 policy upon an individual, except a group insurance
11 policy, shall be made or effectuated unless at the
12 time of the making of the life insurance policy the
13 individual insured, being of competent legal capacity
14 to contract, applies for an insurance policy or con-
15 sents in writing to the contract, except in the fol-
16 lowing cases:
17 (A) A spouse may effectuate life insurance
18 upon the other spouse.
19 (B) Any person having an insurable inter-
20 est in the life of a minor or any person upon
21 whom a minor is dependent for support and
22 maintenance may effectuate life insurance upon
23 the life of or pertaining to the minor.

1 (C) An application for a family life insur-
2 ance policy may be signed by either parent, by
3 a stepparent, or by husband or wife.
4 (D) A business entity may effectuate life
5 insurance upon its employees in whom it has an
6 insurable interest.
7 (E) A trustee of a trust established by a
8 business entity providing life, health, disability,
9 retirement, or similar benefits may effectuate
10 life insurance upon employees for whom such
11 benefits are to be provided. For purposes of this
12 subparagraph, any employee of a group of busi-
13 ness entities consisting of a parent business en-
14 tity and its directly or indirectly owned subsidi-
15 aries shall be considered to be an employee of
16 each business entity within the group.
17 (F) A business entity described in subpara-
18 graph (D) or the trustee of a trust established
19 by such business entity as contemplated by sub-
20 paragraph (E) may exchange any life insurance
21 policy which was sold to itself on the life of an
22 employee or retiree of the business entity, or
23 which was sold to another business entity or the
24 trustee of a trust established by such other
25 business entity as contemplated by subpara-

1 graph (E) on the life of an employee or retiree
2 of such other business entity, and the exchang-
3 ing business entity has acquired by purchase,
4 merger, or otherwise all or part of such other
5 business entity's business for a new life insur-
6 ance policy on such individual's life sold to the
7 exchanging business entity.

8 (2) LIABILITY.—A national life insurer shall be
9 entitled to rely upon all statements, declarations,
10 and representations made by an applicant for insur-
11 ance relative to the insurable interest which such ap-
12 plicant has in the insured. No national life insurer
13 shall incur any legal liability except as set forth in
14 the insurance policy, by virtue of any untrue state-
15 ments, declarations, or representations so relied
16 upon in good faith by the national life insurer.

17 (e) CONDITIONS FOR NEW INSURANCE EXCEEDING
18 INSURANCE BEING REPLACED.—Notwithstanding the
19 provisions of subsections (c)(4), (d)(1)(D), (d)(1)(E), or
20 (d)(1)(F), any new life insurance may exceed the life in-
21 surance being replaced only—

22 (1) when an entity has an insurable interest
23 pursuant to subsection (c)(4) and the authority to
24 effectuate life insurance pursuant to the provisions
25 of subsection (d)(1)(D), (d)(1)(E), or (d)(1)(F); and

(2)(A) to the extent application of the cash surrender value from the old life insurance as a premium under the new life insurance policy requires a larger amount of insurance to qualify as life insurance or to be not treated as a modified endowment contract for federal income tax purposes;

(B) to otherwise comply with applicable Federal law; or

(C) when, upon cessation of premium payments, a former employee or trustee elects under the life insurance policy to use the cash value available under the life insurance policy to restructure the term, face amount, or investment options under the life insurance policy, even though such restructuring may result in an increase in the amount of the insurance.

(f) INSURANCE POLICY TRANSFERS OR ASSIGNMENTS.—If a life insurance policy has been issued in compliance with this section, no transfer or assignment of such insurance policy or any interest thereunder shall be invalid by reason of a lack of insurable interest of the transferee or assignee in the life of the insured or the payment of premiums thereafter by the transferee or assignee.

(g) EFFECT OF STATE LAW.—No State may, by law, regulation, order, interpretation or otherwise, impose any

standard, relating to any matter addressed in this section, on national life insurers or persons who purchase insurance from national life insurers.

SEC. 365. LAW APPLICABLE TO LIFE INSURANCE POLICIES OR OTHER PRODUCTS OF NATIONAL LIFE INSURERS.

(a) IN GENERAL.—Subject to any applicable Federal law, the provisions of any life insurance policy or other product of a national life insurer shall be interpreted in accordance with the law of the jurisdiction, if any, specified by the parties in the life insurance policy or other product, so long as the parties have specified the law of—

(1) the jurisdiction in which the national life insurer has its main office;

(2) the jurisdiction in which the national life insurer has its principal place of business; or

(3) the jurisdiction in which the life insurance policy or other product is delivered.

(b) DEFAULT LAW.—Subject to any applicable Federal law, if the parties to a life insurance policy or other product of a national life insurer have not specified, as provided in subsection (a), the jurisdiction whose law shall govern the provisions of the insurance policy or other product, such provisions shall be interpreted in accordance

with the law of the jurisdiction in which the life insurance policy or other product is delivered.

(c) REGULATIONS.—Subsection (b) shall be subject to such choice of law rules and standards as the Director may establish by regulation.

Subtitle F—Market Conduct

SEC. 371. PURPOSES AND REGULATIONS.

(a) PURPOSE.—The purposes of this subtitle is to ensure appropriate federal regulation of sales and marketing practices of national insurers and State licensed insurance producers selling the products of national insurers to prevent—

(1) unfair methods of competition and unfair and deceptive acts and practices in the advertising, solicitation, sale, issuance, distribution, and administration of insurance policies and other products of national insurers;

(2) unfair claims practices related to insurance underwritten and sold by such insurers and producers;

(3) discrimination in the underwriting of insurance by such insurers and producers; and

(4) insurance fraud.

(b) RULEMAKING AUTHORITY.—The Director shall promulgate such rules and regulations, applicable to na-

1 tional insurers and State insurance producers that sell
2 products of national insurers, as the Director deems nec-
3 essary to carry out the purposes of this subtitle.

4 (c) ANNUAL EXAMINATIONS.—The Director shall
5 conduct annual examinations of the market conduct of na-
6 tional insurers and State insurance producers that sell
7 products of national insurers.

8 (d) SAFE HARBOR.—An immaterial clerical error or
9 mathematical error made in connection with the adver-
10 tising, solicitation, sale, issuance, distribution, or adminis-
11 tration of insurance policies and other products of national
12 insurers and State insurance producers that sell products
13 of national insurers shall not constitute a violation of this
14 subtitle.

15 **SEC. 372. UNFAIR OR DECEPTIVE PRACTICES.**

16 (a) GENERAL PROHIBITION.—No person shall en-
17 gage in any act or practice in or affecting the advertising,
18 solicitation, sale, issuance, distribution, or administration
19 of insurance or other products of national insurers, includ-
20 ing such products sold by State insurance producers, if
21 such act or practice—

22 (1) constitutes an unfair or deceptive act or
23 practice in or affecting the advertising, solicitation,
24 sale, issuance, distribution, or administration of in-
25 surance or other products of national insurers; and

(2)(A) is committed flagrantly and in conscious disregard of this subtitle or any regulations promulgated under this subtitle; or

(B) has been committed with such frequency as to indicate a general business practice to engage in such conduct.

(b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED.—For purposes of this subtitle, the following acts or practices constitute unfair or deceptive acts or practices in or affecting the advertising, solicitation, sale, issuance, distribution, or administration of insurance or other products of national insurers, including such products sold by State insurance producers:

(1) MISREPRESENTATIONS AND FALSE ADVERTISING OF INSURANCE OR ANNUITY CONTRACTS.—Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation or comparison that—

(A) misrepresents the benefits, advantages, conditions or terms of any insurance or annuity contract issued by a national insurer;

(B) misrepresents the dividends to be received on any insurance or annuity contract issued by a national insurer;

1 (C) makes a false or misleading statement
2 as to the dividends previously paid on any in-
3 surance or annuity contract issued by a na-
4 tional insurer;
5 (D) is misleading or is a misrepresentation
6 as to the financial condition of any national in-
7 surer, or as to the reserves required for a na-
8 tional insurer;
9 (E) uses any name or title of any insur-
10 ance or annuity contract issued by a national
11 insurer that misrepresents the true nature of
12 such insurance or annuity contract;
13 (F) is a misrepresentation, including any
14 intentional misquote of a premium rate, for the
15 purpose of inducing or intending to induce the
16 purchase, lapse, forfeiture, exchange, conversion
17 or surrender of any insurance or annuity con-
18 tract issued by a national insurer;
19 (G) is a misrepresentation for the purpose
20 of effecting a pledge or assignment of or effect-
21 ing a loan against any insurance or annuity
22 contract issued by a national insurer; or
23 (H) misrepresents any insurance policy
24 issued by a national insurer as stock.

(2) FALSE, DECEPTIVE, OR MISLEADING ADVERTISING.—Making, publishing, disseminating, circulating, or placing before the public, directly or indirectly, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over the Internet or any radio or television station, or in any other way, any advertisement, announcement, or statement that contains any assertion or representation with respect to any national insurer or State insurance producer selling products of a national insurer which is untrue, deceptive, or misleading.

(3) DEFAMATION.—Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, pamphlet, letter, or poster, which is false or maliciously critical of the financial condition of a national insurer or State insurance producer selling products of a national insurer, and which is calculated to injure such insurer or producer.

(4) FALSE STATEMENTS.—Filing with the Director, or any other public official, or making, publishing, disseminating, circulating, or delivering to

1 any person, or causing, directly or indirectly, to be
2 made, published, disseminated, circulated, or deliv-
3 ered to any person, or placed before the public, any
4 material statement as to the financial condition of a
5 national insurer or State insurance producer selling
6 products of a national insurer that is false.

7 (5) TWISTING.—Making, issuing, or causing to
8 be made or issued an oral or written statement that
9 misrepresents or makes incomplete comparisons
10 about the terms, conditions or benefits contained in
11 an insurance or annuity contract issued by a na-
12 tional insurer, including such contracts sold by State
13 insurance producers, for the purpose of inducing or
14 attempting to or intending to induce the policyholder
15 to forfeit, surrender, retain, exchange, or convert an
16 insurance or annuity contract or allow an insurance
17 or annuity contract to lapse.

18 (6) OTHER ACTS AND PRACTICES.—Engaging
19 in any other act or practice that the Director deter-
20 mines, by regulation or order, to be an unfair or de-
21 ceptive act or practice in or affecting the advertising,
22 solicitation, sale, issuance, distribution, or adminis-
23 tration of insurance and other products of national
24 insurers, including such products sold by State in-
25 surance producers.

1 (c) TIE-IN TRANSACTIONS.—

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

16 (2) RIGHT TO APPROVE INSURANCE COMPANY;
17 NON-DISCRIMINATION.—This section shall not pre-
18 vent the exercise of any right to approve or dis-
19 approve the insurer selected to underwrite the insur-
20 ance, except that in exercising such right, whether
21 pursuant to this section or any other law, no person
22 engaged in any such financing, lending or servicing
23 business and none of its trustees, directors, officers,
24 agents, or other employees shall—

(A) discriminate against an insurance company which issues a policy of insurance that is non-assessable as to any designated mortgages or any secured creditor designated as a loss payee because of the insurer's type of organization; or

(B) refuse to accept an insurance policy because it was not negotiated through a particular insurance company, agent, or broker.

(3) NO FEE TO CHANGE INSURANCE COMPANIES.—No person engaged in any such financing, lending, or servicing business, and none of its trustees, directors, officers, agents, or other employees shall, in connection with compliance with a covenant to insure, require that the person, firm, or corporation for whom the purchase of the property is financed or to whom a mortgage loan is made or who owns the property shall pay a fee or other charges as a condition to accepting, during the unexpired term of a policy then held, another policy of insurance in substitution therefore.

(4) BANKING SERVICES.—A depository institution (as such term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) engaged, directly or indirectly, in the sale of insurance

1 products shall comply with the anti-coercion, disclo-
2 sure, and other consumer protections provided for in
3 section 47 of the Federal Deposit Insurance Act (12
4 U.S.C. 1831x).

5 **SEC. 373. REPLACEMENT OF LIFE INSURANCE POLICIES.**

6 (a) IN GENERAL.—Any replacement of individual life
7 insurance policies or individual annuity contracts of a na-
8 tional insurer by an agent or representative of such in-
9 surer shall conform to standards set forth in regulations
10 promulgated by the Director.

11 (b) REGULATIONS.—The regulation required by sub-
12 section (a) shall

13 (1) specify what constitutes replacement and
14 the disclosure and notification required in order to
15 replace a policy or contract;

16 (2) require notification to the national insurer
17 whose policies or contracts are intended to be re-
18 placed;

19 (3) require the timely exchange of illustrative
20 and cost information necessary for completion of a
21 comparison of the proposed and replaced coverage;
22 and

23 (4) provide for a period following issuance of
24 the replacement policies or contracts during which

1 the policyholder or contract owner may reinstate the
2 replaced policies or contracts.

3 **SEC. 374. UNFAIR DISCRIMINATION, UNFAIR CLAIMS SET-**
4 **TLEMENT PRACTICES, AND UNLAWFUL IN-**
5 **DUCEMENTS.**

6 (a) UNFAIR DISCRIMINATION.—In underwriting in-
7 surance, no national insurer shall commit any of the fol-
8 lowing acts:

9 (1) RATES, DIVIDENDS AND OTHER BENEFITS
10 ASSOCIATED WITH LIFE INSURANCE AND ANNU-
11 ITIES.—Engage in or allow any unfair discrimina-
12 tion between individuals of the same class and equal
13 expectation of life in the rates charged for any life
14 insurance or annuity contract issued by such na-
15 tional insurer or in the dividends or other benefits
16 payable thereon, or in any other terms and condi-
17 tions of such insurance or annuity contract.

18 (2) RATES AND BENEFITS ASSOCIATED WITH
19 ACCIDENT AND HEALTH INSURANCE.—Engage in or
20 allow any unfair discrimination between individuals
21 or risks of the same class and of essentially the
22 same hazard in the rates charged for any accident
23 or health insurance issued by a national insurer or
24 in the benefits payable thereunder, or in any of the

terms or conditions of such insurance, or in any other manner.

(3) GEOGRAPHIC LOCATION OF PROPERTY OR CASUALTY RISK; AGE OF PROPERTY.—Engage in or allow unfair discrimination between individuals or risks of the same class and essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage—

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

(B) on the residential property risk, or the personal property contained therein solely because of the age of the residential property;

except that it is not unfairly discriminatory if such action is based on sound actuarial principles or related to actual or reasonably anticipated experience.

(4) TERMINATION OF AGENT OR BROKER.—Refuse to appoint, or terminate the appointment of, an agent or broker solely because such agent or broker submitted applications for property or casualty risks located in a particular geographical area.

(5) SEX, MARTIAL STATUS, RACE, RELIGION OR NATIONAL ORIGIN.—Refuse to insure, refuse to con-

1 tinue to insure, or limit the amount of coverage
2 available to, an individual because of the sex, marital
3 status, race, religion or national origin of the indi-
4 vidual; except that nothing in this paragraph shall
5 prohibit a national insurer from taking marital sta-
6 tus into account for the purpose of defining persons
7 eligible for dependent benefits.

8 (6) MENTAL OR PHYSICAL IMPAIRMENT.—Ter-
9 minate or modify coverage under, or refuse to issue
10 or refuse to renew, any insurance, or charge a dif-
11 ferent rate for the same coverage, solely because the
12 applicant or insured or any employee of either is
13 mentally or physically impaired; except that—

14 (A) this paragraph shall not apply to acci-
15 dent and health insurance sold by a national in-
16 surer that is chartered to issue property and
17 casualty insurance;

18 (B) this paragraph shall not preclude any
19 such action that is based on sound actuarial
20 principles or is related to actual or reasonable
21 anticipated experience, in which case the na-
22 tional insurer shall, subject to the limitations
23 under section 375(a), notify the insured or ap-
24 plicant of the right to receive, or designate a
25 medical professional to receive, the specific rea-

1 son or reasons for such refusal, limitation or
2 differential; and
3 (C) this paragraph shall not be interpreted
4 to modify any other provision of law related to
5 the termination, modification, issuance, or re-
6 newal of, or rates charged with respect to, any
7 contract issued by a national insurer.
8 (7) REFUSAL BY ANOTHER INSURER.—Refuse
9 to insure solely because another national insurer or
10 State insurer has refused to write an insurance or
11 annuity contract, or has canceled or has refused to
12 renew an existing insurance or annuity contract in
13 which that person was the named insured. Nothing
14 in this paragraph shall prevent the termination of an
15 excess insurance contract on the account of the fail-
16 ure of the insured to maintain any required under-
17 lying insurance.
18 (b) UNFAIR CLAIMS SETTLEMENT PRACTICES.—No
19 national insurer shall engage in any of the following unfair
20 claims settlement practices if such practice is committed
21 without just cause and with such frequency as to indicate
22 a general practice:
23 (1) Knowingly misrepresent material facts or
24 provisions that relate to the claim or coverage at
25 issue.

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

(3) Attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured.

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

(5) Fail to settle a claim promptly whenever liability is reasonably clear under one part of an insurance or annuity contract, in order to influence settlements under other parts of the contract.

(6) Fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim.

(7) Engage in any other practice that the Director determines, pursuant to a rule or order, to be an unfair claims settlement practice.

(c) UNLAWFUL INDUCEMENTS.—

(1) IN GENERAL.—No national insurer, nor anyone acting on behalf of a national insurer, nor any State insurance producer, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to any person to insure, or shall give, sell, or purchase, or offer to give, sell, or

1 purchase, as such inducement, or interdependent
2 with any insurance policy or annuity contract, any
3 stocks, bonds, or other securities, or any dividends
4 or profits accruing or to accrue thereon, any rebate
5 of premium, or any other valuable consideration or
6 inducement whatever having a nominal value in ex-
7 cess of $20, not specified in such policy or contract.
8 (2) AFFILIATES OF CORPORATE INSUREDS.—
9 Within the meaning of paragraph (1), the sharing of
10 a commission with the insured shall be deemed to in-
11 clude any case in which an insurance agent or
12 broker which is an affiliate of any corporate insured,
13 received commissions for the negotiation or procure-
14 ment of any policy or contract of insurance for the
15 insured.
16 (3) DIVIDENDS PERMITTED.—This subsection
17 shall not prohibit any national insurer from equi-
18 tably distributing to its policyholders, at any time
19 during the term or at the termination of the con-
20 tract of insurance, dividends payable from such in-
21 surer's surplus, nor prohibit any national insurer or
22 insurance agent from paying commissions to a li-
23 censed insurance broker for negotiating a policy or
24 contract of insurance, nor prohibit any licensed in-
25 surance broker from sharing or dividing a commis-

sion earned or received by him with any other licensed insurance broker or brokers who shall have aided him in respect to the insurance for the negotiation of which the commission has been earned or paid.

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

SEC. 375. HIV WRITTEN INFORMED CONSENT, DISCRIMINATION AGAINST ABUSE VICTIMS, AND HOLOCAUST VICTIMS CLAIMS.

(a) HIV WRITTEN INFORMED CONSENT.—

(1) IN GENERAL.—No national insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.

(2) WRITTEN CONSENT.—Written informed consent to an HIV related test shall consist of a

1 written authorization that is dated and includes at
2 least the following:
3 (A) A general description of the test.
4 (B) A statement of the purpose of the test.
5 (C) A statement that a positive test result
6 is an indication that the individual may develop
7 AIDS and may wish to consider further inde-
8 pendent testing.
9 (D) A statement that the individual may
10 identify on the authorization form the person to
11 whom the specific test results may be disclosed
12 in the event of an adverse underwriting deci-
13 sion, which person may be the individual or a
14 physician or other designee at the discretion of
15 the individual proposed for insurance.
16 (E) The signature of the applicant or indi-
17 vidual proposed for insurance, or if such indi-
18 vidual lacks capacity to consent, the signature
19 of such other person authorized to consent for
20 such individual.
21 (3) NOTICE TO INDIVIDUAL.—In the event that
22 a national insurer's adverse underwriting decision is
23 based in whole or in part on the result of an HIV
24 related test, the national insurer shall notify the in-
25 dividual of the adverse underwriting decision and

1 ask the individual to elect in writing, unless the indi-
2 vidual has already done so, whether to have the spe-
3 cific HIV related test results disclosed directly to the
4 individual or to such other person as the individual
5 may designate.

6 (4) DEFINITIONS.—For purposes of this sub-
7 section:

8 (A) ADVERSE UNDERWRITING DECISION.—
9 The term ''adverse underwriting decision''
10 means—

11 (i) a declination of insurance coverage
12 as applied for; or

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

15 (B) AIDS.—The term ''AIDS'' means ac-
16 quired immune deficiency syndrome, as may be
17 defined from time to time by the Centers for
18 Disease Control of the United States Public
19 Health Service.

20 (C) HIV INFECTION.—The term ''HIV in-
21 fection'' means infection with the human im-
22 munodeficiency virus or any other related virus
23 identified as a probable causative agent of
24 AIDS.

1 (D) HIV RELATED TEST.—The term
2 "HIV related test" means any laboratory test
3 or series of tests for any virus, antibody, anti-
4 gen, or etiologic agent whatsoever thought to
5 cause or to indicate the presence of AIDS.
6 (5) AUTHORITY OF DIRECTOR.—Nothing in this
7 subsection shall be construed to create, impair, alter,
8 limit, modify, enlarge, abrogate, or restrict the spe-
9 cific authority of the Director to allow or prohibit
10 the use of HIV related tests or the consideration of
11 HIV related test results for insurance coverage pur-
12 poses.
13 (b) DISCRIMINATION BASED ON BEING A VICTIM OF
14 ABUSE.—
15 (1) IN GENERAL.—It is unfairly discriminatory
16 on the part of a national insurer to—
17 (A) deny, refuse to issue, renew or reissue,
18 cancel, or otherwise terminate, restrict, or ex-
19 clude insurance coverage on or add a premium
20 differential to a policy for an applicant or in-
21 sured on the basis of the applicant's or in-
22 sured's abuse status; or
23 (B) exclude, limit, or deny benefits on a
24 life insurance policy on the basis of an insured's

1 abuse status except as otherwise permitted or
2 required by law;
3 except that the prohibitions contained in this para-
4 graph shall not preclude a national insurer from tak-
5 ing any of the actions described in this paragraph so
6 long as the national insurer relies on underwriting
7 criteria reasonably related to the physical or mental
8 condition of a person, their property or claim history
9 and the decision was based on sound underwriting
10 and actuarial principles reasonably related to actual
11 or anticipated loss experience. In such case the selec-
12 tion criteria permitted must be based on such prin-
13 ciples. The national insurer shall notify the insured
14 or applicant of its specific reason or reasons for such
15 decision.
16 (2) DISCLOSURE OF CONFIDENTIAL ABUSE IN-
17 FORMATION.—When a national insurer, agency, or
18 agent has confidential abuse information in its pos-
19 session, the disclosure or transfer of such informa-
20 tion by a person employed by or contracting with a
21 national insurer, agency, or agent for any purpose or
22 to any person is unfairly discriminatory, except—
23 (A) to the subject of abuse or an individual
24 specifically designated in writing by the subject
25 of abuse;

1 (B) to a health care provider for the direct
2 provision of health care services;
3 (C) to a licensed physician identified and
4 designated by the subject of abuse;
5 (D) when ordered by the Director or a
6 court of competent jurisdiction or otherwise re-
7 quired by law;
8 (E) when necessary for a valid business
9 purpose to transfer information that includes
10 confidential abuse information that cannot rea-
11 sonably be segregated without undue hardship;
12 confidential abuse information may be disclosed
13 only if the recipient has executed a written
14 agreement to be bound by the prohibitions of
15 this subsection in all respects and to be subject
16 to the enforcement of this subsection by a court
17 of competent jurisdiction for the benefit of the
18 applicant or the insured, and only to—
19 (i) a reinsurer that seeks to indemnify
20 or indemnifies all or any part of a policy
21 covering a subject of abuse and that can-
22 not underwrite or satisfy its obligations
23 under the reinsurance agreement without
24 that disclosure;

1 (ii) a party to a proposed or con-
2 summated sale, transfer, merger, or con-
3 solidation of all or part of the business of
4 the national insurer, agency, or agent;
5 (iii) medical or claims personnel (in-
6 cluding affiliates of the national insurer,
7 agency, or agent) contracting with the na-
8 tional insurer, agency, or agent, only where
9 necessary to process an application or per-
10 form the duties of such national insurer,
11 agency, or agent under the policy or to
12 protect the safety or privacy of a subject of
13 abuse; or
14 (iv) with respect to address and tele-
15 phone number, to entities with whom the
16 national insurer, agency, or agent trans-
17 acts business when the business cannot be
18 transacted without the address and tele-
19 phone number;
20 (F) to an attorney who needs the informa-
21 tion to represent the national insurer, agency,
22 or agent effectively, *Provided*, That the national
23 insurer, agency, or agent notifies the attorney
24 of its obligations under this subsection and re-
25 quests that the attorney exercise due diligence

to protect the confidential abuse information consistent with the attorney's obligation to represent the national insurer, agency, or agent;

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

(H) to any other entities deemed appropriate by the Director.

(3) REQUESTS PROHIBITED.—It is unfairly discriminatory on the part of a national insurer to request information about acts of abuse or abuse status, or make use of that information, however obtained.

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

(A) preclude a subject of abuse from obtaining his or her insurance records;

(B) prohibit a national insurer, agency, or agent from declining to issue a life insurance policy if the applicant or prospective owner of the policy is or would be designated as a beneficiary of the policy, and if—

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

(ii) the applicant or prospective owner of the policy is known, on the basis of medical, police, or court records, to have committed an act of abuse against the proposed insured; or

(iii) the insurance or prospective insured is a subject of abuse, and that person, or a person who has assumed the care of that person if a minor or incapacitated, has objected to the issuance of the policy on the ground that the policy would be issued to or for the direct or indirect benefit of the abuser; or

(C) prohibit a national insurer, agency, or agent from asking about a medical condition or from using medical information to underwrite or to carry out its duties under the policy, even if the medical information is related to a medical condition that the national insurer, agency, or agent knows or has reason to know is abuse-related, to the extent otherwise permitted under this subsection and other applicable law.

(5) ACTIONS TAKEN IN GOOD FAITH.—A national insurer, agency, or agent shall not be held civilly or criminally liable for the death of or injury to

1 an insured resulting from any action taken in a good
2 faith effort to comply with the requirements of this
3 subsection; except that this paragraph does not pre-
4 vent an action to investigate or enforce a violation
5 of this subsection or to assert any other claims au-
6 thorized by law.

7 (6) DEFINITIONS.—For purposes of this sub-
8 section:

9 (A) ABUSE.—The term ''abuse'' means an
10 act that—

11 (i) would constitute a crime in the
12 State in which the insured or applicant re-
13 sides, including acts constituting disorderly
14 conduct, harassment, menacing, reckless
15 endangerment, kidnapping, assault, at-
16 tempted assault, or attempted murder;

17 (i) has resulted (or multiple acts that
18 have resulted) in actual physical or emo-
19 tional injury or have created a substantial
20 risk of physical or emotional harm to such
21 person or such person's child; and

22 (ii) is alleged (or multiple acts that
23 are alleged) to have been committed by a
24 family or household member.

1 (B) CONFIDENTIAL ABUSE INFORMA-
2 TION.—The term ''confidential abuse informa-
3 tion'' means information that clearly indicates
4 that the insured or applicant is a subject of
5 abuse.
6 (c) HOLOCAUST VICTIMS' CLAIMS.—Any national in-
7 surer in receipt of a claim against it arising from an occur-
8 rence during the period between January 1, 1929, and De-
9 cember 31, 1945, from an individual that such national
10 insurer knows, or reasonably should have known, is a Hol-
11 ocaust victim shall—
12 (1) diligently and expeditiously investigate such
13 claim;
14 (2) allow claimants to provide alternative docu-
15 mentation which does not meet the usual standards
16 of proof required by an insurer to substantiate the
17 particular claim, subject to standards established for
18 such documentation as prescribed by regulations
19 promulgated by the Director; and
20 (3) attempt to resolve, settle and, if appro-
21 priate, make payments on claims irrespective of any
22 statute of limitations or notice requirements imposed
23 by any law or such insurance policy issued to or cov-
24 ering the life of a Holocaust victim, provided that

1 the claim is submitted to the insurer within 10 years
2 from the effective date of this Act.

3 **SEC. 376. MINIMUM NATIONAL STANDARDS.**

4 (a) APPLICABILITY TO INSURERS.—The provisions of
5 this subtitle and any regulations implementing this sub-
6 title shall apply to each insurance company (other than
7 a national insurer) doing business in the United States
8 to the same extent as a national insurer, and shall be en-
9 forceable against each such company by the appropriate
10 State insurance regulator of the State that would other-
11 wise have jurisdiction over the transaction or activity that
12 is alleged to constitute a violation of this subtitle. Each
13 such insurance company shall be subject to the same pen-
14 alties and sanctions that the Director may impose against
15 a national insurer for violations of this subtitle.

16 (b) ENFORCEMENT OF MORE PROTECTIVE STATE
17 LAWS.—Nothing in this section shall be construed to di-
18 minish the authority of any State insurance regulator to
19 enforce a State statute, order, or regulation that provides
20 greater protection to the policyholder, applicant, or claim-
21 ant alleging a violation of this subtitle.

Subtitle G—Acquisitions of Control, Mergers, Bulk Transfers, and Domestication

SEC. 381. ACQUISITION OF CONTROL.

(a) DIRECTOR APPROVAL REQUIRED.—

(1) IN GENERAL.—No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, or acquire, in the open market or otherwise, any voting security of a national insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the national insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a national insurer or any person controlling a national insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved—

(A) such person has filed with the Director and has sent to the national insurer, a statement, the form and content of which is prescribed in accordance with subsection (b); and

(B) the offer, request, invitation, agreement, or acquisition has been approved by the Director.

(2) CONDITIONAL OFFERS.—Nothing in paragraph (1) shall prohibit a person from making an offer, request, or invitation or entering into an agreement to acquire control of a national insurer, the completion of which is conditioned upon obtaining the approval of the Director as required in paragraph (1).

(3) DEFINITIONS.—For purposes of this section:

(A) NATIONAL INSURER.—The term ''national insurer'' includes any person controlling a national insurer.

(B) PERSON.—The term ''person'' does not include any securities broker holding, in the usual and customary broker's function, less than 20 percent of the voting securities of a national insurer or of any person which controls a national insurer.

(b) CONTENT OF STATEMENT.—The Director shall, by regulation, prescribe the form and content of the statement to be filed pursuant to subsection (a).

1 (c) APPROVAL BY DIRECTOR.—The Director shall ap-
2 prove any merger or other acquisition of control referred
3 to in subsection (a) unless the Director finds that—
4 (1) after the acquisition of control, the national
5 insurer referred to in subsection (a) would not be
6 able to satisfy the requirements for the issuance of
7 a federal license to write the line or lines of insur-
8 ance for which it is presently licensed;
9 (2) the financial condition of any acquiring per-
10 son is such as might jeopardize the financial sta-
11 bility of the national insurer, or be hazardous to pol-
12 icyholders of the national insurer;
13 (3) the plans or proposals which the acquiring
14 person has to liquidate the national insurer, sell its
15 assets, or consolidate or merge it with any person,
16 or to make any other material change in its business
17 or corporate structure or management, are unfair
18 and unreasonable to policyholders of the national in-
19 surer and not in the public interest;
20 (4) the competence, experience, and integrity of
21 those persons who would control the operation of the
22 national insurer are such that it would not be in the
23 interest of policyholders of the national insurer and
24 of the public to permit the merger or other acquisi-
25 tion of control; or

1 (5) the acquisition is likely to be hazardous to
2 the insurance-buying public.
3 (d) DISCLAIMER OF CONTROL.—The Director may
4 determine upon application that any person does not or
5 will not upon the taking of some proposed action control
6 another person. Such determination shall be made within
7 30 days of the filing of the application or such further
8 period as the Director may prescribe. The filing of the ap-
9 plication in good faith by any person shall relieve the ap-
10 plicant from any obligation or liability imposed by this sec-
11 tion with respect to the subject of the application until
12 the Director has acted upon the application. The Director
13 may prospectively revoke or modify the Director's deter-
14 mination, after notice and opportunity to be heard, when-
15 ever in the Director's judgment revocation or modification
16 is consistent with this section.
17 (e) HEARING PERMITTED.—The Director may, in the
18 sole discretion of the Director, hold a hearing on a merger
19 or other acquisition of control that is the subject to this
20 section and for which a statement has been filed under
21 subsection (a)(1)(A). The hearing shall be subject to the
22 procedures contained in section 205(g), except that the
23 hearing shall be held in such location as the Director may,
24 in the sole discretion of the Director, specify.

1 (f) EXEMPTIONS.—The provisions of this section
2 shall not apply to—
3 (1) any offer, request, invitation, agreement, or
4 acquisition that the Director by order shall exempt
5 as not having been made or entered into for the pur-
6 pose and not having the effect of changing or influ-
7 encing the control of a national insurer, or as other-
8 wise not comprehended within the purposes of this
9 section; and
10 (2) a merger, consolidation, or acquisition sub-
11 ject to section 382.
12 (g) VOTING OF SECURITIES.—
13 (1) IN GENERAL.—No security which is the
14 subject of any agreement or arrangement regarding
15 acquisition, or which is acquired or to be acquired,
16 in contravention of the provisions of this section or
17 of any regulation or order issued by the Director
18 hereunder may be voted at any shareholder's meet-
19 ing, or may be counted for quorum purposes, and
20 any action of shareholders requiring the affirmative
21 vote of a percentage of shares may be taken as
22 though the securities were not issued and out-
23 standing; but no action taken at any such meeting
24 shall be invalidated by the voting of the securities,

1 unless the action would affect control of the national
2 insurer or unless ordered by a court.
3 (2) INJUNCTION.—If a national insurer or the
4 Director has reason to believe that any security of
5 the national insurer has been or is about to be ac-
6 quired in contravention of the provisions of this sec-
7 tion or of any regulation or order issued by the Di-
8 rector hereunder, the national insurer or the Direc-
9 tor may apply to the United States district court for
10 the judicial district in which the main office of the
11 national insurer is located or the United States Dis-
12 trict Court for the District of Columbia to enjoin
13 any offer, request, invitation, agreement, or acquisi-
14 tion made in contravention of this section or any
15 regulation or order issued by the Director there-
16 under to enjoin the voting of any security so ac-
17 quired, to void any vote of the security already cast
18 at any meeting of shareholders and for such other
19 equitable relief as the nature of the case and the in-
20 terest of the national insurer's policyholders, credi-
21 tors, and shareholders or the public may require.
22 (h) SEQUESTRATION OF VOTING SECURITIES.—
23 (1) IN GENERAL.—In any case where a person
24 has acquired or is proposing to acquire any voting
25 securities in violation of this section or any regula-

1 tion or order issued by the Director hereunder, the
2 United States district court for the judicial district
3 in which the main office of the national insurer is
4 located or the United States District Court for the
5 District of Columbia may, on such notice as the
6 court deems appropriate, upon the application of the
7 national insurer or the Director, seize or sequester
8 any voting securities of the national insurer owned
9 directly or indirectly by the person, and issue such
10 order as may be appropriate to effectuate the provi-
11 sions of this section.

12 (2) SITUS OF OWNERSHIP.—Notwithstanding
13 any other provisions of law, for the purposes of this
14 section, the situs of the ownership of the securities
15 of national insurers shall be deemed to be the State
16 in which the main office of the national insurer is
17 located.

18 (i) CONFLICT WITH OTHER FEDERAL LAWS.—This
19 section shall be construed and interpreted so as not to con-
20 flict with or supersede the provisions of any other Federal
21 law or regulation governing the regulation of holding com-
22 panies, including financial holding companies as created
23 under section 2 of the Bank Holding Company of 1956.

24 (j) NO DELEGATION PERMITTED.—The Director
25 may not delegate to any insurance self-regulatory organi-

1 zation any authority conferred under this section with re-
2 spect to any merger or other acquisition of control of a
3 national insurer.

4 **SEC. 382. MERGERS, CONSOLIDATIONS, AND ACQUISITIONS.**

5 (a) NATIONAL INSURER RESULTING.—

6 (1) IN GENERAL.—A national insurer may, with
7 the approval of the Director, merge or consolidate
8 into, or acquire all or substantially all the assets of
9 and/or assume all or substantially all the liabilities
10 of, another national insurer or a State insurer in a
11 transaction in which a national insurer is the result-
12 ing insurer or the acquiring and/or assuming insurer
13 and may do so without regard to whether the insur-
14 ers involved in the transaction are stock form, mu-
15 tual form, or fraternal form.

16 (2) MERGER, CONSOLIDATION, AND ACQUISI-
17 TION PROCEDURES.—The Director may, by regula-
18 tion, provide for—

19 (A) the merger or consolidation of a na-
20 tional insurer with another national insurer or
21 a State insurer in a transaction in which a na-
22 tional insurer is the resulting insurer; and

23 (B) the acquisition and/or assumption by a
24 national insurer of all or substantially all the
25 assets and/or all or substantially all the liabil-

ities of another national insurer or a State insurer in a transaction in which the national insurer is the acquiring and/or assuming insurer. Any such merger or consolidation, or acquisition and/or assumption, shall be carried out solely in accordance with such regulations as the Director may prescribe; except that in the case of a transaction involving the demutualization of a State insurer, State laws, regulations, and orders shall govern the demutualization process.

(3) EFFECT OF MERGER OR CONSOLIDATION.—Upon the merger or consolidation of a national insurer with another national insurer or a State insurer in accordance with this section and regulations issued by the Director hereunder—

(A) the corporate existence of each of the merging or consolidating insurers shall be merged or consolidated into the resulting insurer, and the resulting insurer shall be deemed to be the same corporation as each insurer participating in the merger or consolidation; and

(B) the resulting insurer shall, by operation of law and without further action, hold and be subject to all rights, privileges, liabilities, property interests, and other interests and

1 obligations that each insurer participating in
2 the merger or consolidation held or was subject
3 to immediately prior to the merger or consolida-
4 tion, except that the resulting insurer shall not
5 hold, following the merger or consolidation, any
6 State license to underwrite and sell insurance
7 that was held by a State insurer participating
8 in the merger or consolidation and the resulting
9 insurer shall obtain, in accordance with section
10 303 and the regulations issued by the Director
11 thereunder, a federal license for all lines of in-
12 surance that it underwrites and sells (except in
13 the case of those lines of insurance for which a
14 national insurer participating in the merger or
15 consolidation held a federal license immediately
16 prior to the merger or consolidation).
17 (4) SPECIAL AUTHORITY.—The Director may,
18 in the Director's discretion and subject to such con-
19 ditions as the Director may prescribe, permit a na-
20 tional insurer resulting from a merger or consolida-
21 tion under this section to retain upon such merger
22 or consolidation such assets, liabilities, and powers
23 and authorities of any other national insurer or any
24 State insurer participating in the merger or consoli-
25 dation that do not conform to the legal requirements

1 applicable to national insurers as the Director deems
2 appropriate.

3 (b) STATE INSURER RESULTING.—Subject to such
4 notification procedures as the Director may prescribe by
5 regulation, a State insurer may merge or consolidate with,
6 or acquire assets of and/or assume liabilities of, a national
7 insurer in a transaction in which a State insurer is the
8 resulting insurer, as permitted by the relevant provisions
9 of applicable State law. Nothing in this subsection or in
10 a transaction pursuant to this subsection shall operate to
11 abrogate any rights, privileges, liabilities, property inter-
12 ests, or other interests or obligations that the national in-
13 surer held or was subject to immediately prior to the
14 transaction.

15 (c) EFFECT OF ASSUMPTION OF LIABILITIES.—If li-
16 abilities of a national insurer are assumed by another na-
17 tional insurer or a State insurer in accordance with the
18 provisions of this Act, such national insurer shall be re-
19 leased from all liabilities so assumed upon their assump-
20 tion by the other national insurer or a State insurer.

21 (d) NO DELEGATION PERMITTED.—The Director
22 may not delegate to any insurance self-regulatory organi-
23 zation any authority conferred under this section with re-
24 spect to any merger, consolidation, acquisition of assets,
25 or assumption of liabilities involving a national insurer.

(e) COORDINATION.—This section shall not apply to any bulk transfer (as defined in section 383(a)) that is subject to approval of the Director in accordance with subsection (b) of such section.

SEC. 383. BULK TRANSFERS.

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

(1) ASSUMING INSURER.—The term ''assuming insurer'' means the insurer that purchases or otherwise acquires existing insurance policies from another insurer by bulk transfer.

(2) BULK TRANSFER.—The term ''bulk transfer'' means the transfer by an insurer to another insurer of existing insurance policies constituting all or substantially all of one or more of its lines of business. Such term does not include—

(A) any sale in which the transferring insurer retains direct or indirect control of the assets supporting the transferred insurance policies;

(B) any transaction effected by an agreement under which the transferring insurer continues to remain directly liable to the policyholders under the insurance policies;

(C) the substitution of one insurer for another upon the expiration of insurance coverage

1 pursuant to statutory or contractual require-
2 ments and the issuance of a new policy of in-
3 surance by that insurer;
4 (D) the transfer of policies of insurance
5 pursuant to merger or consolidation of 2 or
6 more insurers to the extent that those trans-
7 actions are regulated by statute;
8 (E) any transaction effected by an insurer
9 subject to a judicial order of receivership, liq-
10 uidation, or rehabilitation;
11 (F) any transaction to which the National
12 Insurance Guaranty Corporation or a State in-
13 surance guaranty association is a party; or
14 (G) any transfer of liabilities from one in-
15 surer to another under a single group insurance
16 policy upon the request of the group policy-
17 holder.
18 (3) PERMITTED NATIONAL INSURER.—The
19 term ''permitted national insurer'' means—
20 (A) a State insurer that is converting to a
21 national insurer under section 306; or
22 (B) a national insurer that is being newly
23 chartered under section 301 and licensed under
24 section 303.

1 (4) TRANSFERRED INSURANCE POLICIES.—The
2 term ''transferred insurance policies'' means the in-
3 surance policies that are subject to the bulk transfer.
4 (5) TRANSFERRING INSURER.—The term
5 ''transferring insurer'' means the insurer in privity
6 of contract with the policyholders under the existing
7 insurance policies that are subject to the bulk trans-
8 fer.
9 (b) BULKS TRANSFERS AUTHORIZED.—The fol-
10 lowing bulk transfers are authorized:
11 (1) A State insurer as the transferring insurer
12 and a permitted national insurer as the assuming in-
13 surer.
14 (2) A permitted national insurer as the trans-
15 ferring insurer and a State insurer as the assuming
16 insurer.
17 (3) A national insurer as the transferring in-
18 surer and a national insurer as the assuming in-
19 surer.
20 (4) A State insurer as the transferring insurer
21 and a national insurer that is not a permitted na-
22 tional insurer as the assuming insurer.
23 (5) A national insurer that is not a permitted
24 national insurer as the transferring insurer and a
25 State insurer as the assuming insurer.

(c) DIRECTOR APPROVAL.—

(1) REQUIREMENT.—A national insurer, before effecting a bulk transfer as either the transferring insurer or the assuming insurer as authorized under subsection (b)(1), (b)(2), (b)(3), or (b)(5) of this section, shall obtain the prior approval of the Director in accordance with such regulations as the Director may prescribe.

(2) STANDARD.—The Director shall approve a bulk transfer under paragraph (1), after notice and a hearing, unless the Director finds that the bulk transfer is likely to be hazardous to policyholders of transferred insurance policies, policyholders of the transferring insurer, or policyholders of the assuming insurer.

(d) POLICYHOLDER CONSENT.—

(1) TRANSFER WITHOUT CONSENT.—Notwithstanding any other provision of law, a national insurer may, following the Director's approval required by subsection (c), effect a bulk transfer as either the transferring insurer or the assuming insurer as authorized under subsection (b)(1) or (b)(2) without obtaining policyholder consent to the bulk transfer.

(2) CONSENT REQUIRED.—Notwithstanding any other provision of law, a national insurer may,

following the Director's approval required by subsection (c), effect a bulk transfer as either the transferring insurer or the assuming insurer as authorized under subsection (b)(3) by complying with requirements the Director shall prescribe by regulation specifying whether policyholder consent to such a bulk transfer is required and, if policyholder consent is required, the form in which such consent is required to be given.

(3) AUTHORITY TO REQUIRE CONSENT.—In addition to any policyholder consent required by any other applicable provision of law, the Director may by regulation prescribe whether policyholder consent is required for a bulk transfer authorized under subsection (b)(5) and, if policyholder consent is required, the form in which such consent is required to be given.

(e) RELEASE FROM LIABILITY.—Upon the effectiveness of a bulk transfer under this section, the transferring insurer shall be released from its obligations under the transferred insurance policies.

(f) STATE LAW.—

(1) CONSENT REQUIREMENTS PROHIBITED.—Except as provided in paragraph (2), no State may, by law, regulation, interpretation, or otherwise re-

1 quire a national insurer, a permitted national in-
2 surer, or a State insurer to obtain policyholder con-
3 sent to a bulk transfer or to submit the bulk trans-
4 fer to State review or action (including approval and
5 nondisapproval) or prevent or significantly interfere
6 with a bulk transfer effected pursuant to this sec-
7 tion.

8 (2) PERMISSIBLE STATE ACTION.—Paragraph
9 (1) does not prevent any State from—

10 (A) collecting, reviewing, and taking action
11 (including approval or disapproval) on applica-
12 tions and other documents or reports con-
13 cerning a proposed bulk transfer permitted
14 under—

15 (i) subsection (b)(2), (b)(4), or (b)(5)
16 to which a State insurer (other than a per-
17 mitted national insurer) domiciled in that
18 State is a party; or

19 (ii) subsection (b)(4) or (b)(5) to
20 which a State insurer (other than a per-
21 mitted national insurer), other than a
22 State insurer domiciled in that State, is a
23 party,

24 if the review or action meets the standards set
25 forth in paragraph (2); or

1 (B) requiring policyholder consent of a
2 proposed bulk transfer permitted under sub-
3 section (b)(4) or (b)(5).
4 (3) STANDARDS.—The standards applicable to
5 paragraph (1)(A) are that the review or action—
6 (A) is based on standards no more onerous
7 than those imposed by the Director and occurs
8 within a reasonable time frame that advances
9 the purposes of this section;
10 (B) is made in close consultation and co-
11 operation with the Director and is without bias
12 or discrimination toward either the transferring
13 insurer or the assuming insurer; and
14 (C) serves a legitimate State interest and
15 does not frustrate the proposed bulk transfer.
16 (4) FAILURE TO MEET STANDARDS.—If the Di-
17 rector finds that any State review or action under
18 paragraph (2)(A) fails to meet any of the standards
19 set forth in paragraph (3)(A), (3)(B), or (3)(C), the
20 Director may give notice to the applicable State of
21 the reasons for such failure whereupon such State
22 review or action shall be deemed to fail to meet the
23 standards of paragraph (3).
24 (g) DIFFERENTIAL TREATMENT PROHIBITED.—No
25 State may, by law, regulation, interpretation, or otherwise,

1 treat a national insurer, a permitted national insurer, or
2 a State insurer entering into a bulk transfer agreement
3 with a national insurer, a permitted national insurer, or
4 a State insurer, or any affiliate or subsidiary thereof, dif-
5 ferently than any other insurer operating in that State.
6 (h) DELEGATION PROHIBITED.—The Director may
7 not delegate to any insurance self-regulatory organization
8 any authority conferred under this section with respect to
9 any bulk transfer involving a national insurer.

10 **SEC. 384. DOMESTICATION OF U.S. BRANCH OF A NON-U.S.**
11 **INSURER.**

12 (a) DOMESTICATION PERMITTED.—Notwithstanding
13 any other provision of law, upon compliance with the pro-
14 visions of this section and the Directors regulations here-
15 under, any non-U.S. insurer having its U.S. branch en-
16 tered through a State or established pursuant to section
17 302 and owning beneficially, directly or indirectly, all out-
18 standing shares of a national insurer, may, subject to
19 prior written approval of the Director, domesticate its
20 U.S. branch by agreeing in writing with such national in-
21 surer to the acquisition of the business and assets, and
22 the assumption of all liabilities, of the U.S. branch, by
23 the national insurer for no consideration except such as-
24 sumption.

1 (b) APPROVAL BY DIRECTOR.—If satisfied that the
2 domestication is in accordance with the provisions of this
3 section and that the interests of policyholders and credi-
4 tors of the U.S. branch are not materially adversely af-
5 fected, the Director may approve such domestication and
6 authorize its consummation in compliance with the provi-
7 sions of subsection (c).

8 (c) CONSUMMATION OF DOMESTICATION AGREE-
9 MENT; RELEASE OF DEPOSITS; WITHDRAWAL OF
10 TRUSTEED ASSETS.—

11 (1) CONSUMMATION OF DOMESTICATION
12 AGREEMENT.—Upon the filing with the Director of
13 a certified copy of the instrument of transfer and
14 assumption—

15 (A) the domestication of the U.S. branch
16 shall be effective;

17 (B) all rights, franchises and interests of
18 such U.S. branch in and to every species of
19 property, real, personal and mixed, and things
20 in action thereunto belonging, shall be deemed
21 transferred to and vested in the acquiring na-
22 tional insurer and it shall be deemed to have
23 assumed all liabilities of such U.S. branch; and

24 (C) all deposits of the U.S. branch held by
25 State officers or other State regulatory agencies

1 pursuant to State laws shall be released, and
2 the non-U.S. insurer and the U.S. branch shall
3 be released from all liabilities so assumed.
4 (2) RELEASE OF DEPOSITS.—Contempora-
5 neously with the consummation of the domestication
6 of a U.S. branch established under this section, the
7 Director shall transfer to the account of the acquir-
8 ing national insurer the securities deposited by such
9 U.S. branch in compliance with the provisions of this
10 Act, and the Director shall consent that the trustee
11 of the trusteed assets deposited by such U.S. branch
12 in compliance with the provisions of this Act shall
13 withdraw from the trust and transfer and deliver to
14 the acquiring national insurer all assets held by such
15 trustee.
16 (3) WITHDRAWAL OF TRUSTEED ASSETS.—
17 Contemporaneously with the consummation of the
18 domestication of a U.S. branch established under
19 State law, the trustee of any trusteed assets depos-
20 ited by such U.S. branch in compliance with applica-
21 ble State law shall, with the consent of the Director,
22 withdraw the trusteed assets from the trust and
23 transfer and deliver to the acquiring national insurer
24 all assets held by such trustee. No State may, by
25 statute, regulation, order, interpretation, or other-

1 wise prevent, significantly interfere with, or have the
2 authority to review, approve, or disapprove the with-
3 drawal of trusteed assets or other deposits of a U.S.
4 branch established under State law that is domes-
5 ticating pursuant to this section, *Provided*, That
6 such withdrawal is being made contemporaneously
7 with or subsequent to the consummation of a domes-
8 tication of the U.S. branch pursuant to this section.
9 (d) PROHIBITION OF DELEGATION.—The Director
10 may not delegate to any insurance self-regulatory organi-
11 zation any authority under this section with respect to the
12 domestication of a U.S. branch of a non-U.S. insurer.

13 **Subtitle H—Health Insurance**

14 **SEC. 391. RECOMMENDATIONS FOR HEALTH INSURANCE.**

15 Not later than 3 years after the date of the enact-
16 ment of this Act, the Director shall submit a report to
17 the Congress—
18 (1) making recommendations on whether na-
19 tional insurers should be authorized to underwrite
20 health insurance; and
21 (2) including proposed legislation to authorize
22 such underwriting.

TITLE IV—STATE TAXATION

SEC. 401. STATE TAXATION.

(a) IN GENERAL.—Except as provided in subsection (b), a national insurer shall be subject to all taxes, including insurance retaliatory taxes, imposed under the authority of any State legislation to the same extent and in the same manner as an insurer chartered in the State where the national insurer is considered domiciled pursuant to subsection (c).

(b) EXCEPTION.—No State shall have power to impose its insurance retaliatory tax on any national insurer unless, for any tax purpose for which State of domicile is relevant, every national insurer is treated by such State as domiciled in the State designated by each national insurer in accordance with subsection (c) and unless the insurance retaliatory tax is imposed on insurers chartered by the State to the same extent and in the same manner.

(c) DESIGNATION OF DOMICILE.—For purposes of this section, a national insurer may designate one of the following States as its State of domicile, by filing such designation in writing with the Director:

(1) The State in which is located the national insurer's principal place of business in the United States.

1 (2) In the case of an insurer that has converted
2 from being a State insurer to being a national in-
3 surer under this Act, the State in which such insurer
4 was domiciled immediately prior to such conversion.
5 If a national insurer makes no designation of a State of
6 domicile pursuant to this subsection, it shall be deemed
7 to have designated as its State of domicile that State in
8 which is located its principal place of business in the
9 United States.
10 (d) CHANGE IN DOMICILE.—With the approval of the
11 Director, a national insurer may change its State of domi-
12 cile to any other State meeting the requirements of sub-
13 section (c).
14 (e) STATUS OF NATIONAL INSURER.—For purposes
15 of State taxation, a national insurer shall not be consid-
16 ered to be a department, agency, or instrumentality of the
17 Federal Government, nor, except as provided in this sec-
18 tion, shall a national insurer be exempt from any State
19 tax or subject to a lesser burden of any State tax, solely
20 by reason of its status as a national insurer under this
21 Act.

TITLE V—TREATMENT OF MCCARRAN-FERGUSON ACT

SEC. 501. REPEAL OF ANTITRUST EXEMPTION FOR BUSINESS OF INSURANCE.

The antitrust laws of the United States shall apply to national insurers, State insurers, and all reinsurers doing business in the United States (regardless of the domicile of such reinsurers), to the same extent as other business are subject to such laws, except that the antitrust laws shall not apply to—

(1) the sharing of historical loss data among insurers, *Provided,* That this paragraph shall not be construed to permit the sharing of trending data; and

(2) the activities of insurers required to participate in State mandatory residual market mechanisms designed to make insurance available to those unable to obtain insurance in the voluntary market and to the activities of insurers required to participation in a worker's compensation administration mechanism.

TITLE VI—HOLDING COMPANIES

SEC. 601. DEFINITIONS

For purposes of this title:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) EXTRAORDINARY DIVIDEND OR DISTRIBUTION.—Except as may otherwise be specified by the Director by regulation, the term ''extraordinary dividend or distribution'' means a dividend or distribution of cash or other property by a national insurer, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of—

(A) 10 percent of the national insurer's surplus as regards policyholders as of the next preceding December 31; or

(B) the net income of the national insurer for the 12-month period ending the December 31 next preceding, but does not include pro rata distributions of any class of the national insurer's own securities.

(3) INSURANCE HOLDING COMPANY SYSTEM.—The term ''insurance holding company system'' means two or more affiliated persons, one or more of which is a national insurer.

(4) SUBSIDIARY.—The term ''subsidiary'' means, with respect to a person, an affiliate controlled, directly or indirectly, by such person.

SEC. 602. REGISTRATION.

(a) REGISTRATION.—Each national insurer that is a member of an insurance holding company system shall register with the Director.

(b) REGISTRATION STATEMENT.—The Director shall, by regulation, prescribe—

(1) the form and content of the registration statement to be filed pursuant to subsection (a); and

(2) the time by which the registration statement is required to be filed with the Director.

(c) INFORMATION OF NATIONAL INSURERS.—Any person within an insurance holding company system subject to registration under subsection (a) shall be required to provide complete and accurate information to a national insurer, in any case in which the information is reasonably necessary to enable the insurer to comply with the provisions of this title.

(d) TERMINATION OF REGISTRATION.—The Director shall terminate the registration of any national insurer that demonstrates that it no longer is a member of an insurance holding company system.

(e) EXEMPTIONS.—The provisions of this section shall not apply to any national insurer, information, or transaction if and to the extent that the Director by regulation or order provides for such inapplicability.

(f) DISCLAIMER.—Any person may file with the Director a disclaimer of affiliation with any national insurer or a disclaimer may be filed by the national insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the national insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the national insurer shall be relieved of any duty to register or report under this section which may arise out of the national insurer's relationship with the person unless and until the Director disallows the disclaimer. The Director shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

SEC. 603. STANDARDS AND MANAGEMENT OF NATIONAL INSURER WITHIN AN INSURANCE HOLDING COMPANY SYSTEM.

(a) TRANSACTIONS WITHIN INSURANCE HOLDING COMPANY SYSTEM.—

1 (1) STANDARDS.—Transactions within an in-
2 surance holding company system to which a national
3 insurer subject to registration is a party shall be
4 subject to the following standards:
5 (A) The terms shall be fair, reasonable and
6 at least as favorable to the national insurer as
7 those that would be offered to, or would apply
8 to, a non-affiliate.
9 (B) Charges or fees for services performed
10 shall be reasonable and at least as favorable to
11 the national insurer as those that would be of-
12 fered to, or would apply to, a non-affiliate.
13 (C) Expenses incurred and payment re-
14 ceived shall be allocated to the national insurer
15 in conformity with customary insurance ac-
16 counting practices consistently applied.
17 (D) The books, accounts and records of
18 each party to all such transactions shall be so
19 maintained as to clearly and accurately disclose
20 the nature and details of the transactions, in-
21 cluding such accounting information as is nec-
22 essary to support the reasonableness of the
23 charges or fees to the parties.
24 (E) The national insurer's surplus as re-
25 gards policyholders following any dividends or

1 distributions to shareholders shall be reasonable
2 in relation to the national insurer's outstanding
3 liabilities and adequate to meet its financial
4 needs.

5 (2) AUTHORITY TO REQUIRE APPROVAL IN AD-
6 VANCE OF TRANSACTIONS.—The Director may, by
7 regulation, prescribe certain transactions involving a
8 national insurer and any person in its insurance
9 holding company system that may not be entered
10 into unless the national insurer has notified the Di-
11 rector in writing of its intention to enter into the
12 transaction and the Director either has approved or
13 not disapproved the transaction within a specified
14 time period.

15 (3) REVIEW BY DIRECTOR.—The Director, in
16 reviewing any transactions for which notice is re-
17 quired pursuant to paragraph (2), shall consider
18 whether the transactions comply with the standards
19 set forth in paragraph (1) and whether they may ad-
20 versely affect the interests of policyholders.

21 (b) EXTRAORDINARY DIVIDENDS.—

22 (1) NOTICE OF DECLARATION.—No national in-
23 surer that is a member of an insurance holding com-
24 pany system shall pay any extraordinary dividend or
25 distribution to its shareholders until 30 days after

the Director has received notice of the declaration in a form prescribed by the Director.

(2) CONDITIONAL DECLARATION.—A national insurer that is a member of an insurance holding company system may declare an extraordinary dividend or distribution which is conditional upon the Director's approval, and the declaration shall confer no rights upon shareholders until—

(A) the Director has approved the payment of the dividend or distribution; or

(B) the Director has not disapproved payment within the 30-day period referred to in paragraph (1).

SEC. 604. CONFLICT WITH OTHER FEDERAL LAWS.

This title shall be construed and interpreted so as not to conflict with or supersede the provisions of any other Federal law or regulation governing the regulation of holding companies, including financial holding companies as created under Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

TITLE VII—RELATIONSHIPS WITH STATE LAW

SEC. 701. DEFINITIONS.

For purposes of this title:

(1) COVERED PARTY.—The term ''covered party'' means a national insurer, including any officer, director, or employee of such national insurer.

(2) STATE LAW.—The term ''State law'' means any law, rule, regulation, interpretation, or order adopted by a State legislature or promulgated by a State regulatory or enforcement agency, and any provision of a State constitution.

SEC. 702. GENERAL PROHIBITION.

No State may prevent or interfere with the ability of a covered party to engage in any activity authorized under this Act.

SEC. 703. STATE LICENSE NOT REQUIRED.

No covered person shall be required to obtain any State license or similar authorization in order to engage in any State in any business or activity authorized by this Act.

SEC. 704. STATE INSURANCE LAW.

Except as otherwise provided in this Act, no State law that relates to the formation, chartering, supervision, regulation, or business practices of an insurer, or any other matter related to the business of insurance, including issuance or revocation of a license to conduct the business of insurance, regulation of solvency and financial condition, mergers and acquisitions, any policy form and en-

1 dorsement, marketing and sales practice, underwriting,
2 damage appraisal and claims adjustment, any claims han-
3 dling and settlement practice, and unfair insurance trade
4 practices and market conduct activity (including any re-
5 quirement related to nonrenewal, cancellation, and change
6 in policy terms, including rates) shall apply to a covered
7 party, except to the extent consistent with the provisions
8 of this Act.

9 **SEC. 705. PROHIBITION OF DISCRIMINATION.**

10 (a) IN GENERAL.—Any State law that is not pre-
11 empted by section 704 may not discriminate against a cov-
12 ered party or a State-licensed insurance producer selling
13 a product of a national insurer or be applied to a covered
14 party in a manner different than it is applied to a State
15 insurer, State-licensed agency, affiliate of any such insurer
16 or agency, or any officer, director, employee, or agent of
17 such insurer, agency, or affiliate.

18 (b) STATE INSURERS.—No State may discriminate
19 against a State insurer that is affiliated with a national
20 insurer on the basis of that affiliation.

21 **SEC. 706. PERMISSIBLE STATE REGULATION.**

22 The following State laws are not preempted by sub-
23 section 704 or any other provision of this Act, and the
24 following activities of a covered party shall be subject to
25 State regulation, to the extent applicable: *Provided,* That

1 such laws shall be subject to the antidiscrimination stand-
2 ard set forth in section 705:

3 (1) RESIDUAL MARKET INSURANCE PRO-
4 GRAMS.—Any State law that requires participation
5 in an assigned risk plan, mandatory joint under-
6 writing association, or any other mandatory residual
7 market mechanism designed to make insurance
8 available to those unable to obtain it in the vol-
9 untary market: *Provided,* That this paragraph shall
10 not apply to any State law governing participation
11 in any voluntary joint underwriting association or
12 similar arrangement: *Provided further,* That the Di-
13 rector may review any State law regulating any ac-
14 tivity described in this subsection and may preempt
15 such law if the Director determines it to be incon-
16 sistent with any provision or purpose of this Act.

17 (2) TAXES.—Any State law that imposes liabil-
18 ity for State and local taxes and assessments on in-
19 surers, including premium taxes, retaliatory taxes,
20 tax credits, deductions, and offsets related thereto,
21 as provided in section 401.

22 (3) CORPORATE GOVERNANCE.—Except to the
23 extent inconsistent with any provision or purpose of
24 this Act, any State governing insurance company in-

1 corporation, organization, corporate governance, vot-
2 ing rights, and related matters.
3 (4) REPARATION REQUIREMENTS.—Any State
4 law that prescribes the requirements of the repara-
5 tions that every insurer must provide if it under-
6 writes and sells policies of a particular type in a
7 State.
8 (5) ADVISORY ORGANIZATIONS.—Any State law
9 that mandates the participation of insurers in an ad-
10 visory or statistical organization: *Provided,* That
11 such participation does not require a national in-
12 surer to use any particular rate, rating element,
13 price, or form.
14 (6) WORKERS' COMPENSATION.—Any State law
15 that regulates participation in a workers' compensa-
16 tion administration mechanism, provided such par-
17 ticipation is not inconsistent with any provision of
18 this Act.
19 (7) RATE REGULATION.—Any State law that
20 regulates insurance rates.
21 (8) CONVERSION TO STOCK FORM.—Any State
22 law that regulates the conversion of a mutual State
23 insurer to an insurer in stock form.

(9) INSURANCE PRODUCER LICENSING.—Any State law that regulates the licensing of insurance producers.

SEC. 707. SALES ACTIVITIES BY STATE-LICENSED INSURANCE PRODUCERS.

No State may—

(1) prevent a State-licensed insurance producer from selling, soliciting, or negotiating an insurance policy or annuity contract issued by a national insurer;

(2) impose any condition on a State-licensed producer that significantly interferes with the ability of selling, soliciting, or negotiating an insurance policy or annuity contract issued by a national insurer; or

(3) discriminate, in any manner, against a State-licensed producer because it sells, solicits, or negotiates an insurance policy or annuity contract issued by a national insurer.

TITLE VIII—CONFORMING AMENDMENTS AND OTHER PROVISIONS

SEC. 801. FEDERAL COURT JURISDICTION.

(a) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1369. National insurer as party

''The district courts shall have original jurisdiction of any civil action—

''(1) commenced by the United States, or by direction of any officers thereof, against any national insurer;

''(2) to wind up the affairs of a national insurer; and

''(3) to enjoin the Director of the Office of National Insurers of the Department of the Treasury, or any receiver acting under the direction of the Director, as provided in the Insurance Industry Modernization and Consumer Protection Act.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 85 of title 18, United States Code, is amended by adding at the end the following new item:

''1369. National insurer as party.''.

SEC. 802. FEDERAL COURT VENUE.

IN GENERAL.—Chapter 87 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1414. National insurer action against Director of National Insurers.

'Any civil action by a national insurer to enjoin the Director of National Insurers of the Department of the Treasury, under the provisions of any Act of Congress relating to such insurers, may be prosecuted in the judicial district where such insurer is located.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 87 of title 18, United States Code, is amended by adding at the end the following new item:

''1414. National insurer action against Director of National Insurers.''.

SEC. 803. JUDICIAL REVIEW.

Except as otherwise expressly provided in this Act, any party aggrieved by an order or other agency action (as such terms are defined in section 551 of title 5, United States Code) of the Director under this Act may obtain a review of such order or other action in the United States Court of Appeals within any circuit wherein such party has its main office, or in the Court of Appeals for the District of Columbia, by filing in the court, within 30 days after the entry of the Director's order, a petition praying that the order or other action of the Director be set aside,

modified or terminated. A copy of such petition shall be forthwith transmitted to the Director by the clerk of the court, and thereupon the Director shall file in the court the record made before the Director, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm, set aside, modify, or terminate the order or other action of the Director and to require the Director to take such action with regard to the matter under review as the court deems proper. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

SEC. 804. AMENDMENT TO FREEDOM OF INFORMATION ACT.

Section 552(b)(8) of title 5, United States Code, is amended by inserting ''(including national insurers, as such term is defined in section 101 of the Insurance Industry Modernization and Consumer Protection Act)'' after ''financial institutions''.

SEC. 805. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.

(a) 5-YEAR MORATORIUM ON FEDERAL TAX LAW CHANGES APPLICABLE SOLELY TO NATIONAL INSURERS.—For a period of 5 calendar years beginning on January 1 of the first full calendar year beginning on or after transition commencement date—

(1) an insurer that has converted from being a State insurer into a national insurer under this Act shall compute its liability for all federal income and excise taxes under the Internal Revenue Code of 1986 and the Treasury Regulations promulgated thereunder as if such insurance company had continued to prepare and file an annual statement in accordance with the requirements of the NAIC and of the State in which such insurer was domiciled immediately prior to such conversion; and

(2) all parties to any contract, including any insurance, annuity, health, and other contracts, written by a national insurer, shall be treated for all purposes of the Internal Revenue Code, and for purposes of all Treasury regulations promulgated thereunder, as if such contract were an insurance, annuity, health, or other contract under the applicable law of the State in which such national insurer was domiciled immediately prior to such conversion.

1 For purposes of this section, any national insurer that was
2 not domiciled in any State immediately before it was
3 issued a charter as a national insurer shall be deemed to
4 have been domiciled in the State designated by such na-
5 tional insurer pursuant to section 401 of this Act.

6 (b) CONFORMING AMENDMENTS.—For purposes of
7 computing the tax liability of a national insurer following
8 the 5-year period described in subsection (a) of this sec-
9 tion, the Internal Revenue Code of 1986 is amended as
10 follows:

11 (1) Section 264(f)(3) is amended by inserting
12 ''or, in the case of a national insurer, by the Direc-
13 tor of the Office of National Insurers of the Depart-
14 ment of the Treasury'' after ''National Association
15 of Insurance Commissioners''.

16 (2) Section 807(d)(2)(C) is amended by insert-
17 ing ''or, in the case of a national insurer, such
18 standard tables for mortality and morbidity pre-
19 scribed by the Director of the Office of National In-
20 surers of the Department of the Treasury,'' after
21 ''mortality and morbidity''.

22 (3) Section 807(d)(3)(A) is amended by insert-
23 ing ''or, in the case of a national insurer, such re-
24 serve method prescribed by the Director of the Of-

fice of National Insurers of the Department of the Treasury''—

(A) in clause (i), after ''covered by the CVRM'';

(B) in clause (ii), after ''covered by the CARVM''; and

(C) in clause (iv)(I), after ''National Association of Insurance Commissioners''.

(4) Sections 807(d)(3)(A)(iv)(II), 809(g)(4) and 811(a) are amended by inserting ''or, in the case of a national insurer, by the Director of the Office of National Insurers of the Department of the Treasury'' after ''National Association of Insurance Commissioners'' each place such term appears.

(5) Section 807(d)(4)(B)(i) is amended by inserting ''or, in the case of a national insurer, such rate determined by the Director of the Office of National Insurers of the Department of the Treasury'' after ''at least 26 States''.

(6) Section 816(b)(3)(B) is amended by inserting ''or, in the case of a national insurer, by the Director of the Office of National Insurers of the Department of the Treasury'' after ''State insurance commissioner''.

(7) Sections 817(d)(1) and 817A(d)(1) are amended by inserting ''or, in the case of a national insurer, by law or regulation of the United States'' after ''State law or regulation'' each place such term appears.

(8) Section 818 is amended by adding at the end the following new subsection:

''(h) DEFINITIONS RELATING TO NATIONAL INSURERS.—For purposes of this title:

''(1) NATIONAL INSURER.—The term 'national insurer' means any insurer chartered under the Insurance Industry Modernization and Consumer Protection Act.

''(2) NATIONAL LIFE INSURER.—The term 'national life insurer' means any national insurer that is a life insurance company within the meaning of section 816(a).''.

(9) Section 846(f)(3) is amended by inserting ''or, in the case of a national insurer, the annual statement approved by the Director of the Office of National Insurers which the taxpayer is required to file with the Director of the Office of National Insurers of the Department of the Treasury'' after ''authorities of a State''.

(10) Section 7702(c)(3)(B)(i) shall be amended by inserting ''or, in the case of a national insurer, in such standard tables prescribed by the Director of National Insurers of the Department of the Treasury'' after ''in section 807(d)(5))''.

(11) Section 7702B(g)(4)(B)(ii) is amended by inserting ''or, in the case of a national insurer, by the Director of National Insurers of the Department of the Treasury'' after ''appropriate State regulatory agency''.

(12) Section 9832(b)(2) is amended by inserting ''or, in the case of a national insurer, which is licensed to engage in the business of insurance by the United States and which is subject to regulation by the Director of the Office of National Insurers of the Department of the Treasury and to regulations promulgated under the authority of such Director'' after ''the enactment of this section)''.

(c) DEFINITION OF APPLICABLE LAW.—In the case of any national insurer, for purposes of sections 7702(a) and (h) of the Internal Revenue Code of 1986, the term ''applicable law'' shall include the law of the United States, or, in the case of a national insurer that has converted from a State insurer into a national insurer, any State law under which any policy was written by such na-

tional insurer either before or after such national insurer was converted from a State insurer into a national insurer.

SEC. 806. AMENDMENTS TO FEDERAL SECURITIES LAWS.

(a) AMENDMENTS TO SECURITIES ACT OF 1933.—

(1) Section 2(a)(13) of the Securities Act of 1933 (15 U.S.C. 77b(a)(13)) is amended by inserting ''the Director of the Office of National Insurers of the Department of the Treasury or'' after ''subject to supervision by''.

(2) Section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) is amended by inserting ''the Director of the Office of National Insurers of the Department of the Treasury or'' after ''subject to the supervision of''.

(3) Section 4(5)(A)(ii) of the Securities Act of 1933 (15 U.S.C. 77d(5)(A)(ii)) is amended by inserting ''the Director of the Office of National Insurers of the Department of the Treasury or'' after ''subject to the supervision of''.

(b) AMENDMENTS TO SECURITIES EXCHANGE ACT OF 1934.—Section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i)) is amended—

(1) in paragraph (3)(C)(iii), by inserting ''or by the Director of the Office of National Insurers of the

Department of the Treasury'' before the period at the end; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking ''and'' after the semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(C) the Director of the Office of National Insurers of the Department of the Treasury with regard to all interpretations of, and the enforcement of, the Insurance Industry Modernization and Consumer Protection Act relating to the activities, conduct, and operations of national insurers and federally licensed insurance producers.''.

(c) AMENDMENTS TO INVESTMENT COMPANY ACT OF 1940.—

(1) Section 2(a)(17) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(17)) is amended by inserting ''the Director of the Office of National Insurers of the Department of the Treasury or'' after ''subject to supervision by''.

(2) The last sentence of section 12(g) of the Investment Company Act of 1940 (15 U.S.C. 80a–12(g)) is amended—

(A) by inserting ''the Director of the Office of National Insurers of the Department of the Treasury or'' after ''affect or derogate from the powers of''; and

(B) by inserting ''Federal or'' after ''affect the right under''.

(3) Section 26(f)(2)(B)) of the Investment Company Act of 1940 (15 U.S.C. 80a–14(f)(2)(B)) is amended—

(A) in clause (ii), by inserting ''or, in the case of a national insurer chartered under the Insurance Industry Modernization and Consumer Protection Act, files with the Director of the Office of National Insurers of the Department of the Treasury,'' after the first comma; and

(B) in clause (iii), by inserting ''or, in the case of a national insurer chartered under the Insurance Industry Modernization and Consumer Protection Act, the Director of the Office of National Insurers of the Department of the Treasury'' before the period at the end.

SEC. 807. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

The Employee Retirement Income Security Act of 1974 is amended as follows:

(1) Section 401(b)(2)(A) (29 U.S.C. 1101(b)(2)(A)) is amended by inserting ''or licensed as a national insurer'' before the period at the end.

(2) The first sentence of section 733(b)(2) (29 U.S.C. 1191b(b)(2)) is amended by inserting ''or which is licensed as a national insurer and which is subject to the authority of the Director of the Office of National Insurers of the Department of the Treasury'' before the period.

SEC. 608. AMENDMENTS TO GRAMM-LEACH-BLILEY ACT.

(a) INTERAGENCY CONSULTATION.—Section 307 of the Gramm-Leach-Bliley Act (15 U.S.C. 6716) is amended by adding at the end the following new subsection:

''(g) OFFICE OF NATIONAL INSURERS.—

''(1) REGULATORS.—For purposes of this section, the terms ''State insurance regulator'', ''State insurance regulators'', and ''insurance regulator of any State'' shall include the Office of National Insurers of the Department of the Treasury.

''(2) PROVISION OF INFORMATION.—The provision of information or material by the Office of National Insurers of the Department of the Treasury

to a Federal banking agency (as such term is defined in section 3 of the Federal Deposit Insurance Act) shall not constitute a waiver of, or otherwise affect, any privilege or other form of legal protection or exemption from public disclosure to which such information or material is otherwise subject.''.

(b) PRIVACY.—The Gramm-Leach-Bliley Act is amended as follows:

(1) Section 504 (15 U.S.C. 6804(a)) is amended—

(A) in paragraph (1), by inserting ''the Director of the Office of National Insurers of the Department of the Treasury,'' after ''The Federal banking agencies''; and

(B) in paragraph (3), by inserting '', except that, in the case of the Director of the Office of National Insurers of the Department of the Treasury, such regulations shall be issued in final form not later than 12 months after the date of the enactment of the Insurance Industry Modernization and Consumer Protection Act'' before the period at the end.

(3) Section 505 (15 U.S.C.6805) is amended—

(A) in subsection (a)—

(i) in paragraph (6) by inserting "(other than a person subject to the jurisdiction of the Office of National Insurers of the Department of the Treasury under paragraph (8) of this subsection)" after "providing insurance"; and

(ii) by adding at the end the following new paragraph:

"(8) Under section 204 of the Insurance Industry Modernization and Consumer Protection Act, by the Director of the Office of National Insurers of the Department of the Treasury with respect to any national insurer, any subsidiaries of such an entity, and any federally licensed insurance producer."; and

(B) in subsection (b)(2), by striking "and (7)" and inserting "(7), and (8)".

(3) Section 509 (15 U.S.C. 6809(2)) is amended—

(A) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(B) by inserting after subparagraph (D) the following new subparagraph:

"(E) the Director of the Office of National Insurers of the Department of the Treasury;".

(4) Section 521(e) (15 U.S.C. 6821(e)) is amended by inserting ''or Federal'' after ''such institution under State''.

(5) Section 522(b)(1) (15 U.S.C. 6822(b)(1)) is amended—

(A) in subparagraph (A), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(C) section 205 of the Insurance Industry Modernization and Consumer Protection Act, by the Director of the Office of National Insurers of the Department of the Treasury with respect to any national insurer and any federally licensed insurance producer.''.

(6) Section 525 (15 U.S.C. 6825) is amended by inserting ''the Director of the Office of National Insurers of the Department of the Treasury,'' after ''National Credit Union Administration,''.

(c) OTHER CONFORMING AMENDMENTS.—The Gramm-Leach-Bliley Act is amended as follows:

(1) Section 104(b) (15 U.S.C. 6701(b)) is amended by inserting '', or as required by the Direc-

tor of the Office of National Insurers of the Department of the Treasury in accordance with the Insurance Industry Modernization and Consumer Protection Act'' before the period at the end.

(2) Section 301 (15 U.S.C. 6711) is amended by inserting ''; except that the insurance activities of a national insurer and a federally licensed insurance producer shall be functionally regulated by the Office of National Insurers of the Department of the Treasury'' before the period at the end.

(3) Section 311 (15 U.S.C. 6731) is amended by adding at the end the following new sentence: ''This subtitle shall not apply to a national insurer in mutual form that is reorganizing into a mutual holding company.''.

SEC. 809. AMENDMENT TO ACT OF OCTOBER 28, 1974.

Section 111 of the Act of Public Law 93–495 (12 U.S.C. 250) is amended by inserting ''the Director of the Office of National Insurers of the Department of the Treasury,'' after ''the Director of the Office of Thrift Supervision,''.

SEC. 810. AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act is amended as follows:

(1) The section heading for section 45 (12 U.S.C. 1831v) is amended by inserting "**, DIRECTOR OF OFFICE OF NATIONAL INSURERS**" after "**STATE INSURANCE REGULATOR**".

(2) Section 47(g)(1) (12 U.S.C. 1831x(g)(1)) is amended—

(A) in subparagraph (A), by striking "or" after the semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following new subparagraph:

"(C) any authority of the Director of the Office of National Insurers of the Department of the Treasury under the Insurance Industry Modernization and Consumer Protection Act.".

SEC. 811. AMENDMENTS TO BANK HOLDING COMPANY ACT OF 1956.

The Bank Holding Company Act of 1956 is amended as follows:

(1) Section 4(k)(4)(I)(iii) (12 U.S.C. 1843(k)(4)(I)(iii)) is amended by inserting "or Federal" after "relevant State"; and

(2) Section 5 (12 U.S.C. 1844) is amended—

(A) in subsection (c)—

(i) in paragraph (2)(E)(iii), by inserting "or by or on behalf of the Director of the Office of National Insurers of the Department of the Treasury" before the semicolon;

(ii) in paragraph (3)(A)(ii)(I), by inserting "or the Office of National Insurers of the Department of the Treasury" after "Securities and Exchange Commission";

(iii) in paragraph (4)(B), by inserting "or the Director of the Office of National Insurers of the Department of the Treasury" after "a State insurance authority"; and

(iv) in paragraph (5)(B)(iv), by inserting "or by the Director of the Office of National Insurers of the Department of the Treasury" before the semicolon; and

(B) in subsection (g)—

(i) in the subsection heading, by inserting ", DIRECTOR OF THE OFFICE OF NATIONAL INSURERS," after "STATE INSURANCE REGULATOR".

(ii)) in paragraph (1)(B), by inserting "or the Director of the Office of National

Insurers of the Department of the Treasury'' after ''State insurance authority'';

(iii) in paragraph (2)—

(I) in the paragraph heading, by inserting '', DIRECTOR OF THE OFFICE OF NATIONAL INSURERS,'' after ''State Insurance Authority''; and

(II) by inserting ''or the Director of the Office of National Insurers of the Department of the Treasury'' after ″the Board shall promptly notify the State insurance authority''; and

(iv) in paragraph (3), by inserting '', the Director of the Office of National Insurers of the Department of the Treasury,'' after ''State insurance authority''.

SEC. 812. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

(a) SECTION 1033.—Section 1033(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ''removes, conceals, alters, destroys,'' after ''willfully embezzles, abstracts, purloins,''; and

(B) by inserting ''assets,'' after ''moneys, funds, premiums, credits,''; and

(2) in paragraph (2)—

(A) in the first sentence, by inserting ''removal, concealment, alteration, destruction,'' after ''embezzlement, abstraction, purloining,''; and

(B) in the second sentence by inserting ''removed, concealed, altered, destroyed,'' after ''embezzled, abstracted, purloined,''.

(b) INSURANCE FRAUD.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1037. Insurance fraud.

''(a) Whoever—

''(1) commits a fraudulent insurance act; or

''(2) knowingly and intentionally interferes with the enforcement of the provisions of section 206 of the Insurance Industry Modernization and Consumer Protection Act or investigations of suspected or actual violations of such section,

shall be punished as provided in subsection (b).

''(b)(1) Except as provided in paragraph (2), the punishment for an offense under subsection (a) is a fine

as provided under this title or imprisonment for not more than 10 years, or both.

"(2) If the person committing an offense under subsection (a) is a national insurer, insurer-affiliated party or a federally licensed insurance producer, punishment for an offense under subsection (a) is—

"(A) a fine, the maximum of which is the greater of—

"(i) $1,000,000 per violation, or

"(ii) a fine as provided under this title;

"(B) imprisonment for not more than 10 years; or

"(C) both a fine under subparagraph (A) and imprisonment under subparagraph (B).

"(3) If the fraudulent insurance act involved an amount or value not exceeding $5,000, whoever violates subsection (a) shall be fined as provided in this title or imprisoned not more than one year, or both.

"(4) The punishment under this subsection shall be in addition to any other penalties under the Insurance Industry Modernization and Consumer Protection Act.

"(c)(1) Any individual who has been convicted of any criminal felony involving dishonesty or breach of trust, and who participates in insurance operations, shall be

1 fined as provided in this title or imprisoned not more than
2 5 years, or both.
3 ''(2) Any insurance person who is engaged in insur-
4 ance operations who knowingly and intentionally permits
5 the participation described in paragraph (1) shall be fined
6 as provided in this title or imprisoned no more than 5
7 years, or both.
8 ''(3) A person described in paragraphs (1) or (2) may
9 participate in insurance operations or permit such partici-
10 pation, as the case may be, if such person has the written
11 consent of the Director.
12 ''(d) As used in this section:
13 ''(1) The terms 'Director', 'federally licensed in-
14 surance producer', 'insurance operations', 'insurance
15 policy', 'insurance producer', 'insurer-affiliated
16 party', 'national insurer', 'person', and 'policy of in-
17 surance' shall have the meanings given such terms
18 in section 102 of the Insurance Industry Moderniza-
19 tion and Consumer Protection Act.
20 ''(2) The term 'fraudulent insurance act' means
21 a act or omission committed by a person who, know-
22 ingly and with intent to defraud, commits, or con-
23 ceals any material information concerning, one or
24 more of the following:

1 "(A) Presenting, causing to be presented
2 or preparing with knowledge or belief that it
3 will be presented to or by a national insurer or
4 an insurance producer acting with respect to a
5 policy of insurance written by a national in-
6 surer, false information as part of, in support
7 of or concerning a fact material to one or more
8 of the following:
9 "(i) An application for a new or re-
10 newal of an insurance policy or reinsurance
11 contract.
12 "(ii) The rating of a national insurer
13 that writes an insurance policy or enters
14 into a reinsurance contract.
15 "(iii) A claim for payment or benefit
16 pursuant to an insurance policy or reinsur-
17 ance contract.
18 "(iv) Premiums paid on an insurance
19 policy or reinsurance contract.
20 "(v) Payments made in accordance
21 with the terms of an insurance policy or
22 reinsurance contract.
23 "(vi) A document filed with the Direc-
24 tor.

"(vii) The financial condition of a national insurer.

"(viii) The formation, acquisition, merger, consolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance by a national insurer.

"(ix) The issuance of evidence of insurance, whether in writing, electronic form or otherwise.

"(x) The reinstatement of an insurance policy.

"(B) Solicitation or acceptance of new or renewal insurance risks on behalf of a national insurer or other persons engaged in insurance operations by a person who knows or should know that the national insurer or other person responsible for the risk is insolvent at the time of the transaction.

"(C) Removal, concealment, alteration or destruction of the records of a national insurer or other person engaged in insurance operations.

"(D) Transaction of insurance operations in violation of laws requiring a license therefore

under the Insurance Industry Modernization and Consumer Protection Act.

"(E) Attempting to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in, this paragraph.

"(3) The term 'insurance person' means officers, directors, agents, or employees of national insurers, or other persons authorized to act on behalf of national insurers.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

"1037. Insurance fraud.".

SEC. 813. AMENDMENTS TO AMERICANS WITH DISABILITIES ACT OF 1990.

Section 501(c) of the Americans With Disabilities Act of 1990 (42 U.S.C. 12201(c)) is amended—

(1) in paragraph (1), by inserting "or Federal" before "law";

(2) in paragraph (2), by inserting "or Federal" before "law"; and

(3) in paragraph (3), by inserting "or Federal" before "laws".

TITLE IX—RECEIVERSHIP

Subtitle A—Definitions

SEC. 901. DEFINITIONS.

For purposes of this title:

(1) ALIEN REPRESENTATIVE.—The term ''alien representative'' means a trustee, receiver, liquidator, provisional liquidator, administrator or other representative of a non-U.S. insurer in receivership or equivalent proceedings in a foreign country who has been appointed judicially or pursuant to statute.

(2) ASSOCIATION.—The term ''association'' means an insurance guaranty fund or association or any similar entity created under the laws of the relevant State.

(3) CONTINGENT CLAIM.—The term ''contingent claim'' means a claim for which the insurer's obligation to pay has not yet been established.

(4) CORPORATION.—The term ''corporation'' means the National Life Insurance Guaranty Corporation established pursuant to Title X or the National Property and Casualty Insurance Guaranty Corporation established pursuant to such title (as the case may be).

(5) CREDITOR.—The term ''creditor'' means a person having a claim against the insurer, whether

1 matured or unmatured, liquidated or unliquidated,
2 secured or unsecured, absolute, fixed, or contingent.
3 (6) COURT.—The term ''court'' means the
4 court described in section 903(a).
5 (7) ESTATE.—The term ''estate'' means the as-
6 sets and liabilities of any insurer in receivership.
7 (8) FAIR CONSIDERATION.—The term ''fair
8 consideration'' is given for property or an
9 obligation—
10 (A) when in exchange for the property or
11 obligation, as a fair equivalent of the property
12 or obligation and in good faith, property is con-
13 veyed or services are rendered or an obligation
14 is incurred or an antecedent debt is satisfied; or
15 (B) when the property or obligation is re-
16 ceived in good faith to secure a present advance
17 or antecedent debt in an amount not dispropor-
18 tionately small as compared to the value of the
19 property or obligation obtained.
20 (9) GENERAL ASSETS.—The term ''general as-
21 sets'' means all property, real, personal, or other-
22 wise, not specifically mortgaged, pledged, deposited,
23 or otherwise encumbered for the security or benefit
24 of specified persons or a limited class or classes of
25 persons, and as to such specifically encumbered

1 property the term includes all such property or its
2 proceeds in excess of the amount necessary to dis-
3 charge the sum or sums secured thereby. Assets held
4 in trust and assets held on deposit for the security
5 or benefit of all policyholders, or all policyholders
6 and creditors in the United States shall be deemed
7 general assets.

8 (10) GUARANTY ASSOCIATION.—The term
9 ''guaranty association'' means either corporation or
10 any association.

11 (11) INSOLVENCY.—The terms ''insolvency''
12 and ''insolvent'' mean—

13 (A) for a national insurer issuing only as-
14 sessable policies—

15 (i) the inability to pay an obligation
16 within 30 days after it becomes payable; or

17 (ii) the inability to pay an obligation
18 for an assessment 30 days following the
19 date specified in the first assessment notice
20 issued after the date of loss; and

21 (B) for a national insurer, other than a na-
22 tional insurer under paragraph (1), the inability
23 of an insurer to pay its obligations when they
24 are due or when admitted assets do not exceed

1 liabilities plus the greater of either of the
2 following—
3 (i) any capital and surplus required
4 by law for its organization; or
5 (ii) the total par or stated value of its
6 authorized and issued capital stock.
7 For purposes of this paragraph, the term ''liabil-
8 ities'' shall include reserves required by statute or by
9 rule or specific requirements imposed by the Direc-
10 tor upon an insurer.
11 (12) INSURER.—The term ''insurer'' includes a
12 State insurer, a national insurer, and all other enti-
13 ties subject to this title under section 910.
14 (13) MULTIPLE BENEFICIARY TRUST.—The
15 term ''multiple beneficiary trust'' means a trust es-
16 tablished pursuant to this Act for the benefit of
17 more than one beneficiary except trusts established
18 by a U.S. branch.
19 (14) NETTING AGREEMENT.—The term ''net-
20 ting agreement'' means a contract or agreement (in-
21 cluding terms and conditions incorporated by ref-
22 erence therein), including a master agreement
23 (which master agreement, together with all sched-
24 ules, confirmations, definitions and addenda thereto
25 and transactions under any thereof, shall be treated

as one netting agreement), that documents one or more transactions between the parties for or involving one or more qualified financial contracts and that provides for the netting of qualified financial contracts or present or future payment obligations or payment entitlements thereunder (including liquidation or close-out values relating to such obligations or entitlements) among the parties to the netting agreement.

(15) PARTY IN INTEREST.—The term ''party in interest'' means the Director, an insurer, policyholder, third-party claimant, creditor, equity security holder, the corporation, any affected guaranty association, a State commissioner or other principal regulatory official in a State in which the insurer was doing business, an advisory committee appointed under this title, an insurer that ceded to or assumed business from the insurer, and any person, including any indenture trustee, with a financial or regulatory interest in the receivership proceeding.

(16) PLAN.—The term ''plan'' means a plan provided in subtitle H.

(17) QUALIFIED FINANCIAL CONTRACT.—The term ''qualified financial contract'' means a commodity contract, forward contract, repurchase agree-

1 ment, securities contract, swap agreement and any
2 similar agreement that the Director determines by
3 regulation, or order to be a qualified financial con-
4 tract for the purposes of this title. For purposes of
5 this subsection:
6 (A) The term ''commodity contract''
7 means—
8 (i) a contract for the purchase or sale
9 of a commodity for future delivery on, or
10 subject to the rules of, a board of trade
11 designated as a contract market by the
12 Commodity Futures Trading Commission
13 under the Commodity Exchange Act (7
14 U.S.C. 1 et seq.) or board of trade outside
15 the United States;
16 (ii) an agreement that is subject to
17 regulation under section 19 of the Com-
18 modity Exchange Act (7 U.S.C. 23) and
19 that is commonly known to the commod-
20 ities trade as a margin account, margin
21 contract, leverage account or leverage con-
22 tract; or
23 (iii) an agreement or transaction that
24 is subject to regulation under section 4c(b)
25 of the Commodity Exchange Act (7 U.S.C.

6c(b)) and that is commonly known to the commodities trade as a commodity option.

(B) The term ''forward contract'' means a contract (other than a commodity contract) for the purchase, sale, or transfer of any commodity, as defined in section 1 of the Commodity Exchange Act (7 U.S.C. 1), or any similar good, article, service, right or interest that is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction or any combination of these or option on any of them.

(C) The term ''repurchase agreement'' (which also applies to a reverse repurchase agreement) means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal

1 and interest by, the United States or any agen-
2 cy of the United States against the transfer of
3 funds by the transferee of such certificates of
4 deposit, eligible bankers' acceptances, or securi-
5 ties with a simultaneous agreement by the
6 transferee to transfer to the transferor certifi-
7 cates of deposit, eligible bankers' acceptances or
8 securities as described above, at a date certain
9 not later than 1 year after the transfers or on
10 demand, against the transfer of funds. For the
11 purposes of this definition, the items that may
12 be subject to an agreement include mortgage-
13 related securities, a mortgage loan, and an in-
14 terest in a mortgage loan, and shall not include
15 any participation in a commercial mortgage
16 loan, unless the Director determines by regula-
17 tion, resolution or order to include the partici-
18 pation within the meaning of the term.
19 (D) The term ''securities contract'' means
20 a contract for the purchase, sale or loan of a
21 security, including an option for the repurchase
22 or sale of a security, certificate of deposit, or
23 group or index of securities (including an inter-
24 est therein or based on the value thereof), or an
25 option entered into on a national securities ex-

1 change relating to foreign currencies, or the
2 guarantee of any settlement of cash or securi-
3 ties by or to a securities clearing agency. For
4 the purposes of this paragraph (4), the term
5 ''security'' includes a mortgage loan, mortgage-
6 related securities, and an interest in any mort-
7 gage loan or mortgage-related security.
8 (E) The term ''swap agreement'' means an
9 agreement, including the terms and conditions
10 incorporated by reference in an agreement, that
11 is a rate swap agreement, basis swap, com-
12 modity swap, forward rate agreement, interest
13 rate future, interest rate option, forward for-
14 eign exchange agreement, spot foreign exchange
15 agreement, rate cap agreement, rate floor
16 agreement, rate collar agreement, currency
17 swap agreement, cross-currency rate swap
18 agreement, currency future, or currency option
19 or any other similar agreement, and includes
20 any combination of agreements and an option
21 to enter into an agreement.
22 (18) RECEIVER.—The term ''receiver'' means
23 receiver, liquidator, rehabilitator, or conservator as
24 the context requires.

(19) RECEIVERSHIP PROCEEDING.—The term ''receivership proceeding'' means any liquidation, rehabilitation or conservation as the context requires.

(20) SECURED CLAIM.—The term ''secured claim'' means a claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including a special deposit claim or claim against general assets. The term also includes claims that have become liens upon specific assets by reason of judicial process.

(21) SEPARATE ACCOUNT.—The term ''separate account'' means an account authorized under section 321 and established in accordance with the terms of a written agreement or a contract on a variable basis.

(22) SINGLE BENEFICIARY TRUST.—The term ''single beneficiary trust'' means a trust established pursuant to this title for the benefit of a single beneficiary.

(23) SPECIAL DEPOSIT CLAIM.—The term ''special deposit claim' means a claim secured by a deposit made pursuant to a statute for the security or benefit of a limited class or classes of persons, but not including a class secured by general assets.

(24) TRANSFER.—The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of an insurer's equity of redemption.

(25) UNLIQUIDATED CLAIM.—The term ''unliquidated claim'' means a claim for which the amount of the claim has not been determined.

(26) UNMATURED CLAIM.—The term ''unmatured claim'' means a claim for which payment is not yet due.

SEC. 902. CONSTRUCTION.

Except as provided at section 914, this title shall not be interpreted to limit the powers granted the Director by laws or regulations other than this title.

Subtitle B—The Court

SEC. 903. JURISDICTION.

(a) IN GENERAL.—A receivership proceeding under this title shall be filed in the United States district court, or the United States court of any territory, within the jurisdiction of which the main office of the national insurer is located.

1 (b) EXCLUSIVE JURISDICTION.—The court shall, as
2 of the commencement of a receivership proceeding under
3 this title, have exclusive jurisdiction of all property of the
4 national insurer, wherever located.
5 (c) ARBITRATION.—Except as provided at section
6 914, and except as to claims filed against the estate pursu-
7 ant to section 964, nothing in this title shall deprive a
8 party in interest of any contractual right to pursue arbi-
9 tration of any dispute under any law.
10 (d) PERSONS SUBJECT TO PERSONAL JURISDIC-
11 TION.—In addition to grounds otherwise provided by law,
12 the following persons are subject to the personal jurisdic-
13 tion of the court:
14 (1) Current and former insurance producers of
15 the national insurer.
16 (2) Policyholders and reinsurers of the national
17 insurer.
18 (3) Current and former officers, directors, man-
19 agers, trustees, organizers, promoters and persons in
20 control of the national insurer.
21 (4) Any third party administrator for a national
22 insurer and any person (such as a data processing
23 firm) that maintains information for a national in-
24 surer.

(e) ASSOCIATIONS.—The foregoing provisions of this section notwithstanding, the provisions of this title do not confer jurisdiction on the court to resolve coverage disputes between guaranty associations and those asserting claims against them resulting from the initiation of a receivership proceeding under this title, except to the extent that the guaranty association has otherwise expressly consented pursuant to a plan of rehabilitation or liquidation that resolves its obligations to covered policyholders.

(f) DETERMINATION.—The determination of any dispute with respect to the statutory obligations of any guaranty association by a court or administrative agency shall be binding and conclusive as to the parties in a receivership proceeding initiated in the court, including, without limitation, the policyholders of the national insurer.

SEC. 904. POWERS.

(a) IN GENERAL.—The court may issue any order, process or judgment, including such injunctions or other orders as are necessary or appropriate to carry out the provisions of this title or an approved plan.

(b) ENFORCEMENT.—No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary

1 or appropriate to enforce or implement court orders or to
2 prevent an abuse of process.

3 **SEC. 905. APPEALS.**

4 (a) IN GENERAL.—Appeal from orders of the court
5 may be taken—

6 (1) as of right, by any of the following parties
7 in interest who have appeared and participated in
8 the hearing on the matter in question—

9 (A) by the Director or the national insurer
10 from any order of rehabilitation or liquidation
11 or finding of insolvency, or any order refusing
12 rehabilitation, liquidation, or a finding of insol-
13 vency;

14 (B) by the receiver or any such party from
15 any order approving or refusing to approve a
16 plan;

17 (C) by the receiver, the claimant or any re-
18 insurer from any order allowing or disallowing
19 a claim;

20 (D) by the person asserting any interest in
21 an asset from any order finally determining
22 such interest; or

23 (E) by a guaranty association from any
24 order which may substantially affect its rights;
25 or

(2) by leave of court, by any interested party whose substantial rights may be affected, from any order of the court, upon a showing that such rights are not amenable to protection by any appeal as of right; or

(3) by the receiver, from any order substantially affecting the operations of the receivership which is not otherwise appealable; provided, however, that leave shall be sought in the first instance from the court.

(b) PROCEDURE.—Any appeal from the entry or refusal of an order of receivership must be taken within 5 days of its entry. No request for reconsideration, review or appeal, and no posting of a bond shall dissolve or stay such order. Appeals from such orders shall be expedited by the court of appeals for the circuit in which the court is located.

(c) PROCEDURE SAME AS CIVIL APPEALS.—Except as specifically provided in this section and section 906, the procedure on appeal of an order entered under this title shall be as for other civil appeals.

SEC. 906. APPEAL PENDENCY PLANS.

(a) PLAN REQUIRED.—Within 5 days after the filing of a notice of appeal of an order of liquidation, the liquidator shall present for the court's approval a plan for the

1 continued performance of the defendant national insurer's
2 insurance policy claims obligations, including the duty to
3 defend insureds under liability insurance policies, during
4 the pendency of an appeal.

5 (b) CONTENT OF PLAN.—Such plan may provide for
6 the continued performance and payment of insurance pol-
7 icy claims obligations in the normal course of events, not-
8 withstanding the grounds alleged in support of the order
9 of liquidation, including the ground of insolvency. In the
10 event the defendant national insurer's financial condition
11 will not, in the judgment of the liquidator, support the
12 full performance of all insurance policy claims obligations
13 during the appeal pendency period, the plan may prefer
14 the claims of certain policyholders and claimants over
15 creditors and parties in interest as well as other policy-
16 holders and claimants (1) if the liquidator finds that such
17 preference is in the interests of policyholders and other
18 creditors as a whole or that such preference is necessary
19 to prevent hardship to particular policyholders and claim-
20 ants; and (2) if the liquidator finds that such preference
21 is fair and equitable considering the relative circumstances
22 of such policyholders and claimants. The court shall exam-
23 ine the plan submitted by the liquidator and if it finds
24 the plan is in the best interests of the parties and that
25 the liquidator's findings are supported by substantial evi-

dence, it shall approve the plan. No action shall lie against the liquidator or any of his deputies, agents, clerks, assistants or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(c) GUARANTY ASSOCIATION OBLIGATIONS.—The appeal pendency plan shall not supersede or affect the obligations of the National Life Insurance Guaranty Corporation or the National Property and Casualty Insurance Guaranty Corporation under title X or any association which under relevant State law is required to pay covered claims obligations during the appeal pendency period.

Subtitle C—General Provisions

SEC. 907. DUTY TO PROVIDE INFORMATION TO CORPORATION, STATE COMMISSIONERS, AND ASSOCIATIONS.

(a) IN GENERAL.—The receiver shall provide affected State commissioners with relevant receivership information, including reports and analysis of financial condition and the status of development of a plan when requested.

(b) KIND OF INFORMATION.—The receiver shall provide the affected guaranty association with all information necessary to carry out statutory obligations, including without limitation, any information reasonably necessary or appropriate to evaluate and participate in the development of the plan.

1 (c) LISTING OF POLICYHOLDERS.—The receiver shall
2 also permit a State commissioner, and a guaranty associa-
3 tion to obtain a listing of relevant policyholders and certifi-
4 cate holders, including current addresses and summary in-
5 surance policy information, provided that the requestor
6 agrees to maintain the confidentiality of the records and
7 that the records will be used only for regulatory, or guar-
8 anty association purposes.

9 (d) RESTRICTION ON ACCESS AND DISCLOSURE.—In
10 the event the receiver believes that certain information is
11 sensitive or that disclosure might cause a diminution in
12 recovery, the receiver may apply to the court for a protec-
13 tive order imposing additional restrictions on access and
14 disclosure.

15 (e) OTHER DISCLOSURE PERMITTED.—Except as
16 otherwise provided in section 931, nothing contained in
17 this title shall preclude or prohibit disclosure or discussion
18 of information or documents relevant to proceedings here-
19 under between and among the national insurer, the re-
20 ceiver, guaranty associations and State commissioners. No
21 such disclosure or discussion shall compromise the privi-
22 lege or confidential nature of such information or docu-
23 ments.

SEC. 908. COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES.

(a) IN GENERAL.—

(1) An officer, manager, director, trustee, owner, employee, or agent of a national insurer, or any other persons with authority over or in charge of any segment of the national insurer's affairs, shall cooperate with the receiver in a proceeding under this title.

(2) For purposes of this section:

(A) The term ''person'' includes a person who exercises control directly or indirectly over activities of the national insurer through a holding company or other affiliate of the national insurer.

(B) The term ''to cooperate'' includes—

(i) to reply promptly in writing to any inquiry from the receiver requesting such a reply; and

(ii) to make available to the receiver books, accounts, documents, and other records, information, or property of, or pertaining to, the national insurer and in his or her possession, custody, or control.

(b) NO INTERFERENCE.—No person shall obstruct or interfere with the receiver in the conduct of a receivership proceeding.

(c) OTHER RIGHTS.—This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for receivership proceedings or requests for other orders.

SEC. 909. RIGHT TO APPEAR AND BE HEARD.

(a) PARTY IN INTEREST.—A party in interest may raise and may appear and be heard on any issue in a receivership proceeding under this title, without reimbursement of attorneys' fees or expenses unless such reimbursement is expressly authorized elsewhere by the laws of the United States. This subsection shall not affect any right of a reinsurer under a reinsurance contract to recover reasonable fees and expenses to which it is entitled in connection with the interposing of defenses to a claim against the national insurer.

(b) GUARANTY ASSOCIATION.—Any guaranty association which is or may become liable to act as a result of the entry of an order of receivership shall have standing to intervene as of right or otherwise appear and participate in a receivership proceeding under this title. Exercise by any guaranty association of the standing rights con-

ferred under this subsection shall not constitute a submission to the general jurisdiction of the court.

Subtitle D—Administration

SEC. 910. ENTITIES SUBJECT TO THIS TITLE.

The receivership proceedings authorized by this title may be initiated against—

(1) any national insurer; and

(2) any person, if not an insurer, including—

(A) insurance producers, managing general agents, premium finance companies, insurance holding companies and all other non risk bearing entities engaged in any aspect of the business of insurance, whether or not such entities are licensed to engage in the business of insurance under this Act, if such person is an affiliate of the national insurer against which a receivership proceeding has been or is being filed under this title; and

(B) any other entity which is made subject to this title by statute.

SEC. 911. COMMENCEMENT OF RECEIVERSHIP.

(a) WHO MAY INSTITUTE PROCEEDING.—Only the Director may institute a receivership proceeding under this title by filing a petition with the court.

(b) SUBJECT OF PROCEEDING.—The Director may initiate a receivership proceeding against—

(1) a national insurer;

(2) a United States branch established pursuant to this Act; or

(3) any other entity under the provisions of section 910: *Provided,* That as to any non-U.S. insurer that holds a federal license but does not hold a charter issued pursuant to this Act or is not domiciled in any State, such receivership proceeding shall be only as to assets and records of such entity in the United States.

(c) CONTENT OF PETITION.—Any petition filed under this title shall state the grounds upon which the relief is sought and the relief requested and may request entry of such injunctive orders as may be appropriate.

(d) NO DELEGATION PERMITTED.—The Director may not delegate to any insurance self-regulatory organization any authority under this section with respect to instituting a receivership proceeding.

SEC. 912. GROUNDS FOR ENTRY OF A REHABILITATION OR LIQUIDATION ORDER.

(a) IN GENERAL.—Upon the filing of a petition, the court shall forthwith issue an order of rehabilitation or liquidation if the national insurer consents thereto, if the

national insurer fails to contest such petition or if the court finds—

(1) the national insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public;

(2) there is reasonable cause to believe that there has been embezzlement from the national insurer, wrongful sequestration or diversion of the national insurer's assets, forgery or fraud affecting the national insurer, or other illegal conduct in, by, or with respect to the national insurer that, if established, would endanger assets in an amount threatening the national insurer's solvency;

(3) the national insurer has failed to remove a person who in fact has executive authority with the national insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the Director to be dishonest or untrustworthy in a way affecting the national insurer's business;

(4) control of the national insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person found after notice and hearing by the Director to be untrustworthy;

(5) a person who in fact has executive authority with the national insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the Director concerning the person's affairs and after reasonable notice of the fact, the national insurer has failed promptly and effectively to terminate the employment and status of the person and all of his or her influence on management;

(6) after demand by the Director, the national insurer has failed to promptly make available for examination its property, books, accounts, documents, or other records, or those of a subsidiary or company within the control of the national insurer, or those of a person having executive authority with the company and pertaining to the company;

(7) without first obtaining the Director's written consent, the national insurer has transferred, or attempted to transfer, in a manner contrary to law, substantially its entire property or business, or has entered into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(8) the national insurer has concealed, removed, altered, destroyed or failed to establish and maintain books, records, documents, accounts, vouchers and other pertinent material adequate for the determination of its financial condition by examination or has failed to properly administer claims and to maintain claims records which are adequate for the determination of its outstanding claims liability;

(9) the national insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the national insurer or its property otherwise than as authorized under this title, and the appointment has been made or is imminent;

(10) within the previous 5 years, the national insurer has willfully and continuously violated its charter or articles of incorporation, its bylaws, this Act, or a valid order of the Director;

(11) the national insurer has failed to pay a judgment entered against it by a court with personal jurisdiction over the national insurer within 60 days of the date the judgment becomes final;

(12) the national insurer has failed to file its annual report or other financial report required by

this Act within the time allowed by law and, after written demand by the Director, has failed to give immediately an adequate explanation;

(13) the national insurer is found, after examination, to be in a condition so that it could not presently meet the requirements for chartering, incorporation (if applicable) and licensing to underwrite and sell insurance under this Act; or

(14) the national insurer is insolvent.

(b) ADMINISTRATION OF REINSURANCE TRUST.—In addition to the grounds stated in subsection (a) of this section, if the Director or a court of competent jurisdiction has ordered a trustee to turn over to the Director, assets held in trust pursuant to subsection (b) of section 322 requiring security in the form of trusteed assets for reinsurance ceded to a non federally-qualified reinsurer, the court may direct the establishment of a receivership for the purpose of administering said assets; provided, however that any such trust assets shall be administered in accordance with section 922.

SEC. 913. SERVICE OF SUMMONS AND RETURN.

(a) IN GENERAL.—Except with respect to a proceeding pursuant to section 925, upon the filing of a petition, a summons shall forthwith issue, returnable in 3 days after its date, and a copy of the summons together with

1 the petition in any receivership proceeding under this title
2 shall be served upon the national insurer named in such
3 petition by delivering the same to its president, vice presi-
4 dent, secretary, treasurer, director, or to its managing
5 agent, or if the national insurer lacks any of the aforesaid
6 officers, or if they cannot be found within the United
7 States, to the officer performing corresponding functions
8 under another name. Upon request of the Director, the
9 court shall appoint a special process server.

10 (b) SERVICE.—When it is satisfactorily proved by the
11 report of an examiner of the Director made in accordance
12 with the provisions of this title, or by affidavit of anyone
13 familiar with the facts, that the officers, directors, trustees
14 or managing agents or members of any national insurer
15 named in said petition upon whom service is required to
16 be made as above provided, have departed from the United
17 States or keep themselves concealed therein, or if such of
18 the persons residing in the United States and upon whom
19 service is required to be made as above provided have re-
20 signed from their offices, or that service cannot be made
21 immediately by the exercise of reasonable diligence, such
22 service may be had by the mailing of a copy of the petition
23 and summons to the last known address of the national
24 insurer, or by publication in such form and in such man-
25 ner as the court shall order.

SEC. 914. AUTOMATIC STAY.

(a) IN GENERAL.—Except as provided in subsections (c) and (d) of this section or as otherwise provided in this title, the commencement of a receivership proceeding under this title operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the national insurer, including an arbitration proceedings, that was or could have been commenced before the commencement of the receivership proceeding under this title, or to recover a claim against the national insurer that arose before the commencement of the receivership proceeding under this title;

(2) the enforcement, against the national insurer or against property of the national insurer, of a judgment obtained before the commencement of the receivership proceeding under this title;

(3) any act to obtain possession of property of the national insurer or of property from the national insurer or to exercise control over property or records of the national insurer;

(4) any act to create, perfect, or enforce any lien against property of the national insurer;

(5) any act to collect, assess, or recover a claim against the national insurer that arose before the commencement of a receivership proceeding under this title; and

(6) the commencement or continuation of an action or proceeding against a reinsurer of the national insurer, by the holder of a claim against the national insurer, seeking reinsurance recoveries which are contractually due to the national insurer.

(b) OTHER STAY.—Except as provided in subsections (c) and (d) of this section or as otherwise provided in this title, the commencement of a receivership proceeding under this title operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other action or proceeding, including, without limitation, the enforcement of any judgment against any insured that was or could have been commenced before the commencement of the receivership proceeding under this title or to recover a claim against any insured that arose before or after the commencement of the receivership proceedings under this title and for which the national insurer is or may be liable under a policy of insurance or is obligated to defend a party. The stay provided by this subsection shall terminate 90 days after appoint-

1 ment of the receiver unless extended by order of the court,
2 for good cause shown, after notice to any affected parties
3 and such hearing as the court determines is appropriate;
4 provided, however, that any applicable statute of limitation
5 with respect to any claim against an insured shall be tolled
6 during the period of the stay provided by this subsection
7 and any extensions.

8 (c) EXCEPTIONS.—The commencement of a receiver-
9 ship proceeding under this title does not operate as a stay
10 of—

11 (1) criminal actions;

12 (2) any act to perfect, or to maintain or con-
13 tinue the perfection of, an interest in property to the
14 extent such act is accomplished within any relation
15 back period under applicable law;

16 (3) setoff as permitted by section 958;

17 (4) termination of reinsurance contracts cov-
18 ering policies of insurance as provided under sub-
19 section (f) of section 962;

20 (5) pursuit and enforcement of nonmonetary
21 governmental claims, judgments and proceedings;

22 (6) enforcement of a lessor's rights under a
23 lease that expired prior to the filing of the receiver-
24 ship proceeding;

(7) presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(8) enforcement of rights against single beneficiary trusts;

(9) termination, liquidation and netting of obligations under qualified financial contracts as provided at section 959;

(10) discharge by a guaranty associations of statutory responsibilities or the pursuit of claims against a guaranty associations to the extent permitted by law other than this title; or

(11) any—

(A) audit by a governmental unit to determine tax liability;

(B) issuance to the national insurer by a governmental unit of a notice of tax deficiency;

(C) demand for tax returns; or

(D) making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment.

(d) CONSERVATION ORDER.—In the event the Director seeks an order of conservation under section 925, the provisions of subsections (a) and (b) shall be applicable only to those entities with actual notice or knowledge of

1 the initiation of the receivership proceeding until such
2 time as the record of the receivership proceeding is made
3 public under section 926.

4 (e) LENGTH OF STAY.—Except as provided in sub-
5 section (g)—

6 (1) the stay of an act against property of the
7 national insurer under subsection (a) continues until
8 such property is no longer property of the receiver-
9 ship estate; and

10 (2) the stay of any other act under subsection
11 (a) continues until the earliest of—

12 (A) the time the receivership proceeding is
13 closed; or

14 (B) the time the receivership proceeding is
15 dismissed.

16 (f) OTHER EXCEPTIONS.—Notwithstanding the pro-
17 visions of subsection (a)—

18 (1) claims against the national insurer that
19 arose before the commencement of the receivership
20 proceeding under this title may be asserted as a
21 counterclaim in any judicial, administrative or other
22 action or proceeding initiated by or on behalf of the
23 receiver against the holder of such claims; and

24 (2) a party against whom a judicial, adminis-
25 trative or other action or proceeding is initiated by

or on behalf of the receiver may assert and enforce any contractual right the party may have to require arbitration of any dispute under any law.

(g) RELIEF FROM STAY.—On request of a party in interest and after notice and such hearing as the court determines appropriate, the court may grant relief from the stay in effect pursuant to subsection (a), such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause; or

(2) with respect to a stay of an action against property under subsection (a) if—

(A) the national insurer does not have an equity in such property; and

(B) such property is not necessary to an effective plan.

(h) BURDEN OF PROOF.—In any hearing under subsection (g), the party seeking relief from the stay shall have the burden of proof on each issue which must be established by clear and convincing evidence.

(i) DAMAGES FOR WILLFUL VIOLATION OF STAY.—The estate of a national insurer which is injured by any willful violation of a stay provided by this section shall be entitled to actual damages, including costs and attor-

1 neys' fees, and, in appropriate circumstances, the court
2 may impose additional sanctions.
3 (j) OTHER.—No statute of limitations or defense of
4 laches shall run with respect to any action by or against
5 a national insurer between the filing of a petition for con-
6 servation, rehabilitation or liquidation against a national
7 insurer and the order granting or denying that petition.
8 Any action against the national insurer that might have
9 been commenced when the petition was filed may be com-
10 menced for at least 60 days after an order is denied.
11 **SEC. 915. ANSWER AND HEARING.**
12 (a) ANSWER.—The respondent national insurer shall
13 file its answer to the Director's petition within 10 days
14 after service of the summons, exclusive of the day of serv-
15 ice. On timely motion of the respondent, the court shall
16 extend the time for answering for a period not to exceed
17 an additional 10 days.
18 (b) HEARING.—The court, on the return day of the
19 summons as originally fixed or extended hereunder, shall
20 set the cause for hearing within 20 days from the return
21 day or the extended return day.
22 (c) NO OTHER MOTIONS AND PLEADINGS.—Except
23 as provided in section 927, no motions or other pleadings,
24 whether to dissolve, modify or continue any injunction or
25 otherwise, shall be filed by, or permitted on behalf of the

1 respondent prior to the filing of an answer to the com-
2 plaint.
3 (d) DOCUMENT TO BE RECEIVED BY COURT.—The
4 court shall receive as self-authenticated any of the fol-
5 lowing when offered by the Director—
6 (1) certified copies of the financial statements
7 made by the national insurer; and
8 (2) certified copies of examination reports of
9 the national insurer made by or on behalf of the Di-
10 rector.
11 (e) PRIMA FACIE EVIDENCE.—At any hearing, the
12 verified petition and any exhibits filed therewith shall be
13 received as prima facie evidence of the facts therein con-
14 tained.
15 (f) ENTERING JUDGMENT.—The court shall enter
16 judgment within 15 days after the conclusion of the evi-
17 dence.

18 **SEC. 916. NOTICE OF ENTRY OF ORDER OF REHABILITA-**
19 **TION OR LIQUIDATION.**

20 Unless the court otherwise directs, the receiver shall
21 give or cause to be given notice of the order of rehabilita-
22 tion or liquidation as soon as possible by—
23 (1) first-class mail to the State commissioner of
24 each jurisdiction in which the national insurer is
25 doing business;

(2) first-class mail to each guaranty association which is or may become obligated as a result of the receivership proceeding;

(3) first-class mail to all known insurance producers and reinsurers of the national insurer at their last known address as indicated by the records of the national insurer;

(4) first-class mail to all persons known or reasonably expected to have claims against the national insurer including all policyholders, at their last known address as indicated by the records of the national insurer; and

(5) publication in a newspaper of general circulation in the county in which the national insurer has its principal place of business and in other locations as the receiver considers appropriate.

SEC. 917. CONTENTS OF NOTICE OF RECEIVERSHIP.

The notice of the entry of an order of rehabilitation or liquidation shall—

(1) contain a statement that the national insurer has been placed in rehabilitation or liquidation;

(2) advise that an automatic stay is in effect together with a reference to section 914 and a statement that certain acts against the national insurer and its assets are stayed as well as a description of

any additional injunctive relief of general application ordered by the court;

(3) state whether and to what extent the national insurer's insurance policies continue in effect;

(4) include the deadline for filing claims if one has been established;

(5) state the date, time and location of the initial status hearing established pursuant to section 918; and

(6) include such other information as the receiver or the court deems appropriate.

SEC. 918. INITIAL STATUS HEARING.

An initial status hearing shall be held within 120 days of the entry of an order of rehabilitation or liquidation. The receiver shall discuss the condition of the estate and may be questioned by parties in interest or their representatives concerning the matters discussed. The hearing shall be conducted informally under the supervision of the court.

SEC. 919. DISMISSAL OF RECEIVERSHIP PROCEEDING.

(a) IN GENERAL.—Except as provided in subsection (c), until all payments of or on account of the national insurer's contractual obligations by all guaranty associations and interest thereon and all reasonable expenses incurred by them in connection therewith are repaid to the

1 guaranty associations or a plan of repayment by the na-
2 tional insurer is approved by the guaranty associations,
3 an national insurer that is subject to any receivership pro-
4 ceeding shall not—
5 (1) be released from a receivership proceeding;
6 (2) be permitted to solicit or accept new busi-
7 ness or request or accept the restoration of a sus-
8 pended or revoked license or certificate of authority;
9 or
10 (3) be returned to the control of its share-
11 holders or management.
12 (b) FOLLOWING CONSERVATION ORDER.—If the Di-
13 rector, having obtained an ex parte order of conservation,
14 fails to file a motion in the receivership proceeding re-
15 questing entry of an order of rehabilitation or liquidation
16 after having had a reasonable opportunity to do so, the
17 receivership proceeding shall on motion of a party in inter-
18 est or on the court's own motion, be dismissed and va-
19 cated.
20 (c) EXCEPTION.—A receivership proceeding may be
21 dismissed without complying with the requirements of sub-
22 section (a) if the court, on motion of the receiver, deter-
23 mines that the receivership estate has no assets or the es-
24 tate's assets are insufficient to cover the costs of admin-
25 istering the receivership.

(d) DISSOLUTION.—In the event a receivership proceeding is dismissed pursuant to subsection (c), the national insurer shall be dissolved as of entry of the order of dismissal.

SEC. 920. RECEIVERSHIP PROCEEDINGS FOR NON-U.S. INSURERS.

The court, after notice and hearing, may dismiss or suspend a receivership proceeding against a non-U.S. insurer under this title at any time, taking into consideration the following the interests of insured claimants, creditors and the public:

(1) Whether the order requested, and any governing legislation upon which it is based, is consistent with the objectives of this title.

(2) The effect the order requested would have or could reasonably be expected to have on the ability of the liquidator to use assets of non-U.S. insurer's estate under the liquidation order to transfer insurance policy obligations to a solvent assuming insurer.

(3) Any agreements with a receiver or State commissioner or like official of another State in which the non-U.S. insurer was doing business, or of the country under the laws of which the non-U.S. in-

1 surer is domiciled, relating to the receivership or dis-
2 solution of the non-U.S. insurer.
3 (4) The adequacy of information available to
4 the court upon which to make a determination.
5 (5) The costs that could reasonably be expected
6 to be incurred as a result of the order.

7 **SEC. 921. TRUSTEED ASSETS OF A UNITED STATES BRANCH**
8 **OF A NON-U.S. INSURER.**

9 (a) MOTION TO TRANSFER.— Any person having an
10 interest in the trusteed assets of the United States branch
11 established pursuant to section 302 and subject to a re-
12 ceivership proceeding under this title, may, by motion,
13 seek an order directing that all or part of the trusteed
14 assets of such non-U.S. insurer be transferred to such per-
15 son.
16 (b) ACTION ON MOTION.—After providing notice and
17 hearing, the court may grant, deny, or suspend a motion
18 made pursuant to subsection (a) on terms and conditions,
19 or make such other order, as the court considers appro-
20 priate, considering the following:
21 (1) The factors set forth in section 920.
22 (2) Whether the order requested is consistent
23 with the terms, conditions and objectives of the trust
24 agreement or agreements.

SEC. 922. TRUST FUND CLAIMS.

(a) MOTION BY ALIEN REPRESENTATIVE.—An alien representative having an interest in the trusteed assets of a non-U.S. insurer secured by a multiple beneficiary trust may, by motion, seek an order directing that all or part of such trusteed assets of such insurer be transferred to such person.

(b) CONDITIONS FOR RELIEF.—Notwithstanding section 920, the court shall not grant relief under this section unless the Director has determined that—

(1) the assets of such a trust exceed the amount necessary to satisfy the claims of United States beneficiaries of the trust; or

(2) United States beneficiaries of the trust will receive a greater percentage of their claim if the trust fund assets are returned to the grantor's country of domicile and a receiver has been appointed for the grantor in that domicile.

(c) MULTIPLE BENEFICIARY TRUST.—Claims against the assets of a multiple beneficiary trust shall be filed and allowed and shall receive distribution of assets in accordance with the laws of the State in which the trust is organized that are applicable to the receivership of national insurers.

SEC. 923. LIMITED APPEARANCE.

(a) IN GENERAL.—An alien representative may seek dismissal or suspension of a receivership proceeding under section 920.

(b) APPEARANCE LIMITED.—An appearance in a court by an alien representative in connection with a motion or request under section 920, 921, or 922 does not submit such alien representative to the jurisdiction of the court for any other purpose, but the court may condition any order under such sections on compliance by such alien representative with the orders of the court.

SEC. 924. ADVISORY COMMITTEES.

The court, on motion of the receiver or for good cause shown, may appoint one or more advisory committees of policyholders, claimants or other creditors. Any advisory committee shall serve without compensation and without reimbursement of expenses.

SEC. 925. EX PARTE ORDERS OF CONSERVATION AND SEIZURE.

(a) IN GENERAL.—At the time the Director initiates a receivership proceeding under this title, he or she may request entry of an ex parte conservation order by verified petition alleging—

(1) that there exist grounds for entry of an order of rehabilitation or liquidation; and

(2) that the interests of policyholders, creditors, or the public will be endangered by delay.

(b) NO NOTICE OF HEARING.—The court shall issue the ex parte conservation order immediately without prior notice or a hearing.

(c) SERVICE ON NATIONAL INSURER.—Upon issuance of an ex parte conservation order, the order, together with a copy of the verified petition and a summons, shall be promptly served on the national insurer as provided in section 913. The conservator may also serve the order upon persons transacting business with the national insurer or dealing with its assets and such others as may be necessary to obtain compliance therewith. All persons served with the order and all persons having actual knowledge thereof shall be bound by it.

(d) CONTENT OF ORDER.—At the request of the Director, any order entered pursuant to this section shall—

(1) appoint the Director as conservator;

(2) direct the conservator to take possession and control of all or a part of the property, books, accounts, documents, and other records of a national insurer, and of the premises occupied by the national insurer for the transaction of its business;

(3) direct any officer or director or other person or entity that possesses or controls any documents

or recorded information of any nature, including books, claims files, records, and papers of the national insurer or of any affiliate of the national insurer that relate to the national insurer's assets, liabilities, financial affairs or business, shall immediately disclose and, on request of the conservator, turn over such documents and recorded information to the conservator;

(4) enjoin the national insurer and its officers, managers, agents, and employees from disposing of its property and from transacting business except with the conservator's written consent;

(5) contain such other relief as the Director considers necessary; and

(6) specify the duration of the order, which shall be such time as the court considers necessary for the conservator to ascertain the condition of the national insurer.

(e) MODIFICATION OF ORDER.—On motion of the national insurer, the conservator or in its own discretion, the court may at any time modify such order on such notice and after such hearing, if any, as the court determines to be appropriate.

(f) HEARINGS.—Upon entry of an order under this section, the conservator may hold hearings, subpoena wit-

1 nesses to compel their attendance, administer oaths, exam-
2 ine persons under oath, and compel persons to subscribe
3 to his or her testimony after it has been correctly reduced
4 to writing; and in connection with these powers may re-
5 quire the production of books, papers, records, or other
6 documents that he or she considers relevant to the per-
7 formance of his or her duties.

8 (g) NO ANTICIPATORY BREACH.—Entry of an order
9 under this section shall not constitute an anticipatory
10 breach of any contract to which the national insurer is
11 a party.

12 (h) LAW ENFORCEMENT OFFICER ASSISTANCE.—On
13 request of the conservator, those law enforcement officers
14 with authority to process orders of the court shall provide
15 the conservator such assistance as is required to carry out
16 the terms of the order entered under this section.

17 **SEC. 926. CONFIDENTIALITY OF HEARINGS.**

18 In all proceedings and judicial review of proceedings
19 under section 925, all records of the national insurer,
20 other documents, department of insurance files, and court
21 records and papers, so far as they are a part of the record
22 of the proceedings under this subtitle, are confidential and
23 shall be held by the clerk of the court in a confidential
24 file except as is necessary to obtain compliance therewith,
25 unless the court, after hearing arguments from the parties

in chambers, orders otherwise or the insurer requests that the matter be made public. Unless privileged or confidential under law other than this title, all such records shall become public upon filing of a petition for rehabilitation or liquidation under this title.

SEC. 927. MODIFICATION OF ORDERS.

A national insurer against which an order of conservation has been entered under section 925 may move for modification of the order at any time prior to the entry of an order of rehabilitation or liquidation under this title. The court shall hear such motion not more than 15 days after it is filed. A hearing under this section may be held privately in chambers and shall be held privately in chambers if so requested by the national insurer proceeded against.

SEC. 928. AUTHORITY TO OPERATE AND RESTRUCTURE INSURER'S BUSINESS.

If the court has entered an order of rehabilitation, the rehabilitator—

(1) may take such action as he or she considers necessary or appropriate to reform and revitalize the national insurer, subject to any specific limitations of this title;

(2) may operate the business of the national insurer, including the retention or dismissal of the national insurer's employees; and

(3) shall propose a plan.

SEC. 929. CONVERSION TO LIQUIDATION.

(a) GROUNDS FOR CONVERSION.—If, in the exercise of administrative discretion, the Director determines that further attempts to rehabilitate a national insurer would—

(1) substantially increase the risk of loss to creditors, policyholders, other parties in interest or the public,

(2) be futile, or

(3) not be in the best interests of creditors, policyholders, other parties in interest or the public, the Director may petition the court for an order of liquidation and finding of insolvency under section 930.

(b) OTHER GROUNDS FOR CONVERSION.—If the rehabilitator suspends payment of all or substantially all direct insurance policy obligations for a period of 6 months at any time after the entry of an order for relief and has not filed a plan within that time, unless the court, for good cause shown, extends such period, the Director shall request that the court enter a final order of liquidation with a finding of insolvency.

SEC. 930. ORDER OF LIQUIDATION.

(a) LIQUIDATOR'S DUTIES.—If the court has entered an order of liquidation, the liquidator shall—

(1) marshal the assets of the national insurer; and

(2) propose a plan.

(b) DIRECTOR REQUEST FOR FINAL ORDER.—The Director, as part of an initial petition filed under this title, or the receiver, by motion filed in a pending receivership proceeding, may request that the court enter a final order of liquidation with a finding of insolvency.

SEC. 931. CONTINUATION OF COVERAGE.

(a) GENERAL RULE.—Notwithstanding any insurance policy language or any other statute, all reinsurance contracts by which the national insurer has reinsured the insurance obligations of another person are canceled upon entry of an order of liquidation. All policies of insurance (other than reinsurance contracts), surety bonds or surety undertakings, other than life, disability income or long-term care insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force as provided in this section until the earliest of—

(1) 30 days from the date of entry of the liquidation order;

(2) the expiration of the insurance policy;

(3) the date when the insured has replaced the insurance coverage with equivalent insurance in another national insurer or State-insurer or otherwise terminated the insurance policy;

(4) the date the liquidator has effected a transfer of the insurance policy obligation; or

(5) the date proposed by the liquidator and approved by the court to cancel coverage.

(b) TERMINATION OF COVERAGES.—An order of liquidation shall terminate coverages at the time provided under subsection (a) for purposes of any other statute.

(c) POLICIES OF INSURANCE COVERED BY GUARANTY ASSOCIATIONS.—Notwithstanding subsections (a) and (b), policies of life insurance or annuities covered by a guaranty association and any portion of policies of life insurance or annuities covered by a guaranty association shall continue in force to the extent necessary to permit the guaranty association to discharge its statutory obligations.

(d) POLICIES OF INSURANCE NOT COVERED BY GUARANTY ASSOCIATIONS..—Policies of life insurance or annuities not covered by a guaranty association, and any portion of policies of life insurance or annuities not covered by a guaranty association, shall terminate as under subsections (a) and (b), except to the extent that the liqui-

dator proposes and the court approves the continuation of such contracts or coverage. Those policies of insurance that are not cancelable or nonrenewable by the insolvent national insurer pursuant to their terms, and that are not covered in whole or in part under subtitle A of title X may be continued in force pursuant to a plan approved by the court under section 979.

(e) SURETY.—The cancellation of any bond or surety undertaking shall not release any cosurety or guarantor.

(f) REINSURANCE CONTRACTS.—Reinsurance contracts by which the insurer has reinsured obligations arising under policies of insurance shall continue or terminate as provided in section 962.

Subtitle E—Office of the Receiver

SEC. 932. APPOINTMENT OF RECEIVER.

An order of conservation, rehabilitation or liquidation shall appoint the Director and his or her successors in office as receiver.

SEC. 933. TITLE TO AND POSSESSION OF ASSETS AND RECORDS.

(a) IN GENERAL.—Upon entry of an order of rehabilitation or liquidation, the rehabilitator or liquidator shall be vested with title to all of the property, books, accounts, documents and other records of the national insurer, wherever located.

(b) TIMING.—To the extent reasonable, and in the receiver's sole discretion, the receiver may immediately take possession and control of all of the property, books, accounts, documents and other records of the national insurer and of the premises occupied by the national insurer for transaction of its business.

SEC. 934. IMMUNITY AND INDEMNIFICATION OF THE RECEIVER AND EMPLOYEES.

(a) PERSONS PROTECTED.—For the purposes of this section, the persons entitled to protection under this section are—

(1) all receivers responsible for the conduct of a receivership proceeding under this title including present and former receivers; and

(2) their employees, meaning all present and former special deputies and assistant special deputies appointed by the Director and all persons whom the Director, special deputies, or assistant special deputies have employed to assist in a receivership proceeding under this title. Attorneys, accountants, auditors, actuaries, investment bankers, financial advisors, other consultants and any other persons or firms who are retained by the receiver as independent contractors and their employees shall not be

1 considered employees of the receiver for purposes of
2 this section.
3 (b) IMMUNITY.—The receiver and his or her employ-
4 ees shall have official immunity and shall be immune from
5 suit and liability, both personally and in their official ca-
6 pacities, for any claim for damage to or loss of property
7 or personal injury or other civil liability caused by or re-
8 sulting from any alleged act, error or omission of the re-
9 ceiver or any employee arising out of or by reason of their
10 duties or employment; provided that nothing in this provi-
11 sion shall be construed to hold the receiver or any em-
12 ployee immune from suit and/or liability for any damage,
13 loss, injury or liability caused by the intentional or willful
14 and wanton misconduct of the receiver or any employee.
15 (c) INDEMNIFICATION.—If any legal action is com-
16 menced against the receiver or any employee, whether
17 against him or her personally or in his or her official ca-
18 pacity, alleging property damage, property loss, personal
19 injury or other civil liability caused by or resulting from
20 any alleged act, error or omission of the receiver or any
21 employee arising out of or by reason of their duties or
22 employment, the receiver and any employee shall be in-
23 demnified from the assets of the national insurer for all
24 expenses, attorneys' fees, judgments, settlements, decrees
25 or amounts due and owing or paid in satisfaction of or

1 incurred in the defense of such legal action unless it is
2 determined upon a final adjudication on the merits that
3 the alleged act, error or omission of the receiver or em-
4 ployee giving rise to the claim did not arise out of or by
5 reason of his or her duties or employment, or was caused
6 by intentional or willful and wanton misconduct.

7 (d) ADVANCEMENT OF ATTORNEYS' FEES.—Attor-
8 neys' fees and any and all related expenses incurred in
9 defending a legal action for which immunity or indemnity
10 is available under this section shall be paid from the assets
11 of the national insurer, as they are incurred, in advance
12 of the final disposition of such action upon receipt of an
13 undertaking by or on behalf of the receiver or employee
14 to repay the attorneys' fees and expenses if it shall ulti-
15 mately be determined upon a final adjudication on the
16 merits that the receiver or employee is not entitled to im-
17 munity or indemnity under this section.

18 (e) ADMINISTRATION EXPENSE.—Any indemnifica-
19 tion for expense payments, judgments, settlements, de-
20 crees, attorneys' fees, surety bond premiums or other
21 amounts paid or to be paid from the national insurer's
22 assets pursuant to this section shall be an administrative
23 expense of the national insurer.

24 (f) SEGREGATION OF FUNDS GENERALLY RE-
25 QUIRED.—In the event of any actual or threatened litiga-

1 tion against a receiver or any employee for which immu-
2 nity or indemnity may be available under this section, a
3 reasonable amount of funds which in the judgment of the
4 Director may be needed to provide immunity or indemnity
5 shall be segregated and reserved from the assets of the
6 national insurer as security for the payment of indemnity
7 until such time as all applicable statutes of limitation shall
8 have run and all actual or threatened actions against the
9 receiver or any employee have been completely and finally
10 resolved, and all obligations of the national insurer and
11 the Director under this section shall have been satisfied.
12 (g) SURETY BOND IN LIEU OF SEGREGATION OF
13 FUNDS.—In lieu of segregation and reserving of funds,
14 the Director may, in his or her discretion, obtain a surety
15 bond or make other arrangements which will enable the
16 Director to fully secure the payment of all obligations
17 under this section.
18 (h) SETTLEMENT.—If any legal action against an
19 employee for which indemnity may be available under this
20 section is settled prior to final adjudication on the merits,
21 the national insurer shall pay the settlement amount on
22 behalf of the employee, or indemnify the employee for the
23 settlement amount, unless the Director determines—
24 (1) that the claim did not arise out of or by
25 reason of the employee's duties or employment; or

1 (2) that the claim was caused by the intentional
2 or willful and wanton misconduct of the employee.
3 (i) APPROVAL OF SETTLEMENT.—In any legal action
4 in which the receiver is a defendant, that portion of any
5 settlement relating to the alleged title, error or omission
6 of the receiver shall be subject to the approval of the court.
7 The court shall not approve that portion of the settlement
8 if it determines—
9 (1) that the claim did not arise out of or by
10 reason of the receiver's duties or employment; or
11 (2) that the claim was caused by the intentional
12 or willful and wanton misconduct of the receiver.
13 (j) NO DEPRIVATION OF RIGHTS.—Nothing con-
14 tained or implied in this section shall operate, or be con-
15 strued or applied to deprive the receiver or any employee
16 of any immunity, indemnity, benefits of law, rights or any
17 defense otherwise available.
18 (k) OTHER GENERAL RULES.—
19 (1) Subsection (b) shall apply to any suit based
20 in whole or in part on any alleged act, error or omis-
21 sion which takes place on or after the effective date
22 of this title.
23 (2) No legal action shall lie against the receiver
24 or any employee based in whole or in part on any
25 alleged act, error or omission which took place prior

to the effective date of this title, unless suit is filed and valid service of process is obtained within 12 months after the effective date of this title.

(3) Subsections (c) through (i) shall apply to any suit which is pending on or filed after the effective date of this title without regard to when the alleged act, error or omission took place.

SEC. 935. EMPLOYMENT OF PROFESSIONAL PERSONS.

The receiver may—

(1) appoint 1 or more qualified persons to serve as deputy receiver which persons shall have all the powers and responsibilities of the receiver granted under this title and shall serve at the pleasure of the receiver;

(2) employ and fix the compensation of employees and agents;

(3) retain attorneys, actuaries, accountants, appraisers, consultants, and such other personnel as he or she considers necessary to assist in the receivership; and

(4) subject to the requirements of section 945, fix the compensation of those whom he or she appoints or retains under subsection (a) or (b) of this section.

SEC. 936. POWERS OF REHABILITATORS AND LIQUIDATORS.

(a) IN GENERAL.—The rehabilitator or liquidator shall have all the powers of the directors, officers and managers of the national insurer, whose authority shall be suspended, except as they are redelegated by the rehabilitator or liquidator.

(b) OTHER SPECIFIC POWERS.—In addition to those powers otherwise provided by this title, the rehabilitator or liquidator shall have the power to—

(1) use, sell or lease property of the national insurer;

(2) after notice and a hearing, borrow money on the security of the national insurer's assets, borrow money without security, and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(3) collect all debts and money due and claims belonging to the national insurer, wherever located;

(4) institute and pursue legal actions and continue any pending action, in any jurisdiction;

(5) suspend, limit or permit insurance policy withdrawals in connection with policies of insurance;

(6) do other acts as are necessary or expedient to collect, marshal, or protect the assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such

terms and conditions as he or she considers best and that are consistent with this title;

(7) enter into contracts necessary to carry out the order of rehabilitation or liquidation;

(8) hold hearings, subpoena witnesses to compel their attendance, to administer oaths, examine a person under oath, and compel a person to subscribe to his or her testimony after it has been correctly reduced to writing; and, in connection with these powers, require the production of books, papers, records, or other documents that he or she considers relevant to the inquiry; and

(9) exercise all powers now held or hereafter conferred upon receivers by the laws of this State not inconsistent with the provisions of this title.

(c) ORDER OF DISSOLUTION.—The liquidator may petition the court for an order dissolving the corporate existence of a national insurer or a U.S. branch established pursuant to section 302 of this Act at any time after entry of the order of liquidation.

(d) CONSTRUCTION.—The enumeration in this section of the powers and authority of the rehabilitator or liquidator shall not be construed as a limitation upon him or her, and it shall not exclude in any manner his or her right to do other acts not specifically enumerated in this

1 section or otherwise provided for if necessary or appro-
2 priate for the accomplishment of or in aid of the purpose
3 of rehabilitation or liquidation.

4 **SEC. 937. ADVANCES TO THE RECEIVER.**

5 If the property of the national insurer does not con-
6 tain sufficient cash or liquid assets to defray the costs in-
7 curred, the Director may advance the incurred costs out
8 of an appropriation for the Office. Amounts advanced for
9 expenses of administration shall be repaid to the Director
10 for the use of the Office out of the first available money
11 of the national insurer with priority over all other costs
12 of administration.

13 **SEC. 938. EXECUTORY CONTRACTS.**

14 (a) POWER TO ASSUME OR REJECT.—The
15 rehabilitator or liquidator, subject to the court's approval,
16 may assume or reject any executory contract or unexpired
17 lease of the national insurer.

18 (b) EXCEPTIONS.—This section shall not apply to an
19 insurance policy or reinsurance contract.

20 (c) NO ANTICIPATORY BREACH.—Neither the filing
21 of a petition under this title nor the entry of an order
22 of rehabilitation or liquidation shall constitute an antici-
23 patory breach of any contract or lease of the national in-
24 surer.

(d) CONTRACT OR LEASE IN DEFAULT.—If there has been a default in an executory contract or unexpired lease of the national insurer, the receiver may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the receiver—

(1) cures or provides adequate assurance that the receiver will promptly cure such default; and

(2) provides adequate assurance of future performance under such contract or lease.

(e) EXCEPTIONS.—Subsection (d) does not apply to a default that is a breach of a provision relating to—

(1) the insolvency or financial condition of the national insurer at any time before the closing of the receivership proceeding;

(2) the commencement of a receivership proceeding under this title;

(3) the appointment of or taking possession by a receiver in a case under this title or a custodian before such commencement; or

(4) the satisfaction of any penalty rate or provision relating to a default arising from any failure of the insurer to perform nonmonetary obligations under the executory contract or unexpired lease.

SEC. 939. ABANDONMENT OF PROPERTY AND RECORDS.

The receiver may, at any time, abandon any property or records that are burdensome to the estate or that are of inconsequential value and benefit to the receivership estate.

SEC. 940. EXTENSION OF TIME.

(a) IN GENERAL.—The rehabilitator or liquidator may institute any action or proceeding on behalf of the estate of the national insurer while any statute of limitation is tolled pursuant to this section. Unless an applicable limitation period has expired before a successful petition for rehabilitation or liquidation was filed, any applicable statute of limitation is tolled for 2 years. Tolling of the running of any applicable statute of limitation shall begin with the entry of an order of rehabilitation or liquidation. The tolling shall be in addition to any other applicable tolling provision.

(b) OTHER ACTIONS.—For actions not covered by subsection (a), where any unexpired time period is fixed, by any agreement or in any proceeding, for doing any title for the benefit of the estate, the rehabilitator or liquidator shall have 180 days or such longer period as the court may allow for good cause shown, from the entry of the order of rehabilitation or liquidation to perform the title.

SEC. 941. PERIODIC REPORTS.

(a) REPORTS BY REHABILITATOR OR LIQUIDATOR.—A rehabilitator or liquidator shall file periodic reports with the court containing such information as is reasonably available and at such intervals as the court specifies, including—

(1) cash receipts and disbursements for the period; and

(2) a balance sheet which includes known and estimated assets and liabilities of the estate.

(b) REPORTS BY CONSERVATOR.—A conservator shall file with the court a report reflecting the national insurer's—

(1) cash receipts and disbursements for the period; and

(2) such other information, reasonably available to the conservator, as the court specifies.

(c) EXCEPTIONS.—The reports required by subsections (a) and (b) need not be filed more than once for each calendar year if the national insurer's cash and invested assets are less than $250,000.

SEC. 942. DOCUMENT DEPOSITORY.

(a) DOCUMENT DEPOSITORY REQUIRED.—The rehabilitator or liquidator shall maintain, during the pendency of the receivership proceedings, a document depository containing—

(1) copies of the petitions and orders establishing the receivership proceeding, and any amendments thereto;

(2) copies of all reports filed by the receiver with the court or the Director;

(3) copies of all other filings made in the court;

(4) copies of all evidentiary material submitted to the court;

(5) transcripts of any hearings or trials in the court which are obtained by the receiver; and

(6) an index of all items contained in the depository.

(b) DOCUMENTS UNDER SEAL.—Any filing or evidentiary submission made in the court under seal shall not be maintained in the depository, subject to the contrary order of the court, but an index of such filings and submissions, identifying such material with reasonable specificity, but preserving the confidentiality of the contents of such material, shall be maintained in the depository.

(c) PROVISIONS OF DOCUMENTS BY OTHER PARTIES.—Any party other than the receiver who files pleadings or documents in the court, or presents evidentiary materials there, shall forthwith furnish the receiver with

1 copies thereof, in addition to service copies, for inclusion
2 in the depository.
3 (d) OTHER.—Nothing in this section shall preclude
4 the receiver from including additional nonprivileged and
5 nonconfidential items in the document depository.
6 (e) DOCUMENTS PUBLIC.—Except as otherwise or-
7 dered by the court, all records contained in the depository
8 are public. The receiver shall make available the materials
9 contained in the depository, during regular business hours
10 at the principal office of the receiver or such other location
11 as the receiver shall specify, and shall provide copies of
12 depository materials at reasonable cost.
13 **SEC. 943. AUDIT OF RECEIVERSHIP RECORDS.**
14 (a) IN GENERAL.—The pendency of any receivership
15 proceeding under this title shall in no way affect the power
16 and authority of the Director to conduct any examination
17 provided for in section 202(a) in connection with the busi-
18 ness, conduct or affairs of a national insurer.
19 (b) AUDIT REQUIRED.—An annual audit of any na-
20 tional insurer which is in rehabilitation or liquidation pur-
21 suant to this title and which has assets of more than
22 $500,000 shall be performed by an independent outside
23 certified public accountant. The cost of this audit shall
24 be paid by the receiver as an expense of administration.

SEC. 944. GENERAL SERVICE LIST.

(a) SERVICE LIST TO BE MAINTAINED.—The receiver shall maintain a general service list for each receivership proceeding. It shall be the responsibility of the person listed to inform the receiver, in writing, of any changes in his or her address, or to request that his or her name be deleted from the general service list. Any person shall be placed on the general service list upon written request to the receiver.

(b) CONTINUATION REQUEST FORMS.—The receiver may require that listed persons return continuation request forms which the receiver may serve upon them at intervals, but not more frequently than every 12 months. Any person who fails to return the continuation request may be purged from the service list.

(c) NO STANDING CONFERRED.—Inclusion on the general service list does not confer standing in the receivership proceeding to raise, appear or be heard on any issue.

SEC. 945. ROUTINE MATTERS.

(a) NOTICE OF FILING BY RECEIVER.—Notice of the filing of any routine matter in the court shall be provided by the receiver by depositing a copy of the item filed in the depository, including the same in the index and sending notice by U.S. mail on the same date that the copy was deposited in the depository to those persons on the

1 general service list and to any other person known to the
2 receiver to be directly affected, that the matter has been
3 filed and the date of its filing and the date that it was
4 deposited in the depository.

5 (b) OBJECTIONS.—Any party in interest may object
6 to any routine matter by filing a motion with the court
7 and serving a copy thereof on the receiver not later than
8 30 days after the copy of the filing was deposited in the
9 depository. If no objection has been received during such
10 time, no court approval of the matter is required. If an
11 objection has been filed within the prescribed time, the
12 court shall set the matter for hearing and, after hearing,
13 enter such orders concerning the matter as it finds appro-
14 priate.

15 (c) ROUTINE MATTERS DEFINED.—For the purpose
16 of the application of this section, the following matters are
17 routine matters, unless the court otherwise orders:

18 (1) Periodic reports of the receiver, as required
19 by section 941.

20 (2) The establishment of a basis of compensa-
21 tion of deputy receivers, attorneys, actuaries, ac-
22 countants, appraisers, consultants, and such other
23 personnel as the receiver retains.

24 (3) The disposition of property or choices in ac-
25 tion of the estate the value of which does not exceed

the lesser of $250,000 or 10 percent of the last reported total asset value of the estate.

SEC. 946. MATTERS REQUIRING PRIOR COURT APPROVAL.

(a) NOTICE OF FILING BY RECEIVER.—Except as hereinafter set out, notice of the filing of any nonroutine matter shall be provided by the receiver by depositing a copy of the item filed in the depository, including the same in the index and sending notice to those persons on the general service list and any other person known to the receiver to be directly affected that the matter has been filed, the date of its filing, the deadline for the filing of objections, and the date on which the receiver will present the matter for hearing by the court.

(b) ADDITIONAL NOTICE REQUIRED.—In addition to the notice called for in subsection (a), the following matters require additional notice:

(1) Notice of the filing of a plan, or of any amendment to such a plan shall be furnished to all known parties in interest.

(2) Notice of the entry of an order of liquidation or finding of insolvency, other than as part of the initial order of receivership, shall be provided to all persons entitled to notice under section 916.

1 (3) Notice of the proposed allowance or dis-
2 allowance of the claims of any policyholder or other
3 creditor shall be provided pursuant to section 947.
4 (c) NOTICE OF CLOSURE.—Notice of the proposed
5 closure of the estate or final distribution shall be sufficient
6 if mailed to all persons having allowed claims which have
7 not been paid in full, all claimants whose claims have not
8 been adjudicated, all shareholders of the national insurer,
9 if any, and all guaranty associations interested in the es-
10 tate, and the general service list.
11 (d) OBJECTIONS.—Any party in interest may object
12 to any action proposed to be taken by the court in connec-
13 tion with a nonroutine matter by filing a statement show-
14 ing that he or she has an interest in the matter and setting
15 out the grounds of the objection not later than 30 days
16 after the sending of notice under subsection (a), or such
17 other period as the court shall direct for good cause
18 shown.
19 (e) HEARING; ORDER.—Upon the presentation of any
20 nonroutine matter, the court may determine any prelimi-
21 nary issues, and shall set the matter for hearing. Upon
22 hearing the receiver and any party in interest who has
23 filed a timely objection, the court may issue such orders
24 concerning the matter as it finds appropriate.

(f) NONROUTINE MATTER DEFINED.—Any action proposed to be taken by the receiver and which requires court approval and which is not defined as a routine matter, is a nonroutine matter, including, without limitation, the following:

(1) The disposition of any asset or chose in action (including the settlement of any suit or tort claim of the estate) which is property of the estate and which exceeds in value the lesser of $250,000 or 10 percent of the last reported total asset value of the estate.

(2) The allowance of any claim or disallowance of a claim.

(3) Borrowing or lending of any sum, except for debts incurred in the ordinary course of the operations of the receivership and not exceeding $50,000 per obligee.

(4) Conversion of a rehabilitation into a liquidation, or the issuance of a finding of insolvency or the imposition of a deadline for the filing of claims at any time after the entry of an order of rehabilitation or liquidation.

(5) The adoption of any plan.

(g) OTHER COURT POWERS.—After notice and a hearing, the court may designate additional categories of

routine and nonroutine matters, and may, for good cause shown, provide alternate notice, or require the service of additional notice of any specific matter.

SEC. 947. NOTICE OF PROPOSED CLAIMS DISPOSITION.

Except as otherwise ordered by the court, notice of the proposed allowance or disallowance of any claim is sufficient if the receiver serves—

(1) each policyholder under whose insurance policy the claim arises, any third party directly interested in the insurance policy, each guaranty association which is or may be responsible for the claim or any portion thereof, and any reinsurer which is or would be liable to the receiver in respect of the claim if it were allowed, with a description of the claim proposed to be allowed or denied, the rationale for such allowance or denial, and the procedures for objecting; and

(2) notice of the filing of the motion on those on the general service list.

Subtitle F—The Estate

SEC. 948. TURNOVER OF PROPERTY TO RECEIVER.

(a) IN GENERAL.—Except as provided in subsections (c) and (d), any person or entity in possession, custody, or control of property of the national insurer shall deliver such property to the receiver.

(b) PAYMENT TO REHABILITATOR OR LIQUIDATOR.—Any person or entity that owes a debt that is property of the national insurer and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the receiver, except to the extent that such debt may be offset under section 958.

(c) DISCLOSURE BY ATTORNEYS, ACCOUNTANTS, ETC.—Subject to any applicable privilege, and unless the court orders otherwise, any attorney, accountant, agent, management company, data processing company, or affiliate of the national insurer or entity that possesses or controls any documents or recorded information of any nature, including books, claims files, records, and papers of the national insurer or of any affiliate of the national insurer that relate to the national insurer's assets, liabilities, financial affairs, or business, immediately shall disclose and, on request of the receiver, turn over such documents and recorded information, or if the court shall so order, copies thereof, to the receiver.

(d) PROHIBITIONS.—As of the date of the order directing rehabilitation or liquidation, no possessory lien held by any attorney, including common law retaining liens, may be asserted or enforced against the receiver or the national insurer as a basis for withholding files or otherwise. Further, no attorney shall be granted secured sta-

1 tus, security or payment for his or her claim against the
2 national insurer in exchange for the release of files or the
3 extinguishment of any such lien.

4 **SEC. 949. TURNOVER OF PREMIUMS OWED.**

5 (a) IN GENERAL.—Unless otherwise instructed by
6 the receiver in writing, an insurance producer, premium
7 finance company, or any other person, other than the na-
8 tional insurer, who is responsible for the payment of pre-
9 mium who has possession or control of such premium shall
10 immediately turn over to the receiver, and be obligated to
11 pay any unpaid earned premium due the national insurer,
12 whether collected or uncollected, and any collected, un-
13 earned premium and any part of an unearned premium
14 representing commission on or before the date of the entry
15 of a conservation, liquidation, or rehabilitation order.
16 Credits, setoffs, or both, shall not be allowed to an insur-
17 ance producer or premium finance company for an amount
18 advanced to the national insurer by the insurance pro-
19 ducer or premium finance company on behalf of, but in
20 the absence of a payment by, the insured.

21 (b) UNPAID EARNED PREMIUMS.—An insured shall
22 be obligated to pay to the receiver any unpaid earned pre-
23 mium and any retrospectively rated premium due the na-
24 tional insurer.

(c) PENALTIES.—Upon satisfactory evidence of a violation of subsection (a), the Director may impose a civil penalty of no more than $1,000 for each and every act in violation of this section by each offending party.

(d) NOTICE AND HEARING.—Before the Director takes action under subsection (c), the Director shall give written notice to the person, national insurer, guaranty association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days thereafter, for a hearing on the matter. After the hearing, or upon failure of the accused to appear at the hearing, the Director shall upon finding a violation, impose the penalties under subsection (c) at its his or her discretion.

SEC. 950. LIMITATION ON AVOIDING POWERS.

An action or proceeding under section 951, 952, 953, 955, or 956 may not be commenced after the earlier of—

(1) 5 years after the entry of the initial order of rehabilitation or liquidation under this title; or

(2) the time the receivership proceeding is closed or dismissed.

SEC. 951. RECEIVER AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS, PURCHASERS AND FIDUCIARIES.

(a) IN GENERAL.—The receiver may avoid any transfer of or lien upon the property of, or obligation incurred by, a national insurer that the national insurer or a policyholder, creditor, member, or shareholder of the national insurer may have avoided without regard to any knowledge of the receiver, the Director, the national insurer or any policyholder, creditor, member, or shareholder of the national insurer and whether or not such a creditor, member, or shareholder exists.

(b) RECEIVER DEEMED CREDITOR.—The receiver shall be deemed a creditor without knowledge for purposes of pursuing claims under the Uniform Fraudulent Transfer Act.

SEC. 952. PREFERENCES.

(a) PREFERENCE DEFINED.—A preference is a transfer of any property of a national insurer or of an interest in property of a national insurer—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt;

(3) made or suffered within the 2 years preceding the filing of a successful petition for rehabilitation or liquidation under this title; and

(4) that enables such creditor to receive more than such creditor would receive if—

(A) the national insurer was liquidated under this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by this title.

(b) PREFERENCE MAY BE AVOIDED.—Any preference may be avoided by the receiver if—

(1) the national insurer was insolvent at the time of the transfer; and

(2)(A) the transfer was made within 120 days before the filing of the petition;

(B) the creditor receiving it or benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the national insurer was insolvent or was about to become insolvent; or

(C) the creditor receiving or benefiting from the transfer was—

(i) an officer or director of the national insurer; or

(ii) an employee, attorney or other person who was, in fact, in a position to effect a level of control or influence over the actions of the

national insurer comparable to that of an officer, whether or not the person held such a position; or

(iii) any shareholder owning or controlling directly or indirectly more than 10 percent of any class of any equity security issued by the national insurer, or any other person, firm, corporation, association or aggregation of persons with whom the national insurer did not deal at arm's length.

(c) EXCEPTIONS.—The receiver may not avoid a transfer under this section—

(1) to the extent that such transfer was—

(A) intended by the national insurer and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the national insurer; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the national insurer in the ordinary course of business or financial affairs of the national insurer and the transferee and such transfer was—

(A) made in the ordinary course of business or financial affairs of the national insurer and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the national insurer.

(A) to the extent such security interest secures new value that was—

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the national insurer to acquire such property; and

(iv) in fact, used by the national insurer to acquire such property; and

(B) that is perfected on or before 21 days or any other period expressly allowed by law, whichever is less, after the national insurer receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the national insurer—

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the national insurer did not make an otherwise unavoidable transfer to or for the benefit of such creditor; and

(5) that creates a perfected security interest in a receivable or its proceeds, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—

(A)(i) with respect to a transfer to which subsection (b)(1) applies, 120 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(2) or (b)(3) applies, 1 year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest.

1 (d) VOIDABLE LIEN DISSOLVED BY FURNISHING
2 BOND.—If a lien which is voidable under this section has
3 been dissolved by the furnishing of a bond or other obliga-
4 tion, the surety on which has been indemnified directly
5 or indirectly by the transfer or the creation of a lien upon
6 the national insurer's property before the filing of a suc-
7 cessful petition for rehabilitation or liquidation, then that
8 indemnifying transfer or lien shall also be considered void-
9 able.

10 (e) LIABILITY OF SURETY.—The liability of the sur-
11 ety under a releasing bond or other like obligation shall
12 be discharged to the extent of the value of the indem-
13 nifying property recovered or the indemnifying lien to the
14 extent of the amount paid to the liquidator.

15 (f) OTHER RULES.—For the purposes of this
16 section—

17 (1) a transfer of property other than real prop-
18 erty shall be deemed to be made or suffered when
19 it becomes so far perfected that no subsequent lien
20 obtainable by legal or equitable proceedings on a
21 simple contract could become superior to the rights
22 of the transferee;

23 (2) a transfer of real property shall be deemed
24 to be made or suffered when it becomes so far per-
25 fected that no subsequent bona fide purchaser from

the national insurer could obtain rights superior to the rights of the transferee;

(3) a transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created;

(4) a transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition; and

(5) the provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(g) BURDEN OF PROOF.—For the purposes of this section, the receiver has the burden of proving the avoidability of a transfer under subsection (b), and the person against whom recovery or avoidance is sought has the burden of proving the non-avoidability of a transfer under subsection (c). The national insurer is presumed to have been insolvent on and during the 120 day period immediately preceding the date of the commencement of the rehabilitation or liquidation proceeding.

(h) NEW VALUE DEFINED.—For the purposes of this section, the term ''new value'' means money or money's

1 worth in goods, services or new credit, or release by a
2 transferee of property previously transferred to such
3 transferee in a transaction that is neither void nor void-
4 able by the receiver under any applicable law, including
5 proceeds of such property, but does not include an obliga-
6 tion substituted for an existing obligation.

7 **SEC. 953. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

8 (a) POWER TO AVOID.—The rehabilitator or liqui-
9 dator may avoid any transfer of an interest of the national
10 insurer in property, or any obligation incurred by the na-
11 tional insurer, that was made or incurred on or within 1
12 year before the date of the filing of the petition for pro-
13 ceedings under this title, if the national insurer voluntarily
14 or involuntarily—

15 (1) made such transfer or incurred such obliga-
16 tion with actual intent to hinder, delay, or defraud
17 any person to which it was or became indebted on
18 or after the date that such transfer was made or
19 such obligation was incurred; or

20 (2)(A) received less than a reasonably equiva-
21 lent value in exchange for such transfer or obliga-
22 tion; and

23 (B)(i) was insolvent on the date that such
24 transfer was made or such obligation was in-

1 curred, or became insolvent as a result of such
2 transfer or obligation;
3 (ii) was engaged in business or a trans-
4 action, or was about to engage in business or
5 a transaction, for which any property remaining
6 with the insurer was an unreasonably small
7 capital; or
8 (iii) intended to incur, or believed that it
9 would incur, debts that would be beyond its
10 ability to pay as such debts matured.
11 (b) PERMITTED LIENS.—Except to the extent that
12 a transfer or obligation voidable under this section is void-
13 able under section 951 or 952, a transferee or obligee of
14 such a transfer or obligation that takes for value and in
15 good faith has a lien on or may retain any interest trans-
16 ferred or may enforce any obligation incurred, as the case
17 may be, to the extent that such transferee or obligee gave
18 value to the national insurer in exchange for such transfer
19 or obligation. a transfer is made when such transfer is
20 so perfected that a bona fide purchaser from the national
21 insurer against whom applicable law permits such transfer
22 to be perfected cannot acquire an interest in the property
23 transferred that is superior to the interest in such prop-
24 erty of the transferee, but if such transfer is not so per-
25 fected before the commencement of the receivership pro-

1 ceeding, such transfer is made immediately before the date
2 of the filing of the petition.
3 (c) VALUE DEFINED.—For purposes of this section,
4 the term ''value'' means property, or satisfaction or secur-
5 ing of a present or antecedent debt of the national insurer.
6 (d) REINSURANCE SUBJECT TO AVOIDANCE.—A
7 transaction with a reinsurer of the national insurer is sub-
8 ject to avoidance under this section if—
9 (1) the transaction released the reinsurer, in
10 whole or in part, from its obligation to pay to the
11 national insurer the reinsurer's originally specified
12 share of those losses which had occurred prior to the
13 time of the transaction but which had not been paid
14 by the national insurer unless the reinsurer gives a
15 present fair equivalent value for the release; and
16 (2) any part of the transaction was effected
17 within 1 year prior to the filing of the petition under
18 this title.
19 (e) AVOIDED REINSURANCE.—In the event a reinsur-
20 ance transaction is avoided under subsection (d)—
21 (1) the receiver shall tender to the reinsurer the
22 value of any consideration transferred to the na-
23 tional insurer in connection with such transaction
24 less the amount of matured and liquidated liabilities
25 owing by the reinsurer to the estate; and

(2) the parties shall be returned to their relative positions prior to the implementation of the transaction avoided.

SEC. 954. TRANSFER OF NATIONAL INSURER'S PROPERTY TO GOOD FAITH PURCHASER.

(a) IN GENERAL.—After a petition for receivership has been filed, a transfer of the national insurer's real property made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for the property for which amount the transferee shall have a lien on the transferred property. Constructive notice of the commencement of a receivership proceeding shall be given upon the recording of a copy of the petition initiating a receivership proceeding with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any State of jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any State shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(b) OTHER RULES.—After a petition for receivership has been filed and before either the receiver takes posses-

1 sion of the national insurer's property or an order of re-
2 ceivership is granted—
3 (1) a transfer of the national insurer's property,
4 other than real property, made to a person acting in
5 good faith shall be valid against the receiver if made
6 for a present fair equivalent value, or if not made
7 for a present fair equivalent value, then to the ex-
8 tent of the present consideration actually paid for
9 the property for which amount the transferee shall
10 have a lien on the transferred property;
11 (2) a person indebted to the national insurer or
12 holding property of the national insurer, if acting in
13 good faith, may pay all or part of the indebtedness
14 or deliver all or part of the property to the national
15 insurer or upon his or her order, with the same ef-
16 fect as if the petition were not pending;
17 (3) a person having actual knowledge of the
18 pending receivership shall be considered not to act in
19 good faith; and
20 (4) a person asserting the validity of a transfer
21 under this section shall have the burden of proof.
22 Except as elsewhere provided in this section, no
23 transfer by or on behalf of the national insurer after
24 the date of the petition for receivership proceeding

by a person other than the receiver shall be valid against the receiver.

(c) CURRENCY OR NEGOTIABLE INSTRUMENTS.—Nothing in this title shall impair the negotiability of currency or negotiable instruments.

SEC. 955. RECOUPMENT FROM AFFILIATES.

If an order of liquidation or rehabilitation is entered under this title, the receiver shall have a right to recover from any affiliate that controlled the national insurer the amount of distributions, other than shareholder dividends paid by the national insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation subject to the following limitations:

(1) A distribution shall not be recoverable under this section if the recipient or other beneficiary of distribution shows that when paid the distribution was lawful and reasonable, and that the national insurer did not know and could not reasonably have known that the distribution would adversely affect the ability of the national insurer to fulfill its contractual obligations.

(2) A person who was an affiliate that controlled the national insurer at the time the distributions were paid shall be liable up to the amount of

distributions he or she received, and a person who was an affiliate that controlled the national insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately; *Provided,* That—

(A) if two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable; and

(B) if a person liable under this subdivision is insolvent, all controlling affiliates at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(3) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the national insurer to pay its contractual obligations.

SEC. 956. LIABILITY OF TRANSFEREE OF AN AVOIDED TRANSFER.

(a) IN GENERAL.—Except as otherwise provided in this section, to the extent that a transfer is avoided under section 951, 952, 953, or 955, the receiver may recover,

for the benefit of the estate, the property transferred, or if the court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) PARTICIPATION BY OFFICER, DIRECTOR OR CONTROL PERSON.—An officer, director or other person in control of the national insurer who knowingly participates in making a transfer voidable under section 951, 952, 953, or 955, if such person knew or should have known the national insurer was or was about to become insolvent at the time of the transfer, shall be personally liable to the receiver for the amount of the transfer. If the transfer was made within 120 days before the date of filing of a successful petition under this title then it shall be presumed that such person knew or should have known the insurer was or was about to become insolvent.

(c) EXCEPTIONS.—The receiver may not recover under subsection (a)(2) from—

(1) a transferee who or that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(d) OTHER EXCEPTIONS.—A transfer that is voidable only under subsection (b)(3) of section 952 may not be recovered under this section from a transferee that is not—

(1) an officer or director of the national insurer;

(2) an employee, attorney or other person who was, in fact, in a position to effect a level of control or influence over the actions of the national insurer comparable to that of an officer, whether or not the person held such a position; or

(3) any shareholder owning or controlling directly or indirectly more than 10 percent of any class of any equity security issued by the national insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the national insurer did not deal at arm's length.

(e) VALUE OF LIEN.—

(1) A good faith transferee from whom the receiver may recover under subsection (a) has a lien on the property received to secure the lesser of—

(A) the cost, to such transferee, of any improvement made after the transfer, less the

1 amount of any profit realized by or accruing to
2 such transferee from such property; and
3 (B) any increase in the value of such prop-
4 erty as a result of such improvement, of the
5 property transferred.
6 (2) For purposes of this subsection, the term
7 ''improvement'' includes—
8 (A) physical additions or changes to the
9 property transferred;
10 (B) repairs to such property;
11 (C) payment of any tax on such property;
12 (D) payment of any debt secured by a lien
13 on such property that is superior or equal to
14 the rights of the receiver; and
15 (E) preservation of such property.
16 (f) TIMING OF ACTION.—An action or proceeding
17 under this section may not be commenced after the earlier
18 of—
19 (1) 1 year after the avoidance of the transfer
20 on account of which recovery under this section is
21 sought; or
22 (2) the time the receivership proceeding is
23 closed or dismissed.

SEC. 957. AUTOMATIC PRESERVATION OF AVOIDED TRANSFER.

Any transfer avoided under section 951, 952, 953, 955, or section 956 is preserved for the benefit of the receivership but only with respect to property of the national insurer.

SEC. 958. SETOFF.

(a) SETOFF PERMITTED.—Mutual debts or mutual credits whether arising out of one or more contracts between a national insurer that is subject to a receivership proceeding under this title and another person shall be set off and the balance only shall be allowed or paid except as provided in subsection (b) of this section and in section 949 and subsection (b)(4) of section 962. Obligations arising out of the termination of reinsurance contracts pursuant to section 962 may be set off against other debts and credits arising out of contracts between the national insurer and the reinsurer.

(b) EXCEPTIONS..—No setoff shall be allowed in favor of any person when—

(1) the obligation of the national insurer to the person would not at the date of the filing of a petition for receivership entitle the person to share as a claimant in the assets of the national insurer;

(2) the obligation of the national insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(3) the obligation of the national insurer is owed to an affiliate of such person or any other entity or association other than the person;

(4) the obligation of the person is owed to an affiliate of the national insurer or any other entity or association other than the national insurer;

(5) the obligation of the person is to pay an assessment levied against the members or subscribers of the national insurer, is to pay a balance upon a subscription to the capital stock of the national insurer, or is in any other way in the nature of a capital contribution; or

(6) the obligations between the person and the national insurer arise out of transactions by which either the person or the national insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

Notwithstanding the provisions of this subsection, the receiver may permit setoffs if in his or her discretion a setoff is appropriate because of specific circumstances relating to a transaction.

SEC. 959. QUALIFIED FINANCIAL CONTRACTS.

(a) NO STAY.—Notwithstanding any other provision of this title, including any other provision of this title permitting the modification of contracts, or other law of a State, no person shall be stayed or prohibited from exercising—

(1) any contractual right to terminate, liquidate or close out any netting agreement or qualified financial contract with a national insurer because of—

(A) the insolvency, financial condition or default of the national insurer at any time, provided that such right is enforceable under applicable law other than this title; or

(B) the commencement of a receivership proceeding under this title;

(2) any right under a pledge, security, collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract; or

(3) subject to any provision of section 958, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the

1 United States or a State or foreign jurisdiction ap-
2 proved by the Director as eligible for netting.
3 (b) SETTLEMENT ON TERMINATION OF NETTING
4 AGREEMENT.—Upon termination of a netting agreement,
5 the net or settlement amount, if any, owed by a non-de-
6 faulting party to a national insurer against which an appli-
7 cation or petition has been filed under this title shall be
8 transferred to or on the order of the receiver for such na-
9 tional insurer, even if the national insurer is the defaulting
10 party, notwithstanding any provision in the netting agree-
11 ment that may provide that the non-defaulting party is
12 not required to pay any net or settlement amount due to
13 the defaulting party upon termination. Any limited two-
14 way payment provision in a netting agreement with a na-
15 tional insurer that has defaulted shall be deemed to be
16 a full two-way payment provision as against the defaulting
17 national insurer. Any such property or amount shall, ex-
18 cept to the extent it is subject to one or more secondary
19 liens or encumbrances, be a general asset of the national
20 insurer.
21 (c) TRANSFER NETTING AGREEMENT OR QUALIFIED
22 FINANCIAL CONTRACT.—In making any transfer of a net-
23 ting agreement or qualified financial contract of a national
24 insurer concerning which a receivership proceeding is
25 pending under this title, the receiver shall either—

(1) transfer to one party (other than a national insurer subject to a proceeding under this title) all netting agreements and qualified financial contracts between a counterparty or any affiliate of such counterparty and the insurer that is the subject of the proceeding, including—

(A) all rights and obligations of each party under each such netting agreement and qualified financial contract; and

(B) all property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract; or

(2) transfer none of the netting agreements, qualified financial contracts, rights, obligations or property referred to in paragraph (1) (with respect to such counterparty and any affiliate of such counterparty).

(d) TRANSFER; NOTICE.—

(1) If a receiver for a national insurer makes any transfer of one or more netting agreements, then the receiver shall use its best efforts to notify any person who is party to the netting agreements of the transfer by 12:00 noon (the receiver's local time) on the business day following the transfer.

(2) For purposes of this subsection, the term "business day" means any day other than a Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(e) PRERECEIVERSHIP TRANSFERS.—Notwithstanding any other provision of this title, a receiver may not avoid any transfer of money or other property arising under or in connection with a netting agreement (or any pledge, security, collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement) that is made before the commencement of a receivership proceeding under this title. However, a transfer may be avoided under section 953 if the transfer was made with actual intent to hinder, delay or defraud the national insurer, a receiver appointed for the insurer or existing or future creditors.

(f) NETTING AGREEMENT TO BE TAKEN AS A WHOLE.—

(1) In exercising any of its powers under this title to reject or repudiate a netting agreement, the receiver must take such action with respect to each netting agreement and all transactions entered into in connection therewith, in its entirety. Notwithstanding any other provision of this title, any claim

of a counterparty against the estate arising from the receiver's rejection or repudiation of a netting agreement that has not been previously assumed by the receiver shall be determined and shall be allowed or disallowed as if such claim had arisen before the date of the filing of the petition under this title, provided that no such claim shall be allowed to have a priority greater than the claim of a general creditor. The amount of the claim shall be the contractual direct compensatory damages determined as of the date of the rejection or repudiation of the netting agreement.

(2) For purposes of this subsection, the term ''contractual direct compensatory damages'' does not include punitive or exemplary damages, damages for lost profit or lost opportunity or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(g) CONTRACTUAL RIGHT DEFINED.—For purposes of this section, the term ''contractual right'' includes any right, whether or not evidenced in writing, arising under statutory or common law, a rule or bylaw of a national securities exchange, national securities clearing organiza-

tion or securities clearing agency, a rule or bylaw, or a resolution of the governing body, of a contract market or its clearing organization, or under law merchant.

(h) NO APPLICATION TO AFFILIATES.—This section shall not apply to persons who are affiliates of the national insurer that is the subject of the receivership proceeding.

(i) APPLICATION TO THE GENERAL ACCOUNT, SEPARATE ACCOUNTS, AND PROTECTED CELLS.—All rights of counterparties under this title shall apply to netting agreements entered into on behalf of—

(1) the general account;

(2) separate accounts if the assets of each separate account are available only to counterparties to netting agreements entered into on behalf of that separate account; or

(3) protected cells if the assets of each protected cell are available only to counterparties to netting agreements entered into on behalf of that protected cell.

SEC. 960. RECOVERY FROM REINSURERS.

Except as provided in section 961, the amount recoverable by the receiver from reinsurers shall not be reduced as a result of the filing of a proceeding under this title, regardless of any provision in the reinsurance contract or other agreement.

SEC. 961. CUT-THROUGH PROVISIONS.

If a reinsurance contract or other written agreement is entered into prior to the receivership proceeding and is not otherwise prohibited by law and expressly provides for another payee of such reinsurance in the event of the insolvency of the ceding national insurer, any payment made or due to such third party under such contract or other written agreement shall be a reduction to the amount due the receiver. Except as provided in this section, payment made directly to an insured or other payee shall not diminish the reinsurer's obligation to the national insurer's estate.

SEC. 962. LIFE REINSURANCE.

(a) CONTINUATION OF REINSURANCE CONTRACTS PRIOR TO LIQUIDATION.—Contracts reinsuring policies of insurance issued by a company that has not been placed in liquidation pursuant to this Act shall be continued or terminated pursuant to the terms and conditions of each reinsurance contract.

(b) CONTINUATION OF REINSURANCE CONTRACTS REINSURING COVERED POLICIES.—Reinsurance contracts on policies of insurance that are covered policies (as such term is defined in section 1001) that have been ceded by an insolvent insurer (as such term is defined in section 1001) subject to this title shall be assumed by affected guaranty associations unless the receiver shall have termi-

1 nated such contract or contracts pursuant to their terms
2 prior to the order of liquidation (in this section referred
3 to as the ''coverage date''). From and after the coverage
4 date, the guaranty association is deemed to have assumed
5 the rights and obligations of the reinsurance contracts,
6 subject only to its right to terminate pursuant to sub-
7 section (f) of this section. The following paragraphs (1)
8 through (4) shall apply to reinsurance contracts so as-
9 sumed until terminated under subsection (f) of this sub-
10 section:

11 (1) The guaranty association shall be respon-
12 sible for all unpaid premiums due under the reinsur-
13 ance contracts (for periods both before and after the
14 coverage date), and shall be responsible for the per-
15 formance of all other obligations to be performed
16 after the coverage date, in each case which relates
17 to policies of insurance covered (in whole or in part)
18 under Title X or XI. The guaranty association may
19 charge policies of insurance covered in part by the
20 guaranty association, through reasonable allocation
21 methods, the costs for reinsurance in excess of the
22 obligations of the guaranty association.

23 (2) The guaranty association shall be entitled to
24 any amounts payable by the reinsurer under the re-
25 insurance contracts with respect to losses or events

that occur in periods after the coverage date and that relate to policies of insurance covered (in whole or in part) under subtitle A of title X, provided that, upon receipt of any such amounts, the guaranty association shall be obliged to pay to the beneficiary under the insurance policy on account of which the amounts were paid a portion of the amount equal to the excess of (A) the amount received by the guaranty association, over (B) the benefits paid by the guaranty association on account of the insurance policy less the retention of the impaired or insolvent member insurer (as such terms are defined in paragraphs (11) and (12) of section 1001) applicable to the loss or event.

(3) Within 30 days following the coverage date, the guaranty association and each reinsurer under reinsurance contracts assumed by the guaranty association (in this section referred to as the ''indemnity reinsurer'') shall calculate the net balance due to or from the guaranty association under each such reinsurance contract as of the coverage date, which calculation shall give full credit to all items paid by either the company or its receiver) or the indemnity reinsurer prior to the coverage date. Either the guaranty association or indemnity reinsurer shall

pay the net balance due the other within 5 days of the completion of the aforementioned calculation. If the receiver has received any amounts due the guaranty association pursuant to paragraph (2), the receiver shall remit the same to the guaranty association as promptly as practicable.

(4) If the guaranty association, within 60 days of the coverage date, pays the premiums due for periods both before and after the coverage date that relate to policies of insurance covered by the guaranty association (in whole or in part), the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium (insofar as the reinsurance contracts relate to policies of insurance covered by the guaranty association (in whole or in part)) and shall not be entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the guaranty association.

(c) CONTINUATION OF REINSURANCE CONTRACTS REINSURING POLICIES OF INSURANCE NOT COVERED UNDER SUBTITLE A OF TITLE X SUBSEQUENT TO AN ORDER OF LIQUIDATION.—When, pursuant to court approval under subsection (c) of section 931, or pursuant to a plan approved by the court under section 979, a receiver continues policies of insurance in force following an

1 order of liquidation, and such policies of insurance are not
2 covered in whole or in part under subtitle A of title X,
3 the reinsurance on such policies of insurance shall also be
4 continued in force by the receiver pursuant to the terms
5 and conditions of the reinsurance contract, subject only
6 to the receiver's right to terminate pursuant to subsection
7 (f) of this section. Payment of premiums on such contracts
8 shall be chargeable against the estate as a Class 1 admin-
9 istrative expense under subsection (b) of section 975.
10 Amounts paid by the reinsurer on account of losses on
11 the policies of insurance shall be to the estate of the insol-
12 vent insurer unless the court shall, in the interest of eq-
13 uity, order otherwise. Reinsurance contracts covering poli-
14 cies of insurance that are not continued or transferred
15 pursuant to this section shall terminate pursuant to sub-
16 section (f) of this section.

17 (d) TRANSFER OF REINSURANCE CONTRACTS.—
18 When policies of insurance, or other obligations covered
19 by subtitle A of title X, are transferred to an assuming
20 insurer, and other policy obligations are transferred by the
21 receiver to an assuming insurer, reinsurance on such poli-
22 cies of insurance may also be transferred by the guaranty
23 association or the receiver, subject to the following:

24 (1) Unless the reinsurer and assuming insurer
25 agree otherwise, the reinsurance contract transferred

1 shall not cover any new policies of insurance in addi-
2 tion to those transferred.
3 (2) The obligation described in subsection
4 (b)(2) shall no longer apply.
5 (3) Notice shall be given in writing by the
6 transferring party to the affected reinsurer not less
7 than 30 days prior to the effective date of the trans-
8 fer.
9 (e) SUPERSEDE STATE LAW.—The provisions of this
10 section shall supersede the provisions of any law of any
11 State or of any affected reinsurance contracts that provide
12 for or require any payment of reinsurance proceeds, on
13 account of losses or events that occur in periods after the
14 coverage date, to the receiver of the insolvent insurer. The
15 receiver or guaranty association, as the case may be, shall
16 remain entitled to any amounts payable by the reinsurer
17 under the reinsurance contracts with respect to losses or
18 events that occur in periods prior to the coverage date
19 (subject to the provisions of this Act, including applicable
20 setoff provisions).
21 (f) TERMINATION OF REINSURANCE CONTRACTS.—
22 At any time within one year after the date of entry of
23 the order of liquidation, the guaranty association may
24 elect to terminate those reinsurance contracts covering ob-
25 ligations of the national insurer that relate to policies of

1 insurance protected (in whole or in part) under subtitle
2 A of title X, and the receiver may elect to terminate those
3 reinsurance contracts covering obligations of the national
4 insurer that relate to policies of insurance not protected
5 under subtitle A of title X. The election shall be effected
6 by a written notice to any affected reinsurer. Whenever
7 such an election is made, or whenever this Act otherwise
8 requires a reinsurance contract to be terminated, the fol-
9 lowing procedures shall apply:

10 (1) Either the reinsurer or whichever of the re-
11 ceiver or guaranty association that has the right to
12 make such election to terminate shall, upon written
13 notice to the other party to the reinsurance contract
14 no later than 30 days after the receipt by the rein-
15 surer of notice of termination, commence a manda-
16 tory negotiation and arbitration procedure in accord-
17 ance with this subsection.

18 (2) Each party shall appoint an actuary to de-
19 termine an estimated sum due as a result of the ter-
20 mination of the reinsurance contract calculated in a
21 way expected to make the parties economically indif-
22 ferent as to whether the reinsurance contract con-
23 tinues or terminates. The Director shall develop
24 guidelines for calculating the estimated sum and in
25 connection therewith shall consult the American

1 Academy of Actuaries. Such guidelines shall take
2 into account the present value of future cash flows
3 expected under the reinsurance contract and be
4 based on a gross premium valuation of net liability
5 using current assumptions that reflect post-insol-
6 vency experience expectations (without provision for
7 adverse deviation), net of any amounts payable and
8 receivable, and with a market value adjustment to
9 reflect premature sale of assets to fund the settle-
10 ment.

11 (3) Within 90 days of the written notice pursu-
12 ant to paragraph (1), each party shall provide the
13 other party with its estimate of the sum due as a
14 result of the termination of the reinsurance contract,
15 together with all relevant documents and other infor-
16 mation supporting the estimate. The parties shall
17 make a good faith effort to reach agreement on the
18 sum due.

19 (4) If the parties are unable to reach agreement
20 within 90 days following the submission of materials
21 required in paragraph (3), either party may initiate
22 arbitration proceedings as provided in the reinsur-
23 ance contract. In the event that the reinsurance con-
24 tract does not contain an arbitration clause, either
25 party may initiate arbitration pursuant to this para-

1 graph by providing the other party with a written
2 demand for arbitration. The arbitration shall be con-
3 ducted pursuant to the procedures contained in the
4 following subparagraphs (A) through (E):
5 (A) Venue for the arbitration shall be with-
6 in the district of the court's jurisdiction or such
7 other location as may be agreed to by the par-
8 ties.
9 (B) Within 30 days of the responding par-
10 ty's receipt of the arbitration demand, each
11 party shall appoint an arbitrator who is a disin-
12 terested active or former officer or executive of
13 a life insurance or reinsurance company, or
14 other professional with no less than 10 years
15 experience in or serving the life insurance or re-
16 insurance industry. The two arbitrators shall
17 appoint an independent, impartial, disinterested
18 umpire who is an active or former officer or ex-
19 ecutive of a life insurance or reinsurance com-
20 pany. If the arbitrators are unable to agree on
21 an umpire, each arbitrator shall provide the
22 other with the names of three qualified individ-
23 uals, each arbitrator shall strike two names
24 from the other's list and the umpire shall be

1 chosen by drawing lots from the remaining indi-
2 viduals.
3 (C) Within 60 days following the appoint-
4 ment of the umpire, the parties shall, unless
5 otherwise ordered by the panel, submit to the
6 arbitration panel their estimates of the sum due
7 as a result of the termination of the reinsurance
8 contract, together with all relevant documents
9 and other information supporting the estimate.
10 (D) The time periods set forth in this
11 paragraph may be extended upon mutual agree-
12 ment of the parties.
13 (E) The panel shall have all powers nec-
14 essary to conduct the arbitration proceedings in
15 a fair and appropriate manner, including the
16 power to request additional information from
17 the parties, authorize discovery, hold hearings
18 and hear testimony. The panel also may, if it
19 deems necessary, appoint independent actuarial
20 experts, the expense of which shall be shared
21 equally between the parties.
22 (F) Any arbitration panel considering the
23 matters set forth in this section shall issue a
24 written award specifying a net settlement
25 amount due from one party or the other as a

1 result of the termination of the reinsurance con-
2 tract. The court shall confirm that award ab-
3 sent proof of statutory grounds for vacating or
4 modifying arbitration awards under the Federal
5 Arbitration Act.
6 (G) If the net settlement amount agreed or
7 awarded pursuant to this section is payable by
8 the reinsurer, the reinsurer shall pay the
9 amount due to either the estate or to the guar-
10 anty association, whichever is entitled thereto,
11 subject to any applicable set-off under section
12 958. If the net settlement amount agreed or
13 awarded pursuant to this section is payable by
14 the national insurer, the reinsurer shall be enti-
15 tled to file a claim against the estate for that
16 amount, which claim shall be paid pursuant to
17 the priorities established in section 974. If the
18 net settlement amount is due the reinsurer on
19 reinsurance contracts for which the guaranty
20 association had been paying premiums and col-
21 lecting recoveries from the reinsurer, it shall be
22 paid to the reinsurer by the guaranty associa-
23 tion.
24 (g) REINSURANCE CONTRACTS NOT ALTERED OR
25 MODIFIED.—Except as otherwise expressly provided in

this section, nothing herein shall alter or modify the terms and conditions of any reinsurance contract. Nothing herein shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing herein shall give a policyholder or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the reinsurance contract.

Subtitle G—Creditors and Claims

SEC. 963. RIGHTS AND LIABILITIES OF CREDITORS FIXED UPON LIQUIDATION.

The rights and liabilities of the national insurer and of its creditors, policyholders, shareholders, or members and all other persons interested in its assets, shall be fixed as of the date of the entry of the order of liquidation unless otherwise provided in this Act or by order of the court.

SEC. 964. CLAIMS FILING; LATE FILING.

(a) FILING PROOFS OF CLAIMS.—To the extent required, proof of all claims shall be filed with the receiver in the form required by section 965 on or before the last day established by the court, which date shall not be later than 18 months after entry of the order of liquidation unless the court, for good cause shown, extends such time, and except that proofs of claim for cash surrender values or other investment values in life, disability income or

1 long-term care insurance or annuities need not be filed
2 unless the receiver expressly so requires.

3 (b) LIST OF PERSONS WHO HAVE NOT FILED.—
4 Upon the rehabilitation or liquidation of any national in-
5 surer which has issued insurance policies insuring the lives
6 of persons, the Director shall, within a reasonable time
7 after the last day set for the filing of claims, make a list
8 of the persons who have not filed proofs of claim and
9 whose rights have not been reinsured, to whom it appears
10 from the books of the national insurer, there are amounts
11 owing on such insurance policies and the Director shall
12 set opposite the name of each person such amount so
13 owing to such person. The Director shall incur no personal
14 liability by reason of any mistake in such list. Each person
15 whose name shall appear upon said list shall be deemed
16 to have duly filed prior to the last day set for filing of
17 claims a proof of claim for the amount set opposite his
18 or her name on said list.

19 (c) LATE FILING.—The receiver shall permit a claim-
20 ant making a late filing to share in distributions, including
21 a ratable share of distributions previously made, whether
22 past or future, as if the claim were not late-filed, to the
23 extent that the payment will not prejudice the orderly ad-
24 ministration of the receivership, under the following cir-
25 cumstances:

(1) The existence of the claim was not known to the claimant and the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) The claim is filed pursuant to subsection (b) of section 974.

(3) The valuation under section 968 of security held by a secured creditor shows a deficiency, and the claim is filed within 30 days after the valuation.

(d) LATE CLAIMS BY GUARANTY ASSOCIATIONS AND BY REINSURERS.—The receiver shall permit guaranty associations, and those reinsurers whose reinsurance contracts are terminated pursuant to section 962, to file claims late and to receive a ratable share of distributions previously made as if such claims were not late.

(e) OTHER LATE CLAIMS.—Notwithstanding the foregoing, the receiver may consider and allow a late-filed claim which is not covered by subsection (c) of this section and permit it to receive distributions as if it had not been filed late, to the extent such treatment will not prejudice the orderly administration of the receivership. The late-filing claimant shall receive distributions in the same percentage as other claimants in class 6, pursuant to subsection (g) of section 975.

SEC. 965. PROOF OF CLAIM.

(a) CONTENT OF PROOF OF CLAIM.—A proof of claim shall consist of a statement signed by or on behalf of the claimant that includes all of the following that are applicable—

(1) the particulars of the claim, including any consideration given for it;

(2) the identity and amount of any security for the claim;

(3) the payments made on the debt, if any;

(4) that the sum claimed is justly owing and that there is no set off, counterclaim, or defense to the claim;

(5) any right of priority of payment or other specific right asserted by the claimants;

(6) the name and address of the claimant and the attorney who represents him or her, if any; and

(7) the claimant's social security or Federal employer identification number.

(b) FORM PERMITTED.—The receiver may require that a prescribed form be used and may require that other information and documents be included.

(c) SUPPLEMENTARY INFORMATION OR EVIDENCE.—The receiver may request the claimant to present information or evidence supplementary to that required under subsection (a) at any time and may take testimony under

1 oath, require production of affidavits or depositions, or
2 otherwise obtain additional information or evidence.

3 (d) SINGLE OMNIBUS PROOF OF CLAIM BY GUAR-
4 ANTY ASSOCIATION.—Any guaranty association shall be
5 permitted to file a single omnibus proof of claim for all
6 claims of the guaranty association in connection with the
7 payment of claims of the insolvent national insurer. The
8 omnibus proof of claim may be periodically updated by the
9 guaranty association and the guaranty association may be
10 required to submit a reasonable amount of documentation
11 in support of the claim.

12 **SEC. 966. ALLOWANCE OF CLAIMS.**

13 (a) CLAIMS REVIEW.—The receiver shall review all
14 claims duly filed in the receivership proceeding and shall
15 further investigate as he or she considers necessary. Con-
16 sistent with the provisions of this title, the receiver may
17 compound, compromise or in any other manner negotiate
18 the amount for which claims will be recommended to the
19 court unless the receiver is required by law to accept
20 claims as settled by a person or organization, including
21 a guaranty association, subject to any statutory or con-
22 tractual rights of the affected reinsurers to participate in
23 the claims allowance process.

24 (b) CONTINGENT OR UNLIQUIDATED CLAIMS.—Ex-
25 cept as provided in section 967, a contingent or unliqui-

1 dated claim may not be allowed unless such claim becomes
2 absolute on or before the date established by the court.
3 (c) UNMATURED CLAIMS.—A claim that is
4 unmatured as of the date established by the court may
5 be allowed as if it were mature, except it shall be dis-
6 counted at the higher of the legal rate of interest accruing
7 on judgments or the rate of interest available on United
8 States Treasury securities of approximately the same ma-
9 turity.
10 (d) JUDGMENT OR ORDER AGAINST AN INSURED OR
11 NATIONAL INSURER.—A judgment or order against an in-
12 sured or the national insurer entered after the date of the
13 filing of a successful petition for rehabilitation or liquida-
14 tion and a judgment or order against an insured or the
15 national insurer entered at any time by default or by collu-
16 sion need not be considered as evidence of liability or of
17 the quantum of damages. A judgment or order against an
18 insured or the national insurer entered within 120 days
19 before the filing of the petition need not be considered as
20 evidence of liability or of the quantum of damages.
21 (e) EMPLOYMENT CONTRACT CLAIMS.—Claims
22 under employment contracts by directors, principal offi-
23 cers or persons in fact performing similar functions or
24 having similar powers are limited to payment for services
25 rendered prior to any order of rehabilitation or liquidation.

(f) CLAIMS ARISING FROM TRANSFERRED POLICIES.—No claim based on breach of any policy of insurance shall be allowed against a reinsurer where such policy has been transferred to a new assuming insurer.

(g) TOTAL LIABILITY.—The total liability of the national insurer to all claimants arising out of the same act or policy shall be no greater than its total liability would be were the national insurer not in rehabilitation or liquidation.

(h) SMALL CLAIMS DISALLOWED.—Claims equal to or less than $50 shall be disallowed.

SEC. 967. ALLOWANCE OF CONTINGENT AND UNLIQUIDATED CLAIMS.

(a) IN GENERAL.—A reported claim of an insured or third party may be allowed, regardless of the fact that it was contingent or unliquidated as of the date established under section 964, if any contingency is removed in accordance with subsection (b) of this section and the value of the claim is determined in accordance with subsection (c) of this section.

(b) CONTINGENT CLAIM.—A contingent claim may be allowed—

(1) if the claimant has presented proof of the insurer's obligation to pay reasonably satisfactory to the receiver; or

(2)(A) the claim was based upon a cause of action against an insured of the national insurer;

(B) it may be reasonably inferred from proof presented upon the claim that the claimant would be able to obtain a judgment; and

(C) the person has furnished suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims can be made against the national insurer arising out of the cause of action other than those already presented.

(c) UNLIQUIDATED CLAIM.—

(1) An unliquidated claim may be allowed if—

(A) its amount has been determined; or

(B) its amount remains undetermined, the valuation of the unliquidated claim may be made by estimate whenever the receiver determines that either liquidation of the claim would unduly delay the administration of the receivership proceeding or that the administrative expense of processing and adjudicating the claim or group of claims of a similar type would be unduly excessive when compared with the assets that are estimated to be available for distribution with respect to the claim.

(2) Any estimate shall be based on an accepted method of valuing claims with reasonable certainty, such as actuarial evaluation.

SEC. 968. RESERVE FOR THIRD PARTY CLAIMS AGAINST INSURED.

(a) THIRD PARTY FILERS.—If a third party asserts a cause of action against an insured, the third party may file a claim, which claim may be allowed as provided in section 966.

(b) FILING BY INSURED.—Whether or not the third party files a claim, the insured may file a claim on his or her behalf. The receiver, in his or her discretion, may elect to evaluate such claim under section 967(c) or subsection (c) of this section.

(c) ELIMINATION OF CLAIM.—The receiver may estimate the amount of an insured's reported claim after consideration of the probably outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. Upon the receiver's petition and after approval by the court, the receiver shall set aside funds equal to the dividend which would be payable on the claim as estimated, pending the outcome of litigation and negotiation between the insured and the third party. The receiver may reconsider the amount withheld under

1 this subsection on the basis of additional information and
2 petition the court as he or she deems appropriate. After
3 notice and a hearing, the court may amend its allowance
4 as appropriate. As claims against the insured are settled
5 or barred, the claim of the insured shall be allowed and
6 there shall be paid from the amount reserved the same
7 percentage dividend as was paid on other claims of the
8 same priority, based on the lesser of—

9 (1) the amount actually due from the insured
10 on the basis of a judgment or by agreement with the
11 third party, plus the reasonable costs and expense of
12 defense; or

13 (2) the amount of the estimate approved by the
14 court and for which provision was made in accord-
15 ance with this subsection.

16 After all claims are settled or barred, any sum remaining
17 from the amount withheld shall revert to the undistributed
18 assets of the national insurer.

19 (d) MULTIPLE CLAIMS.—If several claims founded
20 upon one policy are filed, whether by third parties or as
21 claims by the insured under this section, and the aggre-
22 gate allowed of the claims exceeds the aggregate policy
23 limits, the policy limits shall be apportioned ratably among
24 the allowed claims. If any insured's claim is subsequently
25 reduced under subsection (c), the amount thus freed shall

be apportioned ratably among the claims which have been reduced under this subsection.

(e) EXCEPTION.—No claim may be allowed under this section to the extent it is covered by any guaranty association.

SEC. 969. ALLOWANCE OF SECURED CLAIMS.

(a) DETERMINATION OF VALUE OF SECURITY.—The value of security held by a secured creditor shall be determined—

(1) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to the creditors; or

(2) by agreement, arbitration, compromise, or litigation between the creditor and the receiver.

(b) PROCEDURE.—The determination shall be under the court's supervision and control with due regard for the receiver's recommendation. The amount determined shall be credited upon the secured claim and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his or her security to the receiver, the entire claim shall be allowed as if unsecured.

SEC. 970. PRELIMINARY NOTICE OF CLAIMS DETERMINATION.

(a) IN GENERAL.—Except as otherwise provided in this title, after consideration of claims in accordance with

sections 966, 967, 968, and 969 the receiver shall provide notice of his or her preliminary determination and of the right to object to the claimant or the claimant's representative and to any reinsurer which is or would be liable to the receiver in respect of the claim if it were allowed. Notice shall be sent by first class mail to the intended recipient's last known address, according to the receiver's records, and shall include a description of the claim proposed to be allowed or denied, the rationale for such allowance or denial, and the procedures for submitting objections to the receiver.

(b) FILING OF OBJECTIONS.—Within 60 days from the mailing of the notice, the claimant or the reinsurer may file written objections with the receiver. Any claimant or reinsurer who fails to object on a timely basis may not further object to that claim determination.

(c) SUBMISSION OF UNRESOLVED OBJECTION TO COURT.—Whenever an objection is filed with the receiver and the matter is not resolved by the parties, the receiver shall submit the claim with his or her final determination to the court in accordance with section 973.

SEC. 971. CLAIMS OF CO-DEBTORS.

(a) IN GENERAL.—If a creditor, whose claim against an insurer is secured in whole or in part by the undertaking of another person, fails to prove and file that claim,

1 the other person may do so in the creditor's name and
2 shall be subrogated to the rights of the creditor, whether
3 the claim has been filed by the creditor or by the other
4 person in the creditor's name, to the extent that he or
5 she discharges the undertaking. In the absence of an
6 agreement with the creditor to the contrary, the other per-
7 son shall not be entitled to any distribution until the
8 amount paid to the creditor on the undertaking plus the
9 distributions paid on the claim from the insurer's estate
10 to the creditor equals the amount of the entire claim of
11 the creditor. Any excess received by the creditor shall be
12 held by him or her in trust for the other person.

13 (b) DEFINITIONS.—For purposes of this section, the
14 term ''other person'' is not intended to apply to a guaranty
15 association.

16 **SEC. 972. APPROVAL OF AGREED CLAIMS.**

17 (a) IN GENERAL.—Claims with respect to which no
18 objection is filed on a timely basis under 970 shall be
19 treated as agreed claims under this section.

20 (b) UNRESOLVED DISPUTES.—Unresolved disputes
21 shall be determined in accordance with section 973 or as
22 otherwise provided in this Act.

23 (c) REPORT OF AGREED CLAIMS.—As soon as prac-
24 ticable, the receiver shall file with the court a report of
25 the agreed claims against the national insurer with his or

her recommendation. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the national insurer has issued annuities or life insurance policies, the receiver shall report the persons, according to the records of the national insurer, to whom amounts are owed as cash surrender values or other investment value and the amounts owed.

(d) NOTICE.—Notice of the proposed allowance or disallowance of any claim under this section shall be given as provided at section 947.

(e) COURT ACTION.—The court may, not sooner than 14 days from the date notice was mailed pursuant to subsection (d), approve, disapprove or modify the receiver's claim report.

SEC. 973. DENIAL OF A CLAIM.

(a) NOTICE OF DENIED CLAIM.—If the receiver denies a claim in whole or in part, he or she shall provide notice of the final determination and hearing as provided at section 947, by first class mail at the last known address, according to the receiver's records.

(b) HEARING.—A hearing shall be held with respect to the claim determination, not sooner than 14 days from the date notice was mailed pursuant to subsection (a) of this section.

SEC. 974. CLAIM BY CREDITOR IN RECEIPT OF VOIDABLE TRANSFER.

(a) IN GENERAL.—The court shall disallow the claim of any entity from which property is recoverable under section 956 or that is the transferee of a transfer voidable under section 951, 952, 953, or section 955, or a similar provision of the laws of the United States other than under this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under said sections. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the receiver within 30 days from the date of the entering of the final judgment, unless the court allows further time for an appeal or other continuation of the proceeding.

(b) EXCUSED LATE FILING.—A claim arising by reason of the recovery of property under section 949 or section 956, whether voluntary or involuntary, may be filed as an excused late filing under subsection (c) of section 964 if filed within 30 days from the date of the avoidance or within the further time allowed by the court.

SEC. 975. PRIORITY OF DISTRIBUTION.

(a) IN GENERAL.—The priority of distribution from the national insurer's general assets shall be in accordance with the order in which each class of claims is set forth

in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment. Except as provided in subsection (b)(7) of this section, section 937, and subsection (e) of section 978, subclasses shall not be established within a class.

(b) CLASS 1.—Class 1 claims shall be the costs and expenses of administration, including the following:

(1) The actual and necessary costs of preserving or recovering the national insurer's assets.

(2) Reasonable compensation for all services rendered by or to the receiver.

(3) Any necessary filing fees.

(4) The fees and mileage payable to witnesses.

(5) The reasonable expenses of a guaranty association, including overhead, salaries and other general administrative expenses, allocable to such receivership, to include administrative and claims handling expenses and expenses in connection with arrangements for ongoing coverage, other than expenses incurred in the performance of duties relating to the detection and prevention of insolvencies.

(6) Amounts described in the second sentence of subsection (c) of section 962.

(7) Unsecured loan and other credit obligations incurred by the receiver. Any such obligation shall have priority over all other costs of administration.

(c) CLASS 2.—Class 2 claims shall be as follows:

(1) All claims under insurance policies, including claims under nonassessable policies for unearned premium; all other claims of a guaranty association not included in Class 1 or Class 5; and in the case of a guaranty association covering life, disability income or long-term care insurance or annuities, all claims as a creditor of the impaired or insolvent national insurer for all payments of and liabilities incurred on behalf of covered claims or covered obligations of the national insurer and for the funds needed to reinsure those obligations with a solvent insurer.

(2) If it is provided by written agreement, statute or rule that the assets in a separate account are not chargeable with the liabilities arising out of any other business of the national insurer, that part of a claim that includes a separate account shall be satisfied out of the assets in the separate account equal to the reserves maintained in the separate account under the separate account agreement. The remainder of the claim shall be treated as a Class

1 2 claim to the extent that reserves therefore have
2 been established in the national insurer's general ac-
3 count pursuant to statute, rule or the separate ac-
4 count agreement.
5 (3) A claim involving liabilities and other obli-
6 gations of a protected cell established pursuant to
7 section 323 shall be satisfied solely out of the assets
8 in the protected cell. The remainder of the claim
9 shall be deemed to be zero for purposes of this title.
10 (4) Notwithstanding the foregoing, the fol-
11 lowing claims shall be excluded from Class 2 pri-
12 ority:
13 (A) Obligations of the insolvent national
14 insurer arising out of reinsurance contracts
15 issued by the national insurer.
16 (B) Obligations incurred after the expira-
17 tion date of the insurance policy or after the in-
18 surance policy has been replaced by the insured
19 or canceled at the insured's request or after the
20 insurance policy has been canceled as provided
21 in this title. Notwithstanding this subsection,
22 unearned premium claims on insurance policies,
23 other than reinsurance contracts issued by the
24 insurer, shall not be excluded.

(C) Any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent national insurer.

(D) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the insurance policy.

(E) Tort claims of any kind against the national insurer and claims against the national insurer for bad faith or wrongful settlement practices.

(d) CLASS 3.—Class 3 claims shall be debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for receivership proceeding. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(e) CLASS 4.—Class 4 shall be claims of general creditors not included in Classes 1 through 3, including claims under reinsurance contracts issued by the insurer, claims by reinsurers for amounts due under reinsurance contracts terminated pursuant to subsection (f) of section 962 and claims of guaranty associations for assessments not paid by the national insurer.

(f) CLASS 5.Class 5 claims shall be claims of the Federal Government and any State or local government not included in Class 2. Claims, including those of the federal government, or of any State or local governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of the claims shall be postponed to the class of claims under subsection (i).

(g) CLASS 6.—Class 6 claims shall be late filed claims which would otherwise be classified in Classes 2 through 5.

(h) CLASS 7.—Class 7 claims shall be surplus, capital or contribution notes, or similar obligations, and premium refunds on assessable policies.

(i) CLASS 8.—Class 8 claims shall be the claims of shareholders or other owners.

SEC. 976. LIQUIDATOR'S PROPOSAL FOR EARLY ACCESS DISBURSEMENTS.

(a) IN GENERAL.—Within 120 days of a final order of liquidation the liquidator shall make application to the court for approval of a proposal to make early access disbursements out of marshaled assets, to any guaranty asso-

1 ciation having obligations because of the insolvency of a
2 national insurer.
3 (b) CONTENT OF PROPOSAL.—The proposal shall at
4 least include provisions for—
5 (1) reserving amounts for the payment of ex-
6 penses of administration and the payment of claims
7 of secured creditors, to the extent of the value of the
8 security held, and claims falling within the priorities
9 established in Class 1 and, to the extent not within
10 guaranty association coverage, Class 2 of section
11 975;
12 (2) initial disbursement of the assets marshaled
13 to date, which shall be as soon as practicable and in
14 any case not later than 120 days after approval of
15 the early access plan, and subsequent disbursement
16 of assets which shall be at least annually;
17 (3) equitable allocation of disbursements to
18 each of the guaranty associations entitled thereto;
19 (4) the securing by the liquidator from each of
20 the guaranty associations entitled to disbursements
21 pursuant to this section of an agreement to return
22 to the liquidator such assets, together with invest-
23 ment income actually earned on assets previously
24 disbursed, as may be required to pay claims of se-
25 cured creditors and claims falling within the prior-

ities established in section 975 accordance with such priorities, and no bond shall be required of the guaranty association;

(5) a full report to be made by each guaranty association to the liquidator accounting for all assets so disbursed to the guaranty association, all disbursements made therefrom, any interest earned by the guaranty association on the assets and any other matter as the court may direct;

(6) disbursements to guaranty associations in sums as large as possible, subject to the limitations set forth in subsection (b)(1); if the liquidator determines that there are insufficient assets to disburse at the time of any required disbursement, the liquidator shall make application to the court, with notice to the affected guaranty associations pursuant to subsection (b) of section 916 for approval of the determination not to disburse, stating the reasons therefore;

(7) the liquidator's proposal shall provide for disbursements to the guaranty associations in amounts estimated at least equal to the sum of—

(A) claim payments and allocated loss adjustment expenses of the guaranty association; and

(B) reserves as established by the guaranty association for reported unpaid claims and allocated loss adjustment expenses; amounts used for (A) and (B) above shall be those reported to the liquidator by the guaranty association in its most recent financial report to the liquidator; the liquidator's proposal shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of claim payments made or to be made by the guaranty association then disbursements shall be in the amount of available assets; the liquidator shall liquidate the assets of the national insurer in an expeditious manner, but is not required to make forced or quick sales that would result in obtaining less than market value for assets; unless otherwise provided for by the court, the reserves of the insolvent national insurer as reflected in its records on the date of the order of liquidation shall be used for purposes of determining the pro rata allocations of initial disbursements among eligible guaranty associations; and

(8) the liquidator may not offset the amount to be disbursed to any guaranty association by the

amount of any ''special deposit'' or any other statutory deposit or asset of the insolvent national insurer unless such deposit has been forwarded to the association.

(c) GUARANTY ASSOCIATION METHOD.—Nothing in this section shall affect the method in which life insurance guaranty associations or property casualty associations compute their coverage obligations.

Subtitle H—The Plan

SEC. 977. WHO MAY FILE A PLAN.

(a) IN GENERAL.—Except as otherwise provided in this section, only the receiver may file a plan within 1 year after the earlier of the date of the order of rehabilitation or liquidation under this title.

(b) OTHER PERMITTED PLAN FILERS.—Any party in interest may file a plan only if—

(1) the receiver has not filed a plan within 1 year after the earlier of the date of the order of rehabilitation or liquidation under this title; or

(2) the receiver has not filed a plan that has been approved by the court, within 18 months after the earlier of the date of the order of rehabilitation or liquidation under this title.

(c) REDUCTION OR INCREASE IN TIME PERIODS.—On request of a party in interest made within the respec-

1 tive periods specified in subsections (b)(1) and (b)(2) and
2 after such notice as the court deems appropriate, the court
3 may for cause reduce or increase the time periods of either
4 subsection.

5 (d) PLAN OBJECTIONS OR MODIFICATIONS.—Once a
6 plan has been filed, any party in interest may object to
7 the plan or propose modifications to it.

8 **SEC. 978. CONTENTS OF A PLAN.**

9 (a) REQUIRED PLAN PROVISIONS.—A plan shall—

10 (1) except as provided at subsection (e), provide
11 the same treatment for each claim or interest of a
12 particular class, unless the holder of a particular
13 claim or interest agrees to a less favorable treatment
14 of such particular claim or interest;

15 (2) provide adequate means for the plan's im-
16 plementation;

17 (3) contain adequate information concerning
18 the financial condition of the national insurer and
19 the operation and effect of the plan, in sufficient de-
20 tail as far as is reasonably practicable in light of the
21 nature and history of the national insurer, the condi-
22 tion of the national insurer's books and records and
23 the nature of the plan. Alternatively, the plan itself
24 may identify the sources of such information as con-

1 tained in the document depository established pursu-
2 ant to section 942;
3 (4) provide for the transfer of books, records,
4 documents and other information relevant to the du-
5 ties and obligations covered by the plan;
6 (5) provide for the notice to parties in interest
7 of the provisions of the plan and an opportunity to
8 be heard;
9 (6) provide for the termination of the receiver-
10 ship proceedings and discharge of the receiver, if ap-
11 propriate; and
12 (7) provide for the continuation of policies of
13 insurance (subject to the terms of the policies, in-
14 cluding any restructured provisions effected under
15 subsection (d) of this section) not protected (in
16 whole or in part) under subtitle A of title X, and for
17 reinsurance contracts on such policies of insurance,
18 that are not terminable by the insurer under the
19 terms of the policies of insurance or by the receiver
20 pursuant to subsection (f) of section 962.
21 (b) PERMITTED PLAN PROVISIONS.—A plan may in-
22 clude any other provisions not inconsistent with the provi-
23 sions of this title, including—
24 (1) payment of a dividend pursuant to section
25 981;

(2) assumption or reinsurance of all or a portion of the national insurer's remaining liabilities by, and transfer of assets to, an insurer or other entity;

(3) to the extent appropriate, provide for application of the market conduct standards contained in subtitle F of title III to any entity administering claims on behalf of the receiver or assuming direct liabilities of the national insurer;

(4) contracting with a State guaranty association or any other qualified entity to perform the administration of claims covered and/or not covered by guaranty associations;

(5) a provision for annual independent financial and performance audits of any entity administering claims on behalf of the receiver which is not otherwise subject to examination pursuant to section 202(a); and

(6) termination of the national insurer's liabilities as of a date certain.

(c) LIQUIDATION ORDER; LIQUIDATING TRUST PERMITTED.—If the court has entered an order of liquidation pursuant to this title, any plan may include provisions which—

(1) establish a liquidating trust pursuant to section 982;

1 (2) establish one or more reinsurance recover-
2 able trusts pursuant to section 986; or
3 (3) require mandatory negotiation and arbitra-
4 tion procedures pursuant to section 985.
5 (d) INSURERS OF LIFE, DISABILITY INCOME, OR
6 LONG-TERM CARE INSURANCE OR ANNUITIES.—If the
7 national insurer has provided life, disability income, or
8 long-term care insurance or annuities, the plan may mod-
9 ify and restructure insurance policies or provide substitute
10 policies of insurance, subject to the limitations imposed
11 under subsection (b)(2) of section 1009.
12 (e) CERTAIN CLASSIFIED CLAIMS.—As to claims
13 which are classified under subsections (c), (e), or (f) of
14 section 975, a plan may designate and separately treat
15 one or more separate sub-classes consisting only of those
16 claims within such classes that are for or reduced to de
17 minimis amounts. A de minimis amount shall be any
18 amount equal to or less than a maximum de minimis
19 amount approved by the court as being reasonable and
20 necessary for administrative convenience.
21 **SEC. 979. COURT APPROVAL OF PLAN.**
22 (a) CONDITIONS OF APPROVAL.—After notice and a
23 hearing, the court shall approve a plan only if it finds
24 that—

(1) the plan complies with the applicable provisions of this title; and

(2) with respect to each class of claims, each claimant of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the amount that such claimant would receive or retain if the insurer were liquidated within a time period that is reasonable.

(b) INSURERS OF LIFE, DISABILITY INCOME, OR LONG-TERM CARE INSURANCE OR ANNUITIES; CONSENT BY GUARANTY ASSOCIATIONS.—Notwithstanding any other provision of this subtitle, if the plan proposes to restructure or substitute life, disability income, or long-term care insurance policies or annuity contracts, the court may not approve the plan unless each guaranty association whose obligations are affected in any way by such modification or restructuring or substitution has given its written consent thereto. In the event that obligations under the policies or contracts are reinsured by one or more reinsurance contracts, those reinsurance contracts may either remain in force with the consent of the reinsurer or be terminated pursuant to subsection (f) of section 962.

SEC. 980. EFFECT OF COURT APPROVAL OF PLAN.

(a) IN GENERAL.—Upon its entry, the provisions of a plan and the order approving it bind the national insurer, any entity acquiring property under the plan, all policyholders, creditors, and equity holders of the national insurer.

(b) STATUS OF PROPERTY DEALT WITH BY PLAN.—Except as provided in the plan or in the order approving the plan, after court approval of a plan, the property dealt with by the plan shall be free and clear of all claims and interests of creditors and equity holders of the national insurer.

SEC. 981. PARTIAL AND FINAL DISTRIBUTIONS OR DIVIDENDS.

(a) IN GENERAL.—Pursuant to a plan, a receiver may declare and pay a partial or final distribution or dividend to claimants whose claims have been allowed as provided in this title, or fixed as provided in subsection (c) of this section.

(b) BASIS FOR DISTRIBUTION OF DIVIDEND.—In determining the percentage of distributions or dividends to be paid on such claims, the receiver may consider the estimated value of the assets (including estimated reinsurance recoverables and the estimated value of the insurer's liabilities) and the estimated value of the national insurer's liabilities (including estimated liabilities for unpaid losses

1 and loss expenses and for incurred but not reported losses
2 and loss expenses).
3 (c) ESTIMATIONS.—The estimation authorized pursu-
4 ant to this section may be used for purposes of fixing a
5 creditor's claim in the estate and for determining the per-
6 centage of a partial or final distribution or dividend.
7 (d) CLAIMS OF REINSURERS; INCURRED BUT NOT
8 REPORTED LOSSES.—Nothing in this section or any other
9 section of this title, shall be construed as authorizing the
10 receiver, or any other entity, to compel payment from a
11 reinsurer on the basis of estimated incurred but not re-
12 ported losses or loss expenses, except with respect to
13 claims allowed pursuant to section 967. The obligation of
14 reinsurers to make payments to the national insurer shall
15 be determined on the basis of reported claims that have
16 been allowed pursuant to subtitle G.

17 **SEC. 982. TRANSFER OF ASSETS AND LIABILITIES TO LIQUI-**
18 **DATING TRUST.**

19 (a) If there has been an order of liquidation entered
20 in the receivership proceeding then, pursuant to a plan,
21 a receiver may establish one or more liquidating trusts.
22 In the case of a liquidating trust established in connection
23 with a plan for a national insurer that issues property and
24 casualty insurance: Some or all of the national insurer's
25 assets and liabilities may be transferred to such trust.

1 (b) For purposes of this section:
2 (1) A future claim under this section is one
3 which is incurred but not reported to the national
4 insurer as of the date the liquidating trust is estab-
5 lished pursuant to this section.
6 (2) A future claimant under this section is a
7 person who has, or may have, a future claim against
8 the national insurer.
9 (c) The receiver may declare and pay distributions
10 or dividends as provided in section 981 while reserving for
11 the benefit of future claimants a similar percentage divi-
12 dend to be paid on future claims in accordance with sub-
13 section (d) of this section.
14 (d) Future claimants may share in the proceeds of
15 the liquidating trust only when, and to the extent, that
16 any future claim is allowed pursuant to subtitle G.
17 (e) The receiver may petition the court for the ap-
18 pointment of a future claim representative who shall have
19 the power to represent the interests of those who may as-
20 sert future claims against the national insurer. Notwith-
21 standing this subsection, a future claimant may elect to
22 represent his, her or its own interests and may opt out
23 of being represented by the future claims representative.
24 (f) The liquidator may terminate liquidation pro-
25 ceedings and/or dispose of property free and clear of the

1 obligation to future claimants or any other individual or
2 entity as long as such property was disposed of in accord-
3 ance with this section and other applicable provisions of
4 a plan authorized by section 978.

5 **SEC. 983. COLLATERALIZATION OF CASE RESERVES AND**
6 **INCURRED BUT NOT REPORTED LOSSES.**

7 (a) Upon the entry of a receivership order, and con-
8 tinuing thereafter, reinsurers that are required to
9 collateralize their obligations to the national insurer pur-
10 suant to contract or law shall be required to maintain such
11 collateralization in accordance with the terms of the appli-
12 cable law or contract.

13 (b) Any dispute concerning the appropriate amount
14 of collateral shall be determined in accordance with the
15 procedure established in section 985(b).

16 **SEC. 984. COMMUTATIONS.**

17 (a) The receiver may, in his or her discretion, enter
18 into a voluntary commutation and release of all obligations
19 arising from reinsurance agreements entered into by the
20 national insurer, subject to the approval of the court.

21 (b) Nothing in this section, or any other provision
22 of this Act, shall be construed to override or impair any
23 provision in a reinsurance agreement which establishes a
24 commercially reasonable and actuarially sound method for
25 valuing and commuting the obligations of the parties to

1 the reinsurance agreement; provided, however, that such
2 commutation provision shall not be effective if it is dem-
3 onstrated to the court that at the time such provision was
4 entered into, the parties had reasonable cause to believe
5 that the national insurer was insolvent or was about to
6 become insolvent. Any such contractual commutation pro-
7 vision entered into within one year of the liquidation order
8 of the national insurer shall be rebuttably presumed to
9 have been entered into with reasonable cause to believe
10 that the national insurer was insolvent or about to become
11 insolvent.

12 **SEC. 985. MANDATORY NEGOTIATION AND ARBITRATION.**

13 (a)(1) The receiver may apply to the court, with no-
14 tice to the other party to the reinsurance agreement, for
15 an order requiring the parties to submit to a mandatory
16 negotiation and arbitration procedure in accordance with
17 subsection (b), if—

18 (A) the ratio of the national insurer's actuari-
19 ally estimated casualty losses to the sum of (i) re-
20 ported claims on casualty losses allowed by the court
21 and (ii) actuarially estimated casualty losses, is 25
22 percent or less; or

23 (B) the reinsurer's total adjusted capital is at
24 or below 200 percent of its authorized control level
25 for risk-based capital purposes.

(2) For purposes of this subsection—

(A) the term ''casualty losses'' means the national insurer's aggregate losses arising out of insurance contracts in the following lines: Farm owners Multiperil, Homeowners Multiperil, Commercial Multiperil, Medical Malpractice, Workers' Compensation, Other Liability, Products Liability, Auto Liability, Aircraft (all peril) and International (of the foregoing lines); and

(B) the term ''actuarially estimated casualty losses'' means actuarially estimated incurred but not reported casualty losses and estimated case reserves for claims not yet allowed by the court.

(b)(1) Within 90 days of the court's order pursuant to subsection (a) of this section, or from the date that either party to a reinsurance agreement demands arbitration pursuant to section 983(b), each party shall provide the other party with an estimate of the liabilities between the parties and all relevant documents and other information supporting the estimate, including but not limited to: underlying premium, commission and loss data; estimated incurred but not reported losses; projected ultimate payout; net present value and the discount factor proposed.

(2) If the parties are unable to reach agreement within 90 days following the submission of materials required

1 in paragraph (1) of this subsection, either party may ini-
2 tiate the arbitration procedure set forth in paragraph (3)
3 of this subsection by providing the other party with a de-
4 mand for arbitration. A copy of the demand shall be
5 promptly provided to the court by the liquidator.
6 (3) Venue for the arbitration shall be within the dis-
7 trict of the court's jurisdiction or such other location as
8 may be agreed to by the parties.
9 (A) Within 30 days of the responding party's
10 receipt of the arbitration demand, each party shall
11 appoint an arbitrator who is a disinterested active or
12 inactive officer, executive or other professional with
13 no less than 10 years' experience in or serving the
14 insurance or reinsurance industry. The two arbitra-
15 tors shall appoint an independent, impartial, disin-
16 terested umpire who is an active or inactive officer
17 or executive of an insurance or reinsurance com-
18 pany. If the arbitrators are unable to agree on an
19 umpire, each arbitrator shall provide the other with
20 the names of three qualified individuals, each arbi-
21 trator shall strike two names from the other's list
22 and the umpire shall be chosen by drawing lots from
23 the two remaining individuals.
24 (B) Within 60 days following the appointment
25 of the umpire, the parties shall, unless otherwise or-

1 dered by the panel, submit to the arbitration panel
2 their estimates of the liabilities between the parties
3 and other documents and information relevant to the
4 determination of the parties' rights and obligations
5 under the reinsurance agreements, including but not
6 limited to: underlying premium, commission and loss
7 data; estimated incurred but not reported losses;
8 projected ultimate payout; net present value and the
9 discount factor proposed.
10 (C) The arbitration panel shall issue an award
11 with respect to the parties' obligations and the court
12 shall confirm such award absent proof of statutory
13 grounds for vacating or modifying arbitration
14 awards under the Federal Arbitration Act.
15 (D) The time periods set forth in this sub-
16 section may be extended upon mutual agreement of
17 the parties.
18 (c) Within 30 days of the issuance of the award pur-
19 suant to a receiver's application under subsection (a)(1)
20 of this section in an arbitration commenced pursuant to
21 section 983(b) over the appropriate amount of collateral,
22 either the reinsurer shall post additional collateral or the
23 national insurer shall release collateral, as necessary to
24 bring the actual amount of the collateral to the amount
25 provided for in the arbitration panel's award.

(d) Within 30 days of issuance of the award entered pursuant to a receiver's application under subsection (a)(1) of this section, the reinsurer shall give notice to the receiver that it—

(1) opts to voluntarily commute its liabilities to the insurer for the amount of the award in return for a full and complete release of all liabilities between the parties, whether past, present or future; or

(2) opts not to commute its liabilities to the insurer, in which case the reinsurer shall establish a reinsurance recoverable trust in the amount of 102 percent of the award. The trust shall be established and maintained in accordance with section 986. The reinsurer shall pay the costs and fees associated with establishing and maintaining the trust.

(e) If the reinsurer notifies the receiver that it opts to commute its liabilities pursuant to subsection (d)(1), the receiver shall have 30 days to—

(1) accept the reinsurer's offer and tender to the reinsurer a proposed commutation and release agreement providing for a full and complete release of all liabilities between the parties, whether past, present or future; or

(2) reject the reinsurer's offer in exchange for the reinsurer's establishment of a reinsurance recoverable trust. If the reinsurer's offer to commute is rejected by the receiver in accordance with this paragraph, the national insurer shall share equally in the costs and fees associated with establishing and maintaining the trust and the receiver shall not initiate procedures pursuant to this section for a period of 5 years from the date of the receiver's notification pursuant to this subsection, provided that the receiver and reinsurer may still initiate procedures pursuant to section 986(e).

SEC. 986. REINSURANCE RECOVERABLE TRUST PROVISIONS.

(a) As used in this section—

(1) the term ''beneficiary'' means the domiciliary insurance commissioner, as receiver of the insurer for whose sole benefit a reinsurance recoverable trust is established;

(2) the term ''grantor'' means the reinsurer who has established a reinsurance recoverable trust for the sole benefit of the beneficiary;

(3) the term ''qualified United States financial institution'' means an institution that—

(A) is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any State thereof and has been granted authority to operate with fiduciary powers; and

(B) is regulated, supervised and examined by Federal or State authorities having regulatory authority over banks and trust companies; and

(4) the term ''reinsurance recoverable trust'' means a trust established pursuant to section 985.

(b) The trust agreement governing a reinsurance recoverable trust shall—

(1) be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution;

(2) create a trust account into which assets shall be deposited in accordance with section 985; all assets in the trust account shall be held by the trustee at the trustee's office in the United States;

(3) provide that the beneficiary shall have the right to withdraw assets from the trust, only—

(A) if the claim was a reported claim allowed by the court pursuant to subtitle G;

(B) where the beneficiary has notified the grantor, in writing, of the court's allowance of the claim;

(C) if and to the extent that the amount to be withdrawn exceeds any setoff, permitted by section 958, due to the grantor;

(D) where 60 days has expired during which the grantor has failed to either pay the claim or file notice of a written dispute with respect to the claim in accordance with the terms of the reinsurance agreement; or

(E) if the beneficiary has complied with any different or other terms and conditions mutually agreed to by the beneficiary and the grantor in the trust agreement;

(4) require the trustee to—

(A) receive assets and hold all assets in a safe place;

(B) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(C) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(D) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(5) be made subject to and governed by the laws of this state;

(6) prohibit the invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee;

(7) provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith;

(8) provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary or a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, *Provided*, That no such resignation or removal shall be effective until a successor trustee has been duly appointed and ap-

1 proved by the beneficiary and the grantor and all as-
2 sets in the trust have been duly transferred to the
3 new trustee;
4 (9) provide that the grantor shall have the full
5 and unqualified right to vote any shares of stock in
6 the trust account; subject to other provisions of this
7 section, any interest or dividends paid on shares of
8 stock or other obligations in the trust account, shall
9 remain in the trust;
10 (10) specify categories of investments reason-
11 ably acceptable to the beneficiary and authorize the
12 trustee to invest funds and to accept substitutions,
13 by the grantor, that the trustee determines are at
14 least equal in market value to the assets withdrawn,
15 *Provided*, That no investment or substitution shall
16 be made without prior approval from the beneficiary,
17 which shall not be unreasonably or arbitrarily with-
18 held;
19 (11) provide that the beneficiary may at any
20 time designate a party to which all or part of the
21 trust assets are to be transferred; transfer may be
22 conditioned upon the trustee receiving, prior to or si-
23 multaneously, other specified assets;
24 (12) specify the types of assets that may be in-
25 cluded in the trust account which shall consist only

of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by this State's Insurance Act or any combination of the above, *Provided*, That investments in or issued by any entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments; assets deposited in the trust account shall be valued according to their current fair market value;

(13) give the grantor the right to seek approval from the beneficiary, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the grantor, *Provided*, That—

(A) the grantor shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets so as to maintain at all times the deposit in the required amount; or

(B) after withdrawal and transfer, the market value of the trust account is no less than 102 percent of the award made pursuant to section 985(b)(3)(c);

(14) provide for the return of any amount withdrawn in excess of the actual amounts required for payment of reported allowed claims under paragraph (3), and for interest payments at a rate not in excess of the prime rate of interest on the excess amounts withdrawn; and

(15) provide for termination of the reinsurance recoverable trust in accordance with subsection (f).

(c) Nothing in this section shall be construed as altering the rights or obligations of the parties pursuant to contractual and statutory provisions providing for notice and the determination of claims.

(d) The grantor shall, prior to depositing assets with the trustee, execute assignments or endorsements in blank, or transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the beneficiary, or the trustee upon the direction of the beneficiary, may whenever necessary negotiate these assets without consent or signature from the grantor or any other entity.

(e) Either party may request that an arbitration panel review the amount held in a reinsurance recoverable trust. The court may order such review upon a demonstration that the amount in trust is either twenty five percent or more deficient or 25 percent or more in excess of the

1 reinsurer's liabilities to the national insurer. Upon such
2 a demonstration, parties shall reinitiate the procedures es-
3 tablished in section 985(b).
4 (f) A reinsurance recoverable trust shall terminate
5 upon the earlier of—
6 (1) the court approval of a voluntary commuta-
7 tion between the grantor and the beneficiary pursu-
8 ant to section 985;
9 (2) the mutual agreement of the grantor and
10 the beneficiary; or
11 (3) a finding by the court that the grantor has
12 discharged its liabilities to the beneficiary.
13 Upon termination of the trust account, all assets not pre-
14 viously withdrawn by the beneficiary, pursuant to para-
15 graph (b)(3), shall, with written approval of the bene-
16 ficiary, be delivered over to the grantor.
17 **SEC. 987. LIQUIDATING TRUST PROVISIONS.**
18 (a) As used in this section—
19 (1) the terms ''beneficiary'' and ''beneficiaries''
20 mean the creditors of the insurer for whose sole ben-
21 efit the liquidating trust is established;
22 (2) the term ''grantor'' means the domiciliary
23 insurance commissioner, as receiver of the insurer,
24 or his or her designee;

1 (3) the term ''qualified U.S. financial institu-
2 tion'' has the same meaning given such term in sec-
3 tion 986; and
4 (4) the term ''liquidating trust'' means a trust
5 established pursuant to section 986.
6 (b) A liquidating trust shall be established by the
7 grantor for the benefit of the beneficiaries, subject to ap-
8 proval of the court.
9 (c) A trust agreement governing a liquidating trust
10 shall be entered into between the grantor and the trustee,
11 which shall be a qualified United States financial institu-
12 tion.
13 (d) Assets and liabilities of the national insurer may
14 be transferred to the Liquidating Trust in accordance with
15 section 982 and shall be held by the trustee at the trust-
16 ee's office in the United States.
17 (e) The trust agreement entered into pursuant to
18 subsection (b) shall—
19 (1) identify the beneficiaries of the trust;
20 (2) enumerate the authority and duties of the
21 trust;
22 (3) specify the types of assets and categories of
23 investments that may be held in the trust account;

1 (4) provide that the trustee shall be liable for
2 its negligence, willfulmisconduct or lack of good
3 faith;
4 (5) be made subject to and governed by the
5 laws of this State;
6 (6) provide for the compensation of the trustee
7 and the expense of establishing and maintaining the
8 trust account;
9 (7) provide for the distribution of trust assets
10 to beneficiaries of the trust; and
11 (8) provide for termination of the trust and dis-
12 tribution of any remaining assets in the trust
13 account—
14 (A) after payments have been made to all
15 beneficiaries,
16 (B) when insufficient assets exist to war-
17 rant maintaining the trust, or
18 (C) when the amount of assets in the trust
19 to be distributed make it impractical or uneco-
20 nomic to distribute to beneficiaries.
21 (f) The trustee shall furnish to the grantor a state-
22 ment of all assets in the trust account upon its inception
23 and at intervals no less frequent than the end of each cal-
24 endar quarter.

Subtitle I—Post Plan

SEC. 988. UNCLAIMED AND UNDISTRIBUTED FUNDS.

(a) IN GENERAL.—Distributions or dividends remaining unclaimed or unpaid in the receiver's possession for 6 months after the final order of distribution shall be handled as other unclaimed funds and shall be paid by the custodian thereof without interest to the person entitled thereto or his or her legal representative or shall be presumed abandoned and handled pursuant to the provisions of relevant State law governing disposition of unclaimed property.

(b) CLOSED ESTATE FUND TRUST ACCOUNT.—Subject to the approval of the court, after the completion of all post closure activities for which moneys were reserved, any remaining reserved assets as well as any other assets in the hands of the receiver, that may not be practicably or economically distributed to claimants, shall be deposited into a segregated account to be known as the closed estates fund trust account. The Director may use moneys held in this account for paying the administrative expenses of insurers subject to this title that lack sufficient assets to allow the Director to perform his or her duties and obligations under this title. An annual audit of the closed estate fund trust account shall be performed in accordance with section 943 regardless of its balance.

SEC. 989. TERMINATION OF RECEIVERSHIP PROCEEDINGS AND DISCHARGE OF RECEIVER.

(a) PETITION TO CLOSE ESTATE.—When all assets justifying the expense of collection and distribution have been marshaled and distributed under this title, the receiver shall petition the court to terminate the liquidation proceedings and to close the estate. The court may grant such other relief as may be appropriate, including a full discharge of all liability and responsibility of the receiver or a reservation of assets for administrative expenses incurred in the closing of the estate. The receiver may recommend to the court and the court shall direct which records should be retained for what periods of time and which should be destroyed.

(b) DISSOLUTION.—If the dissolution of the insurer's corporate existence has not previously been ordered, it shall be effected by operation of law upon the discharge of the receiver, absent a contrary provision in the plan approved by the court.

SEC. 990. PETITION TO REOPEN PROCEEDINGS.

The Director or other party in interest may petition the court at any time to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is good cause for reopening, it shall so order.

TITLE X—INSOLVENCY PROTECTION

Subtitle A—Life Insurance

SEC. 1001. DEFINITIONS.

For purposes of this subtitle:

(1) ACCOUNT.—The term ''account'' means either of the two accounts referred to in section 1007.

(2) ASSOCIATION.—The term ''association'' means the State life insolvency guaranty association created under the laws of the relevant State.

(3) AUTHORIZED ASSESSMENT.—The terms ''authorized assessment'' and ''authorized'', when used in the context of assessments, mean the Director has issued an order authorizing the corporation to call an assessment immediately or in the future from member insurers for a specified amount. An assessment is authorized when the order is issued.

(4) BENEFIT PLAN.—The term ''benefit plan'' means a specific employee, union or association of natural persons benefit plan.

(5) CALLED ASSESSMENT.—The terms ''called assessment'' and ''called'', when used in the context of assessments, mean that a notice has been issued by the corporation to member insurers requiring that an authorized assessment be paid within the

time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the corporation to member insurers.

(6) STATE COMMISSIONER.—The term ''State commissioner'' means the chief insurance regulatory official of a State.

(7) CONTRACTUAL OBLIGATION.—The term ''contractual obligation'' means an obligation under a policy or certificate under a group policy, or portion thereof for which coverage is provided under section 1006.

(8) COVERED PERSON.—The term ''covered person'' means a person for whom coverage is provided under section 1006.

(9) COVERED POLICY.—The term ''covered policy'' means a policy or portion of a policy for which coverage is provided under section 1006.

(10) EXTRA-CONTRACTUAL CLAIMS.—The term ''extra-contractual claims'' includes claims relating to bad faith in the payment of claims, punitive or exemplary damages or attorneys' fees and costs.

(11) IMPAIRED INSURER.—The term ''impaired insurer'' means a member insurer which is not an insolvent insurer, and is placed under an order of re-

1 habilitation or conservation by a court of competent
2 jurisdiction.
3 (12) INSOLVENT INSURER.—The term ''insol-
4 vent insurer'' means a member insurer which is
5 placed under an order of liquidation by a court of
6 competent jurisdiction with a finding of insolvency.
7 (13) MEMBER INSURER.—
8 (A) The term ''member insurer'' means—
9 (i) a State life insurance company li-
10 censed or holding a certificate of authority
11 to transact in a nonqualifying State any
12 kind of insurance for which coverage is
13 provided under section 1006, including a
14 State insurer whose license or certificate of
15 authority in that State may have been sus-
16 pended, revoked, not renewed or volun-
17 tarily withdrawn; and
18 (ii) a national insurer that is a life in-
19 surance company and holds a Federal li-
20 cense to issue the kinds of insurance for
21 which coverage is provided under section
22 1006, including a company whose license
23 may have been revoked, suspended, re-
24 stricted or voluntarily surrendered.
25 (B) Such term does not include—

(i) a non-life insurance company, other than an insurer licensed to transact only health insurance;

(ii) a hospital or medical service organization, whether profit or nonprofit;

(iii) a health maintenance organization;

(iv) a fraternal benefit society;

(v) a mandatory State pooling plan;

(vi) a mutual assessment company or other person that operates on an assessment basis;

(vii) an insurance exchange; or

(viii) an entity similar to any of the above.

(14) MOODY'S CORPORATE BOND YIELD AVERAGE.—The term ''Moody's corporate bond yield average'' means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(15) NONQUALIFYING STATE.—The term ''nonqualifying State'' means a State that is not a qualified State as defined in section 1003.

(16) POLICY.—The term ''policy'' means a policy or contract.

(17) POLICYOWNER.—The term ''policyowner'' means, with respect to a policy the person who is identified as the legal owner under the terms of the policy or who is otherwise vested with legal title to the policy through an assignment, absolute on its face, completed in accordance with the terms of the policy and properly recorded as the policyowner on the books of the insurer. Such term does not include a person with a mere beneficial interest in a policy or a person to which a policy is assigned for collateral security purposes.

(18) PREMIUMS.—The term ''premiums'' means amounts or considerations (by whatever name called) received on covered policies less returned premiums, considerations and deposits and less dividends and experience credits. Such term does not include amounts or considerations received for policies or for the portions of policies for which coverage is not provided under subsection (b) of section 1006 except that assessable premium shall not be reduced on account of subsection (b)(2)(C) of section 1006, relating to interest limitations, and subsection (e)(1)(B) of section 1006, relating to limitations with respect to one individual, one participant and one policyowner. Such term does not include—

(A) premiums on an unallocated annuity contract, or

(B) with respect to multiple non-group policies of life insurance owned by one policyowner, whether the policyowner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of $5,000,000 with respect to these policies, regardless of the number of policies held by the policyowner.

(19) RECEIVERSHIP COURT.—In the case of a State insurer, the term ''receivership court'' means the court having jurisdiction over the conservation, rehabilitation or liquidation of the insurer. In the case of a national insurer, such term means the United States district court or other United States court having jurisdiction over the receivership proceedings involving the national insurer.

(20) RESIDENT.—The term ''resident'' means a person to whom a contractual obligation is owed and who resides in a nonqualified State on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent in-

1 surer, whichever occurs first. A person may be a
2 resident of only one State, which in the case of a
3 person other than a natural person shall be its prin-
4 cipal place of business. Citizens of the United States
5 that are either (1) residents of foreign countries, or
6 (2) residents of United States possessions, territories
7 or protectorates that do not have an association
8 similar to qualified State associations shall be
9 deemed residents of the nonqualifying State, in the
10 case of national insurers, and the State of domicile
11 of other insolvent insurers, that issued the policies.
12 (21) STRUCTURED SETTLEMENT ANNUITY.—
13 The term ''structured settlement annuity'' means an
14 annuity purchased in order to fund periodic pay-
15 ments for a plaintiff or other claimant in payment
16 for or with respect to personal injury suffered by the
17 plaintiff or other claimant.
18 (22) STATE.—The term ''State'' means a State,
19 the District of Columbia and Puerto Rico.
20 (23) STATE INSURANCE COMPANY AND STATE
21 LIFE INSURANCE COMPANY.—The terms ''State in-
22 surance company'' and ''State life insurance com-
23 pany'' mean a State-chartered insurance company
24 that underwrites and sells life insurance, health in-

1 surance, disability income insurance, long-term care
2 insurance, annuity contracts, or funding agreements;
3 (24) SUPPLEMENTAL CONTRACT.—The term
4 ''supplemental contract'' means a written agreement
5 entered into for the distribution of proceeds under a
6 life or annuity policy.
7 (25) UNALLOCATED ANNUITY CONTRACT.—The
8 term ''unallocated annuity contract'' means an an-
9 nuity contract or group annuity certificate which is
10 not issued to and owned by an individual, except to
11 the extent of any annuity benefits guaranteed to an
12 individual by an insurer under the contract or cer-
13 tificate.

14 **SEC. 1002. NATIONAL INSURER PARTICIPATION IN QUALI-**
15 **FIED STATE ASSOCIATIONS.**

16 (a) QUALIFIED STATE ASSOCIATION MEMBER-
17 SHIP.—A national insurer holding a Federal license to
18 issue life insurance or annuities must, as a condition of
19 its authority to transact business, become and continue
20 as a member of a qualified State's association in each
21 State in which the national insurer is doing business.
22 (sate insurance companyb) DEFINITION OF DOING
23 BUSINESS.—A national insurer is doing business in a
24 State for purposes of this subtitle if it has any policies
25 on the life or lives of residents of the State, collects pre-

1 miums from a policyowner resident in the State, or has
2 current obligations to policyowners or beneficiaries of poli-
3 cies in that State.

4 **SEC. 1003. QUALIFIED STATE DEFINED.**

5 (a) QUALIFIED STATE DEFINED.—For purposes of
6 this title, the term ''qualified State'' means a State which
7 has established an association—

8 (1) that provides protection for covered persons
9 in the event of insolvency of any national insurer or
10 State insurer doing business in the State that meets
11 or exceeds the standards set forth in sections 1006,
12 1008, and 1010; and

13 (2) which has been determined by the Director
14 to comply with the standards set forth in sections
15 1006, 1008, 1009 (including the definitions of ''im-
16 paired insurer'' and ''insolvent insurer'' in section
17 1001), and 1010, and such determination has not
18 been revoked.

19 (b) DEEMED COMPLIANCE.—An association shall be
20 deemed in compliance with and the requirements of sub-
21 section (a) until 3 years after the effective date of this
22 Act, following which date an association must meet those
23 requirements. An association that is determined by the Di-
24 rector not to meet the standards required in subsection
25 (a) at any time on or after 3 years following the effective

date of this Act shall be preempted by this subtitle. The Director may, for good cause, extend this 3-year period for not more than 6 months as to any association. The Director shall notify an association's board of directors and the relevant State's State commissioner that the association's qualification under subsection (a) has been revoked for the reasons stated, effective 90 days following the date of such notification.

SEC. 1004. TRANSITION RULES WHEN ASSOCIATION PREEMPTED.

In the event an association's qualification is revoked under section 1003 following a date on which a member insurer of that association has been determined to be insolvent, for insolvencies occurring on or before the date on which the standard benefits of this title apply, and prior to a termination of receivership proceedings—

(1) the Director shall develop a plan, in consultation with the association and the relevant State's State commissioner, to provide appropriate benefits and coverage to covered persons, and assessments appropriate to the line of insurance affected, which plan may include benefits and coverage provided in whole or in part by the corporation;

(2) such plan shall incorporate appropriate adjustments in the event payments for benefits have

been made under the association's coverage, including the adjustment of benefits transferred to, and assumption of liabilities by, succeeding insurance companies; and

(3) appropriate supplemental assessments, if necessary, may be made pursuant to section 1010, by the corporation as the Director finds necessary to effect the change in benefits provided under this title.

SEC. 1005. ESTABLISHMENT OF THE NATIONAL LIFE INSURANCE GUARANTY CORPORATION; PROTECTION FOR RESIDENTS IN PREEMPTED STATES.

(a) ESTABLISHMENT OF THE CORPORATION.—There is established the National Life Insurance Guaranty Corporation. The corporation shall be a nonprofit corporation and shall have succession until dissolved by Act of the Congress. The corporation—

(1) shall not be an agency or instrumentality of the United States Government; and

(2) except as otherwise provided in this subtitle, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act (section 29–301.01 et seq., D.C. Official Code).

1 (b) MEMBERSHIP IN THE CORPORATION.—The mem-
2 bership of the corporation shall consist of all member in-
3 surers.
4 (c) CORPORATE GOVERNANCE.—
5 (1) BOARD OF DIRECTORS.—The board of di-
6 rectors of the corporation shall be the governing
7 body of the corporation and shall be vested with all
8 powers necessary for the management and adminis-
9 tration of the affairs of the corporation and the pro-
10 motion of its purposes as authorized by this Act.
11 The board's authority shall be specified in the by-
12 laws of the corporation.
13 (2) INITIAL BOARD.—The initial board of the
14 corporation shall be elected by the membership of
15 the corporation, provided that if the membership
16 fails to elect the initial board of the corporation
17 within 3 years of the effective date of this Act, then
18 the initial board shall be appointed by the Director.
19 Membership on the board shall be fairly representa-
20 tive of member insurers of differing size and lines of
21 business written.
22 (3) BYLAWS.—The Director shall prescribe the
23 initial bylaws and rules governing the corporation
24 which shall set forth the composition of the board,
25 the term of board members, filling of board vacan-

cies, board compensation, election of officers and procedures to call board meetings, and all matters necessary for the governance of the corporation not addressed by the District of Columbia Nonprofit Corporation Act.

(4) AMENDMENTS TO BYLAWS AND RULES.—Amendments to the bylaws and rules of the corporation following the establishment of the initial bylaws and rules as provided in paragraph (3) shall be adopted by the board of the corporation following the approval thereof by the Director.

(d) RELATIONSHIP OF CORPORATION TO THE FEDERAL GOVERNMENT.—

(1) The corporation shall be subject to supervision and oversight of the Director.

(2) The obligations of the corporation shall not be backed, directly or indirectly, by the full faith and credit of the United States. The corporation shall receive no financial assistance from or have any authority to borrow from the United States.

(3) Funds held by or due to the corporation shall not be included in the budget of the United States, nor may the United States borrow or pledge such funds.

1 (e) CORPORATION TO PROVIDE PROTECTION IN PRE-
2 EMPTED STATES.—The corporation shall provide the pro-
3 tections under this subtitle for covered persons, as set
4 forth in section 1006, in any State in which the operations
5 and activities of the association have been preempted pur-
6 suant to section 1003.

7 (f) CONTRACTING WITH PERSON TO ADMINISTER
8 BENEFITS.—The corporation may, with the approval of
9 the Director, contract with another person to administer
10 the benefits to be provided by the corporation under this
11 subtitle.

12 (g) FUNDING OF BENEFITS.—Funds for the provi-
13 sion of covered benefits by the corporation shall be in ac-
14 cordance with the formulas and procedures, and subject
15 to the limitations of, section 1010. Premiums and other
16 considerations for purposes of such assessments shall in-
17 clude all nationwide premiums of national insurers on the
18 covered lines of business.

19 **SEC. 1006. PROTECTIONS AGAINST INSOLVENCY: COV-**
20 **ERAGE AND LIMITATIONS.**

21 (a) COVERED PERSONS.—This subtitle shall provide
22 coverage for the policies specified in subsection (d)—

23 (1) to persons who, regardless of where they re-
24 side (except for certificate holders under group poli-
25 cies who are not residents of a nonqualifying State),

are the beneficiaries, assignees or payees of the persons covered under paragraph (2);

(2) to persons who are owners of or certificate holders under the policies (other than unallocated annuity contracts, and structured settlement annuities) and in each case who—

(A) are residents of a nonqualifying State, or

(B) are not residents, but only if—

(i) the insurer that issued the policies is domiciled in a nonqualifying State; and

(ii) the persons are not eligible for coverage by an association in any other State due to the fact that the insurer was not licensed in the State at the time specified in the State's association law; and

(3) for structured settlement annuities specified in subsection (b), paragraphs (1) and (2) shall not apply, and this title shall (except as provided in paragraphs (5) and (6)) provide coverage to a person who is a payee under a structured settlement annuity (or beneficiary of a payee if the payee is deceased), if the payee—

(A) is a resident of a nonqualifying State, regardless of where the policyowner resides, or

1 (B) is not a resident of a nonqualifying
2 State, but only if—
3 (i)(I) the policyowner of the struc-
4 tured settlement annuity is a resident of a
5 nonqualifying State, or
6 (II) the policyowner of the structured
7 settlement annuity is not a resident of a
8 nonqualifying State, but—
9 (aa) the insurer that issued the
10 structured settlement annuity is domi-
11 ciled in a nonqualifying State; and
12 (bb) the State in which the
13 policyowner resides has an associa-
14 tion; and
15 (ii) neither the payee (nor beneficiary)
16 nor the policyowner is eligible for coverage
17 by the association of the State in which the
18 payee or policyowner resides.
19 (b) This subtitle shall not provide coverage to a per-
20 son who is a payee (or beneficiary) of a policyowner resi-
21 dent of a nonqualifying State, if the payee (or beneficiary)
22 is afforded any coverage by a qualified State's association.
23 (c) This subtitle is intended to provide coverage to
24 persons who are residents of a nonqualifying State and,
25 in special circumstances, to persons not resident in a non-

1 qualifying State. In order to avoid duplicate coverage, if
2 a person who would otherwise receive coverage under this
3 title is provided coverage under the laws of any State other
4 than the nonqualifying State, the person shall not be pro-
5 vided coverage under this title. In determining the applica-
6 tion of the provisions of this subsection in situations where
7 a person could be covered by the association of more than
8 one qualifying or nonqualifying State, whether as a
9 policyowner, payee, beneficiary or assignee, this title shall
10 be construed in conjunction with the laws of such States
11 to result in coverage by only one association.

12 (d) POLICIES COVERED.—

13 (1) IN GENERAL.—This subtitle shall provide
14 coverage to the persons specified in subsection (a)
15 for direct, non-group life or annuity policies and
16 supplemental contracts to any of these and for cer-
17 tificates under direct group policies, except as lim-
18 ited by this title. Annuity contracts and certificates
19 under group annuity policies include allocated agree-
20 ments, structured settlement annuities, and any im-
21 mediate or deferred annuity policies.

22 (2) POLICIES NOT COVERED.—This subtitle
23 shall not provide coverage for—

1 (A) a portion of a policy not guaranteed by
2 the insurer, or under which the risk is borne by
3 the policyowner;
4 (B) a reinsurance contract, unless assump-
5 tion certificates have been issued pursuant to
6 the reinsurance contract;
7 (C) a portion of a policy to the extent that
8 the rate of interest on which it is based, or the
9 interest rate, crediting rate or similar factor de-
10 termined by use of an index or other external
11 reference stated in the policy employed in calcu-
12 lating returns or changes in value—
13 (i) averaged over the period of 4 years
14 prior to the date on which the Director be-
15 comes obligated under this title with re-
16 spect to the policy, exceeds a rate of inter-
17 est determined by subtracting 2 percentage
18 points from Moody's Corporate Bond Yield
19 Average averaged for that same 4-year pe-
20 riod or for such lesser period if the policy
21 was issued less than 4 years before the
22 member insurer becomes an impaired or
23 insolvent insurer under this subtitle; and
24 (ii) on and after the date on which the
25 Director becomes obligated with respect to

the policy, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's Corporate Bond Yield Average as most recently available;

(D) a portion of a policy issued to a plan or program of an employer, membership association or other person to provide life or annuity benefits to its employees, members or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, membership association or other person under—

(i) a multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144);

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(E) a portion of a policy to the extent that it provides for—

1 (i) dividends or experience rating
2 credits;
3 (ii) voting rights; or
4 (iii) payment of any fees or allowances
5 to any person, including the policyowner,
6 in connection with the service to or admin-
7 istration of the policy;
8 (F) a policy issued in a nonqualified State
9 by an insurer (other than a national insurer) at
10 a time when it was not licensed or did not have
11 a certificate of authority to issue the policy in
12 the nonqualified State;
13 (G) a portion of a policy to the extent that
14 the assessments required by section 1010 with
15 respect to the policy are preempted by Federal
16 or State law;
17 (H) an obligation that does not arise under
18 the express written terms of the policy issued
19 by the insurer to the policyowner, including
20 without limitation—
21 (i) claims based on marketing mate-
22 rials;
23 (ii) claims based on side letters, riders
24 or other documents that were issued by the

1 insurer without meeting applicable policy
2 form filing or approval requirements;
3 (iii) misrepresentations of or regard-
4 ing policy benefits;
5 (iv) extra-contractual claims; or
6 (v) a claim for penalties or consequen-
7 tial or incidental damages;
8 (I) a contractual agreement that estab-
9 lishes an insurer's obligations to provide a book
10 value accounting guaranty for defined contribu-
11 tion benefit plan participants by reference to a
12 portfolio of assets that is owned by the benefit
13 plan or its trustee, which in each case is not an
14 affiliate of the insurer;
15 (J) a portion of a policy to the extent it
16 provides for interest or other changes in value
17 to be determined by the use of an index or
18 other external reference stated in the policy, but
19 which have not been credited to the policy or as
20 to which the policyowner's rights are subject to
21 forfeiture, as of the date the member insurer
22 becomes an impaired or insolvent insurer under
23 this title, whichever is earlier. If a policy's in-
24 terest or changes in value are credited less fre-
25 quently than annually, then for purposes of de-

1 termining the values that have been credited
2 and are not subject to forfeiture under sub-
3 section (b)(2)(C) of section 1005, the interest
4 or change in value determined by using the pro-
5 cedures defined in the policy will be credited as
6 if the contractual date of crediting interest or
7 changing values was the date of impairment or
8 insolvency, whichever is earlier, and will not be
9 subject to forfeiture;
10 (K) activities, assets, liabilities or obliga-
11 tions of a protected cell established pursuant to
12 section 323;
13 (L) a funding agreement; and
14 (M) an unallocated annuity contract.
15 (e) COVERAGE LIMITATIONS.—
16 (1) IN GENERAL.—The benefits provided under
17 this subtitle shall in no event exceed the lesser of—
18 (A) the contractual obligations for which
19 the insurer is liable or would have been liable
20 if it were not an impaired or insolvent insurer,
21 or
22 (B) with respect to one life, regardless of
23 the number of policies—
24 (i) $300,000 in life insurance death
25 benefits, but not more than $100,000 in

1 net cash surrender and net cash with-
2 drawal values for life insurance;
3 (ii) $100,000 in the present value of
4 annuity benefits, including net cash sur-
5 render and net cash withdrawal values;
6 (iii) with respect to each payee of a
7 structured settlement annuity (or bene-
8 ficiary or beneficiaries of the payee if de-
9 ceased), $100,000 in present value annuity
10 benefits, in the aggregate, including net
11 cash surrender and net cash withdrawal
12 values, if any.
13 (2) LIMITATION.—In no event shall benefits
14 exceed—
15 (A) an aggregate of $300,000 in benefits
16 with respect to any one life under paragraph
17 (1)(B)(i), or
18 (B) with respect to one policyowner of mul-
19 tiple non-group policies of life insurance, wheth-
20 er the policyowner is an individual, firm, cor-
21 poration or other person, and whether the per-
22 sons insured are officers, managers, employees
23 or other persons, more than $5,000,000 in ben-
24 efits, regardless of the number of policies held
25 by the policyowner.

1 (3) OTHER CONSIDERATIONS.—The limitations
2 set forth in this subsection are limitations on bene-
3 fits under this subtitle before taking into account ei-
4 ther the subrogation and assignment rights or the
5 extent to which those benefits could be provided out
6 of the assets of the impaired or insolvent insurer at-
7 tributable to covered policies. The obligations for
8 benefits under this subtitle may be met by the use
9 of assets attributable to covered policies or reim-
10 bursed to the corporation pursuant to the subroga-
11 tion and assignment rights in subsection (i) of sec-
12 tion 1009.

13 (f) OTHER EXCLUSIONS.—The corporation shall not
14 be required to guarantee, assume, reinsure or perform, or
15 cause to be guaranteed, assumed, reinsured or performed,
16 the contractual obligations of the insolvent or impaired in-
17 surer under a covered policy that do not materially affect
18 the economic values or economic benefits of the covered
19 policy.

20 **SEC. 1007. ACCOUNTS FOR ADMINISTRATION AND ASSESS-**
21 **MENTS.**

22 For purposes of administration and assessment, the
23 corporation shall establish the following accounts:

24 (1) A life insurance account.

25 (2) An annuity account.

SEC. 1008. BOARD OF DIRECTORS.

The board of directors of a qualifying State's association shall provide for representation of insurers on a basis that does not unfairly discriminate against national insurers or against insurers domiciled in other jurisdictions, and shall be fairly representative of insurers of differing sizes and lines of insurance written. State commissioners shall be member insurers and may be represented by officers at the discretion of the member insurer.

SEC. 1009. POWERS AND DUTIES OF THE CORPORATION.

(a) IMPAIRED INSURER.—Subject to the coverage limitations set forth in section 1006, if a member insurer is an impaired insurer, the corporation may, in its discretion, and subject to any conditions imposed by the corporation that do not impair the contractual obligations of the impaired insurer and that are approved by the Director, meet its obligation under subsection (e) of section 1005 by doing taking one of the following actions:

(1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies of the impaired insurer.

(2) Provide such monies, pledges, loans, notes, guarantees or other means as are proper to effectuate paragraph (1) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1).

1 (b) INSOLVENT INSURER.—Subject to the coverage
2 limitations set forth in section 1006, if a member insurer
3 is an insolvent insurer, the corporation shall, in its discre-
4 tion, meet its obligation under subsection (e) of section
5 1005 by taking one of the actions under the following two
6 paragraphs:
7 (1)(A)(i) Guaranty, assume or reinsure, or
8 cause to be guaranteed, assumed or reinsured, the
9 policies of the insolvent insurer; or
10 (ii) assure payment of the contractual obliga-
11 tions of the insolvent insurer; and
12 (B) provide monies, pledges, loans, notes, guar-
13 antees, or other means reasonably necessary to dis-
14 charge the duties imposed by this section; or
15 (2) Provide benefits and coverages in accord-
16 ance with the following provisions:
17 (A) With respect to life insurance policies
18 and annuities, assure payment of benefits for
19 premiums identical to the premiums and bene-
20 fits (except for terms of conversion and renew-
21 ability) that would have been payable under the
22 policies of the insolvent insurer, for claims
23 incurred—
24 (i) with respect to group policies, not
25 later than the earlier of the next renewal

1 date under those policies or 45 days, but
2 in no event less than 30 days, after the
3 date on which the corporation becomes ob-
4 ligated under this section with respect to
5 the policies;
6 (ii) with respect to non-group policies,
7 not later than the earlier of the next re-
8 newal date (if any) under the policies or 1
9 year, but in no event less than 30 days,
10 from the date on which the corporation be-
11 comes obligated under this section with re-
12 spect to the policies.
13 (B) Make diligent efforts to provide all
14 known insureds or annuitants (for non-group
15 policies), or group policyowners with respect to
16 group policies, 30 days notice of the termi-
17 nation (pursuant to subparagraph (A)) of the
18 benefits provided.
19 (C) With respect to non-group policies cov-
20 ered by this title, make available to each known
21 insured or annuitant, or policyowner if other
22 than the insured or annuitant, and with respect
23 to an individual formerly insured or formerly an
24 annuitant under a group policy who is not eligi-
25 ble for replacement group coverage, make avail-

able substitute coverage on an individual basis in accordance with the provisions of subparagraph (D), if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(D)(i) In providing the substitute coverage required under subparagraph (C), the corporation may offer either to reissue the terminated coverage or to issue an alternative policy.

(ii) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) the corporation may reinsure any alternative or reissued policy;

(E)(i) Alternative policies adopted by the corporation shall be subject to the approval of the Director and the receivership court. The

1 corporation may adopt alternative policies of
2 various types for future issuance without regard
3 to any particular impairment or insolvency.
4 (ii) Alternative policies shall contain at
5 least the minimum statutory provisions required
6 in the nonqualifying State if the insolvent in-
7 surer is not a national insurer; in the case of
8 an insolvent national insurer such policies shall
9 comply, with the provisions of this Act and pro-
10 vide benefits that shall not be unreasonable in
11 relation to the premium charged. The corpora-
12 tion shall set the premium in accordance with
13 a table of rates that it shall adopt. The pre-
14 mium shall reflect the amount of insurance to
15 be provided and the age and class of risk of
16 each insured, but shall not reflect any changes
17 in the health of the insured after the original
18 policy was last underwritten.
19 (iii) Any alternative policy issued by the
20 corporation shall provide coverage of a type
21 similar to that of the policy issued by the im-
22 paired or insolvent insurer, as determined by
23 the corporation.
24 (F) If the corporation elects to reissue ter-
25 minated coverage at a premium rate different

from that charged under the terminated policy, the premium shall be set by the corporation in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the nonqualifying State commissioner in the case of a State insurer, and the Director in the case of a national insurer, and the receivership court.

(G) Benefits under this subtitle with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policyowner, the insured or the corporation.

(H) When proceeding under this paragraph with respect to a policy carrying guaranteed minimum interest rates, the corporation shall assure the payment or crediting of a rate of interest consistent with subsection (d)(2)(C) of section 1006.

(c) NONPAYMENT OF PREMIUMS.—Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or substitute coverage shall terminate bene-

1 fits under this subtitle with respect to the policy, except
2 with respect to any claims incurred or any net cash sur-
3 render value which may be due in accordance with the pro-
4 visions of this title.

5 (d) PREMIUMS DUE AFTER ENTRY OF ORDER.—
6 Premiums due for coverage after entry of an order of liq-
7 uidation of an insolvent insurer shall belong to and be pay-
8 able at the direction of the corporation, and the corpora-
9 tion shall be liable for unearned premiums due to
10 policyowners arising after the entry of the order.

11 (e) POWERS OF THE CORPORATION.—In carrying out
12 its duties under subsection (b), the corporation may—

13 (1) subject to approval by the Director, impose
14 permanent policy liens in connection with a guar-
15 antee, assumption or reinsurance contract, if the
16 corporation finds that the amounts which can be as-
17 sessed under this subtitle are less than the amounts
18 needed to assure full and prompt performance of the
19 protections provided under this subtitle, or that the
20 economic or financial conditions as they affect the
21 insurance industry are sufficiently adverse to render
22 the imposition of such permanent policy liens, in the
23 public interest; and

24 (2) subject to approval by the Director, impose
25 temporary moratoriums or liens on payments of cash

values and policy loans, or any other right to withdraw funds held in conjunction with policies, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies, out of the assets of the impaired or insolvent insurer, the corporation may defer the payment of cash values, policy loans or other rights by the corporation for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by this title to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(f) DEPOSITS.—A deposit in the nonqualifying State, held pursuant to State law or required by the State commissioner of the nonqualifying State for the benefit of creditors, including policyowners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in the nonqualifying State or in a reciprocal State, pursuant to applicable State law governing re-

1 ceivership of State insurers, shall be promptly paid to the
2 corporation. The corporation shall be entitled to retain a
3 portion of any amount so paid to it equal to the percentage
4 determined by dividing the aggregate amount of
5 policyowners claims related to that insolvency for which
6 the corporation has provided statutory benefits by the ag-
7 gregate amount of all policyowners' claims in nonquali-
8 fying State related to that insolvency and shall remit to
9 the domiciliary receiver the amount so paid to the corpora-
10 tion and retained pursuant to this subsection. Any amount
11 so paid to the corporation less the amount retained by it
12 shall be treated as a distribution of estate assets pursuant
13 to applicable State law governing receivership of State in-
14 surers of the State of domicile of the impaired or insolvent
15 insurer.

16 (g) ADVICE TO STATE COMMISSIONER.—The cor-
17 poration may render assistance and advice to the State
18 commissioner in a nonqualifying State, upon the State
19 commissioner's request, concerning rehabilitation, pay-
20 ment of claims, continuance of coverage, or the perform-
21 ance of other contractual obligations of an impaired or in-
22 solvent insurer.

23 (h) STANDING.—The corporation shall have standing
24 to appear or intervene before a court or agency in the
25 State, or United States district court, with jurisdiction

1 over an impaired or insolvent insurer concerning which
2 benefits under this subtitle are to be provided, or with ju-
3 risdiction over any person or property against which the
4 corporation may have rights through subrogation or other-
5 wise. Standing shall extend to all matters germane to the
6 powers and duties under this subtitle, including, but not
7 limited to, proposals for reinsuring, modifying or guaran-
8 teeing the policies of the impaired or insolvent insurer and
9 the determination of the policies and contractual obliga-
10 tions.

11 (i) SUBROGATION.—

12 (1) Persons receiving benefits under this sub-
13 title shall be deemed to have assigned their rights
14 under, and any causes of action against any person
15 for losses arising under, resulting from or otherwise
16 relating to, their covered policies to the corporation
17 to the extent of the benefits received because of this
18 subtitle, whether the benefits are payments of or on
19 account of contractual obligations, continuation of
20 coverage or provision of substitute or alternative cov-
21 erages. The corporation shall also have the right to
22 require an assignment to it of such rights and
23 causes of action by any payee, policyowner, bene-
24 ficiary, insured or annuitant as a condition prece-

1 dent to the receipt of any right or benefits conferred
2 by this subtitle upon the person.
3 (2) The subrogation rights of the corporation
4 provided under the law of a nonqualifying State
5 shall be accorded the same priority against the as-
6 sets of the impaired or insolvent insurer as that pos-
7 sessed by the person entitled to receive benefits
8 under this subtitle.
9 (3) In addition to paragraphs (1) and (2), the
10 corporation shall have all common law rights of sub-
11 rogation and any other equitable or legal remedy
12 that would have been available to the impaired or in-
13 solvent insurer or policyowner, beneficiary or payee
14 of a policy with respect to the policy (including with-
15 out limitation, in the case of a structured settlement
16 annuity, any rights of the policyowner, beneficiary or
17 payee of the annuity, to the extent of benefits re-
18 ceived pursuant to this subtitle, against a person
19 originally or by succession responsible for the losses
20 arising from the personal injury relating to the an-
21 nuity or payment therefore), excepting any such per-
22 son responsible solely by reason of serving as an as-
23 signee in respect of a qualified assignment under
24 section 130 of the Internal Revenue Code of 1986.

(4) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable under this subtitle with respect to the related benefits under this subtitle shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies (or portion thereof) protected by this subtitle.

(5) If benefits have been provided under this subtitle with respect to a covered obligation and a person recovers amounts as to which the corporation has rights as described in the preceding paragraphs, the person shall pay to the corporation the portion of the recovery attributable to the policies (or portion thereof) covered by this subtitle.

(j) OTHER CORPORATION POWERS.—In addition to the rights and powers provided elsewhere in this subtitle, the corporation may—

(1) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this subtitle;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 1010 and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this subtitle; any notes or other evidence of indebtedness of the Corporation not in default shall be legal investments for Companies and may be carried as admitted assets;

(4) employ or retain such persons as are necessary or appropriate to handle the financial transactions of the corporation, and to perform such other functions as become necessary or proper under this subtitle;

(5) take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(6) exercise, for the purposes of this subtitle and to the extent approved by the Director, the powers of a national insurer, except that the corporation may not issue insurance policies or annuity contracts other than those issued to provide the protections under this subtitle;

(7) request information from a person seeking protection under this subtitle in order to aid the corporation in determining its obligations under this subtitle with respect to the person, and the person shall promptly comply with the request;

(8) become a member of an association of associations; and

(9) take other necessary or appropriate action to discharge its duties and obligations under this subtitle or to exercise its powers under this subtitle.

(k) JUDGMENT.—The corporation shall have discretion and may exercise reasonable business judgment to determine the means by which the benefits and protections of this subtitle will be provided in an economical and efficient manner.

(l) OTHER BENEFITS.—Where the corporation has arranged or offered to provide the benefits of this subtitle to a covered person under a plan or arrangement that fulfills obligations to provide the protections under this subtitle, the person shall not be entitled to benefits under this subtitle in addition to or other than those provided under the plan or arrangement.

(m) VENUE.—Venue in a suit against the corporation arising under this subtitle shall be in the United States district court for the District of Columbia.

SEC. 1010. ASSESSMENTS.

(a) IN GENERAL.—For the purpose of providing the funds necessary to provide the protections and benefits under this subtitle, the corporation shall be authorized to assess the member insurers separately for each account,

1 at such time and for such amounts as the board of the
2 corporation finds necessary. Assessments shall be due not
3 less than 30 days after prior written notice to the member
4 insurers and shall accrue interest at a rate of interest
5 specified by law on and after the due date.

6 (b) CLASSES OF ASSESSMENT.—There shall be 2
7 classes of assessments, as follows:

8 (1) Class A assessments shall be authorized and
9 called for the purpose of meeting administrative and
10 legal costs and other expenses. Class A assessments
11 may be authorized and called whether or not related
12 to a particular impaired or insolvent insurer. The
13 board of the corporation may authorize the corpora-
14 tion to make a Class A assessment only against na-
15 tional insurers, and against national insurers and
16 other member insurers in nonqualifying States, to
17 meet its administrative and legal costs and other ex-
18 penses pursuant to operating rules established by
19 the board.

20 (2) Class B assessments shall be authorized and
21 called to the extent necessary to provide the protec-
22 tion and benefits under this subtitle with regard to
23 an impaired or an insolvent insurer.

24 (c) ASSESSMENT AMOUNTS.—

(1) The amount of a Class A assessment shall be determined by the board of the corporation and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board of the corporation may provide that it be credited against future Class B assessments. The total of all non-pro rata assessments shall not exceed $150 per assessed member insurer in any one calendar year. The amount of a Class B assessment shall be allocated for assessment purposes among the accounts or subaccounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in the nonqualifying State by each assessed member insurer on policies covered by each account or subaccount for the 3 most recent calendar years for which information is available preceding the year in which the insurer became insolvent (or, in the case of an assessment with respect to an impaired insurer, the 3 most recent calendar years for which in-

1 formation is available preceding the year in which
2 the insurer became impaired) bears to premiums re-
3 ceived on business in the nonqualifying State for
4 those calendar years by all assessed member insur-
5 ers.

6 (3) Assessments for funds to meet the require-
7 ments of the corporation with respect to an impaired
8 or insolvent insurer shall not be authorized or called
9 until necessary to implement the purposes of this
10 title. Classification of assessments under subsection
11 (b) and computation of assessments under this sub-
12 section shall be made with a reasonable degree of ac-
13 curacy, recognizing that exact determinations may
14 not always be possible. The corporation shall notify
15 each member insurer of its anticipated pro rata
16 share of an authorized assessment not yet called
17 within 180 days after the assessment is authorized.

18 (d) ABATED OR DEFERRED ASSESSMENTS.—The
19 board of the corporation may abate or defer, in whole or
20 in part, the assessment of a member insurer if, in the
21 opinion of the board, payment of the assessment would
22 endanger the ability of the member insurer to fulfill its
23 contractual obligations. In the event an assessment
24 against a member insurer is abated, or deferred in whole
25 or in part, the amount by which the assessment is abated

or deferred may be assessed against the other member insurers, in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the board of the corporation.

(e) MAXIMUM ASSESSMENT.—

(1) AMOUNT.—

(A) Subject to the provisions of subparagraph (B), the total of all assessments authorized by the corporation with respect to a member insurer for each of the life insurance and annuity accounts shall not in one calendar year exceed 2 percent of that member insurer's average annual premiums received in the nonqualifying State on the policies covered by the account during the 3 calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(B) If 2 or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assess-

1 ment percentage limitation referenced in sub-
2 paragraph (A) shall be equal and limited to the
3 higher of the 3-year average annual premiums
4 for the applicable subaccount or account as cal-
5 culated pursuant to this section.
6 (C) If the maximum assessment, together
7 with other assets held in an account or sub-
8 account, does not provide in 1 year in either ac-
9 count or subaccount an amount sufficient to
10 carry out the responsibilities under this title,
11 the necessary additional funds shall be assessed
12 as soon thereafter as permitted by this subtitle.
13 (2) The board of the corporation may provide
14 by operating rules a method of allocating funds
15 among claims, whether relating to one or more im-
16 paired or insolvent insurers, when the maximum as-
17 sessment will be insufficient to cover anticipated
18 claims.
19 (3) If the maximum assessment for a sub-
20 account of the life and annuity account in 1 year
21 does not provide an amount sufficient to provide the
22 protection and benefits of this subtitle, then pursu-
23 ant to subsection (c)(2), the other subaccounts of
24 the life and annuity account may be accessed by the

1 corporation for the necessary additional amount,
2 subject to the maximum stated in paragraph (1).
3 (f) REFUNDS.—The board of the corporation may, by
4 an equitable method as established by operating rules, re-
5 fund to member insurers, in proportion to the contribution
6 of each insurer to that account or subaccount, the amount
7 by which the assets of the account exceed the amount the
8 board finds is necessary to carry out during the coming
9 year the obligations of this subtitle with regard to that
10 account or subaccount, including assets accruing from as-
11 signment, subrogation, net realized gains and income from
12 investments. A reasonable amount may be retained in any
13 account to provide funds for the continuing expenses of
14 the corporation, and for future claims.
15 (g) RATES AND DIVIDENDS.—It shall be proper
16 under this subtitle for any national insurer, in determining
17 its premium rates and policyowner dividends as to any
18 kind of insurance within the scope of this title, to consider
19 the amount reasonably necessary to meet its assessment
20 obligations under this subtitle.
21 (h) CERTIFICATES OF CONTRIBUTION.—The cor-
22 poration shall issue to each insurer paying an assessment
23 under this subtitle, other than a Class A assessment, a
24 certificate of contribution, in a form prescribed by the Di-
25 rector, for the amount of the assessment so paid. All out-

1 standing certificates shall be of equal dignity and priority
2 without reference to amounts or dates of issue. A certifi-
3 cate of contribution may be shown by a national insurer
4 in its financial statement as an asset in such form and
5 for such amount, if any, and period of time as the Director
6 may approve.

7 (i) ASSESSMENT PROTESTS.—

8 (1) A member insurer that wishes to protest all
9 or part of an assessment shall pay when due the full
10 amount of the assessment as set forth in the notice
11 provided by the corporation. The payment shall be
12 available to meet obligations under this subtitle dur-
13 ing the pendency of the protest or any subsequent
14 appeal. Payment shall be accompanied by a state-
15 ment in writing that the payment is made under
16 protest and setting forth a brief statement of the
17 grounds for the protest.

18 (2) Within 60 days following the payment of an
19 assessment under protest by a member insurer, the
20 corporation shall notify the member insurer in writ-
21 ing of its determination with respect to the protest
22 unless the corporation notifies the member insurer
23 that additional time is required to resolve the issues
24 raised by the protest.

(3) Within 30 days after a final decision has been made, the corporation shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the Director.

(4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the corporation may refer protests to the Director for a final decision, with or without a recommendation from the corporation.

(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member shall be paid at the rate actually earned by the corporation.

(j) INFORMATION REQUESTS.—The corporation may request information of member insurers in order to aid in carrying out its duties under this section and member insurers shall promptly comply with a request.

SEC. 1011. APPEAL BY NATIONAL INSURER OF ASSESSMENTS.

A national insurer that has paid an assessment to a qualified State's association shall comply with the proce-

dures in that State for protesting the assessment. In the event of an adverse determination by the State commissioner in that State the national insurer may appeal to the Director.

SEC. 1012. DUTIES AND POWERS OF DIRECTOR.

(a) DIRECTOR'S DUTIES AND POWERS.—In addition to the duties and powers enumerated elsewhere in this subtitle, the Director—

(1) shall provide the corporation upon request with a statement of the premiums in nonqualifying States for each member insurer;

(2) shall, when an impairment of a national insurer is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; and

(3) may either—

(A) suspend or revoke, after notice and hearing, a Federal license of a national insurer; or

(B) levy a forfeiture in an amount not to exceed 5 percent of the unpaid assessment per month, but no forfeiture shall be less than $100 per month—

(i) on a national insurer or other member insurer that fails to pay an assessment to the corporation when due or fails to otherwise comply with the requirements of this subtitle; or

(ii) on a national insurer that fails to pay an assessment to a qualified State's association or otherwise comply with its plan of operation.

(b) APPEAL BY NATIONAL INSURER.—A national insurer may appeal a final action of the board of directors of the association in a qualifying State to the Director if the appeal is taken within 60 days of its receipt of notice of the final action being appealed.

(c) NOTIFICATION OF INTERESTED PERSONS.—The liquidator, rehabilitator or conservator of an impaired insurer may notify all interested persons of the effect of this subtitle.

SEC. 1013. COOPERATION BETWEEN DIRECTOR AND STATE COMMISSIONERS.

(a) NOTICE TO STATE COMMISSIONERS.—The Director shall notify the State commissioner in each State in which a national insurer is doing business within 30 days of taking any of the following actions against a national insurer—

(1) revocation or suspension of the national insurer's authority to transact insurance;

(2) the entry of a formal order that the national insurer restrict its premium writing, obtain additional contributions to surplus, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyowners or creditors; or

(3) the Director has reasonable cause to believe from an examination, whether completed or in process, of any national insurer that such national insurer may be an impaired or insolvent insurer.

(b) NOTICE TO DIRECTOR.—Each State commissioner shall notify the Director when any action listed in subsection (a)(1) is taken or condition is believed to exist with respect to a State insurer that is a member insurer.

(c) REPORT TO ASSOCIATIONS.—The Director shall also report to the boards of directors of the appropriate associations when the Director has taken any of the actions set forth in subsection (a). Any report to the boards of directors shall contain all significant details of the action taken and may be provided with the cooperation of the corporation.

(d) OBLIGATIONS OF THE CORPORATION.—The corporation may make reports and recommendations to the

1 Director, as appropriate, upon any matter germane to the
2 solvency, liquidation, rehabilitation or conservation of any
3 member insurer. The reports and recommendations shall
4 not be considered public documents. The corporation shall
5 also provide such information and advice as requested by
6 the Director when providing protection and benefits under
7 this subtitle in a nonqualifying State.

8 (e) NOTICE BY THE CORPORATION.—The corporation
9 may notify the Director of any information indicating a
10 member insurer in a nonqualifying State may be an im-
11 paired or insolvent insurer.

12 **SEC. 1014. PROHIBITED DISCRIMINATION IN TAX TREAT-**
13 **MENT.—**

14 No State law may discriminate between national in-
15 surers and other insurers with respect to deductions or
16 offsets of assessments against premium, franchise or in-
17 come tax liability to the State, and any State law that
18 does so shall not be effective.

19 **SEC. 1015. MISCELLANEOUS PROVISIONS.**

20 (a) NO REDUCTION IN LIABILITY.—This subtitle
21 shall not be construed to reduce the liability for unpaid
22 assessments of the insureds of an impaired or insolvent
23 insurer operating under a plan with assessment liability.

24 (b) CORPORATION AS CREDITOR.—

(1) For the purpose of providing the protections and benefits required under this subtitle, the corporation shall be deemed to be a creditor of an impaired or insolvent national insurer to the extent of assets attributable to covered policies reduced by any amounts to which the corporation is entitled as subrogee pursuant to subsection (i) of section 1009. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this subtitle.

(2) For purposes of this subsection, the term ''assets attributable to covered policies'' are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(c) DISBURSEMENTS PAYABLE TO THE CORPORATION.—As a creditor of the impaired or insolvent insurer as established in subsection (b) of this section and consistent with section 975, the corporation shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time, as the assets become available

1 to reimburse it, as a credit against contractual obligations
2 required to be covered under this subtitle. If the liquidator
3 has not, within 120 days of a final determination of insol-
4 vency of an insurer by the receivership court, made an
5 application to the court for the approval of a proposal to
6 disburse assets out of marshaled assets to State associa-
7 tions having obligations because of the insolvency, then the
8 corporation shall be entitled to make application to the
9 receivership court for approval of its own proposal to dis-
10 burse these assets.

11 (d) TERMINATION; SHAREHOLDER DISTRIBU-
12 TIONS.—

13 (1) Prior to the termination of any liquidation,
14 rehabilitation or conservation proceeding, the court
15 may take into consideration the contributions of the
16 respective parties, including the corporation, the
17 shareholders, and policyowners of the insolvent in-
18 surer, and any other party with a bona fide interest,
19 in making an equitable distribution of the ownership
20 rights of the insolvent national insurer. In such a
21 determination, consideration shall be given to the
22 welfare of the policyowners of the continuing or suc-
23 cessor insurer.

24 (2) No distribution to shareholders, if any, of
25 an impaired or insolvent insurer shall be made until

and unless the total amount of valid claims of the Director and the corporation when acting under this subtitle, with interest thereon for funds expended in carrying out their powers and duties with respect to the insurer, have been fully recovered by the Director or the corporation, as applicable.

SEC. 1016. EXAMINATION OF THE CORPORATION; ANNUAL REPORT.

The corporation shall be subject to examination and regulation by the Director. The corporation shall submit to the Director each year, not later than 120 days after the end of its fiscal year, a financial report in a form approved by the Director and a report of its activities during the preceding fiscal year, as they relate to the duties and functions carried out under this subtitle.

SEC. 1017. IMMUNITY.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the corporation or its agents or employees, members of the board of directors, or the Director or the Director's representatives, for any action or omission by them in the performance of their powers and duties under this subtitle.

SEC. 1018. STAY OF PROCEEDINGS; REOPENING DEFAULT JUDGMENTS.

All proceedings in which an insolvent national insurer is a party in any Federal or State court shall be stayed 60 days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the associations, or by the corporation when acting under the provisions of this title, on any matters germane to their powers or duties. As to judgment under any decision, order, verdict or finding based on default an association, or the corporation, may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

SEC. 1019. PROHIBITED ADVERTISEMENT OF STATE ASSOCIATION OR THE CORPORATION IN INSURANCE SALES; NOTICE TO POLICYOWNERS.

(a) IN GENERAL.—No person, including a national insurer or other insurance producer or affiliate of a national insurer or other insurer shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any adver-

1 tisement, announcement or statement, written or oral,
2 which uses the existence of an association, or the corpora-
3 tion, for the purpose of sales, solicitation or inducement
4 to purchase any form of insurance covered by the associa-
5 tion or the corporation. However, such prohibition does
6 not apply to an association or any other entity which does
7 not sell or solicit insurance.

8 (b) DISCLAIMER.—A national insurer may not deliver
9 a policy to a policyowner unless a summary document de-
10 scribing the general purposes and current limitations of
11 the appropriate association, or the corporation, and com-
12 plying with subsection (c), is delivered to the policyowner
13 at the time of delivery of the policy. The document shall
14 also be available upon request by a policyowner. The dis-
15 tribution, delivery or contents or interpretation of this doc-
16 ument does not guarantee that either the policy or the
17 policyowner is covered in the event of the impairment or
18 insolvency of a member insurer. Failure to receive this
19 document does not give the policyowner, certificate holder,
20 or insured any greater rights than those stated in this
21 title. The summary document required of a national in-
22 surer under this subsection shall be in lieu of any similar
23 document required by any State.

24 (c) FORM OF DISCLAIMER.—The form and content
25 of the disclaimer required by subsection (b) shall be as

prescribed by the State commissioner in the State in which the policy is delivered or issued for delivery, in the case of a qualified State, or the Director, in the case of a non-qualified State. The disclaimer may also include a provision that the national insurer, other insurer and insurance producers are prohibited from using the existence of the association and the corporation for the purpose of sales, solicitation or inducement to purchase any form of insurance.

Subtitle B—Property and Casualty Insurance

SEC. 1020. DEFINITIONS.

For purposes of this subtitle:

(1) ACCOUNT.—The term ''account'' means either of the three accounts referred to in section 1027.

(2) ASSOCIATION.—The term ''association'' means the State property and casualty insurance guaranty association created under the laws of the relevant State.

(3) CLAIMANT.—The term ''claimant'' means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

1 (4) COVERED CLAIM.—
2 (1) IN GENERAL.—The term ''covered claim''
3 means an unpaid claim, including one for unearned
4 premiums, submitted by a claimant, which arises out
5 of and is within the coverage and is subject to the
6 applicable limits of an insurance policy to which this
7 subtitle applies issued by a member insurer, if the
8 member insurer becomes an insolvent insurer after
9 the effective date of this subtitle and—
10 (i) the claimant or insured is a resi-
11 dent of a nonqualifying State at the time
12 of the insured event, provided that for en-
13 tities other than an individual, the resi-
14 dence of a claimant, insured or policy-
15 holder is the State in which its principal
16 place of business is located at the time of
17 the insured event; or
18 (ii) the claim is a first party claim for
19 damage to property with a permanent loca-
20 tion in a nonqualifying State.
21 (2) EXCLUSIONS.—Such term shall not include;
22 (A) any amount awarded as punitive or ex-
23 emplary damages;
24 (B) any amount sought as a return of pre-
25 mium under any retrospective rating plan;

(C) any amount due any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise; no claim for any amount due any reinsurer, insurer, insurance pool or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the corporation's obligation limitations set forth in section 1025;

(D) any first party claims by an insured whose net worth exceeds $25,000,000 on December 31 of the year prior to the year in which the member insurer becomes an insolvent insurer; provided that an insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis; or

(E) any first party claims by an insured which is an affiliate of the insolvent insurer.

(5) INSOLVENT INSURER.—The term ''insolvent insurer'' means a member insurer which is placed

1 under an order of liquidation by a court of com-
2 petent jurisdiction with a finding of insolvency.
3 (6) MEMBER INSURER.—
4 (A) The term ''member insurer'' means
5 any person who—
6 (i) writes any kind of insurance to
7 which this subtitle applies, including the
8 exchange of reciprocal or inter-insurance
9 contracts; and
10 (ii) is a State insurer licensed or hold-
11 ing a certificate of authority to transact in
12 a nonqualifying State any kind of insur-
13 ance for which coverage is provided under
14 section 1025, including a State insurer
15 whose license or certificate of authority in
16 that State may have been suspended, re-
17 voked, not renewed or voluntarily with-
18 drawn; or
19 (iii) is a national insurer that holds a
20 Federal license under this Act to issue the
21 kinds of insurance for which coverage is
22 provided under section 1025.
23 (B) A State insurer or national insurer
24 shall cease to be a member insurer effective on
25 the day following the termination or expiration

of its license to transact the kinds of insurance to which this subtitle applies; provided, however, that such State insurer or national insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the State insurer's or national insurer's license and assessments levied after the termination or expiration, with respect to such State insurer or national insurer that becomes an insolvent insurer prior to the termination or expiration of the State insurer's or national insurer's license.

(7) NET DIRECT WRITTEN PREMIUMS.—The term ''net direct written premiums'' means direct gross premiums less return premiums written in a nonqualifying State to which this subtitle applies and dividends paid or credited to policyholders on that direct business. Such term does not include premiums on contracts between insurers or reinsurers.

(8) NON-QUALIFYING STATE.—The term ''nonqualifying State'' means a State that is not a qualified State as defined in section 1022.

(9) RECEIVERSHIP COURT.—In the case of a State insurer, the term ''receivership court'' means

the court having jurisdiction over the conservation, rehabilitation or liquidation of the insurer. In the case of a national insurer holding a Federal license under this Act, such term means the United States district court or other United States court having jurisdiction over the receivership proceedings involving such national insurer.

(10) STATE COMMISSIONER.—The term ''State commissioner'' means the chief insurance regulatory official of a State.

SEC. 1021. NATIONAL INSURER PARTICIPATION IN QUALIFIED STATE ASSOCIATIONS.

(a) QUALIFIED STATE ASSOCIATION MEMBERSHIP.—A national insurer holding a Federal license to issue property and casualty insurance must, as a condition of its authority to transact business, become and continue as a member of a qualified State's association in each State in which the national insurer is doing business.

(b) DEFINITION OF DOING BUSINESS.—A national insurer is doing business in a State for purposes of this subtitle if it has any policies on property with a permanent location in the State, collects premiums from a policyowner resident in the State, or has current obligations to policyowners or beneficiaries of policies in that State.

SEC. 1022. QUALIFIED STATE DEFINED.

(a) QUALIFIED STATE DEFINED.—For purposes of this subtitle, the term ''qualified State'' means a State which has established an association—

(1) that provides protection for covered claims in the event of insolvency of any national insurer or State insurer doing business in the State that meets or exceeds the standards set forth in sections 1025, 1026, and 1027; and

(2) which has been determined by the Director to comply with the standards set forth in sections 1025, 1026, and 1027, and such determination has not been revoked.

(b) DEEMED COMPLIANCE.—An association shall be deemed in compliance with the requirements of subsection (a) until 3 years after the effective date of this Act, following which date an association must meet those requirements. An association that is determined by the Director not to meet the standards required in subsection (a) at any time on or after 3 years following the effective date of this Act shall be preempted by this subtitle. The Director may, for good cause, extend this 3-year period for not more than 6 months as to any association. The Director shall notify an association's board of directors and the relevant State's State commissioner that the association's qualification under subsection (a) has been revoked for the

reasons stated, effective 90 days following the date of such notification.

SEC. 1023. TRANSITION RULES WHEN ASSOCIATION PREEMPTED.

In the event an association's qualification is revoked under section 1022 following a date on which a member insurer of that association has been determined to be insolvent, for insolvencies occurring on or before the date on which the standard benefits of this title apply, and prior to a termination of receivership proceedings—

(1) the Director shall develop a plan, in consultation with the association and the relevant State's State commissioner, to provide appropriate coverage to covered claims, and assessments appropriate to the line of insurance affected, which plan may include coverage provided in whole or in part by the corporation;

(2) such plan shall incorporate appropriate adjustments in the event payments for claims have been made under the association's coverage, including the adjustment of claims transferred to, and assumption of liabilities by, succeeding insurance companies; and

(3) appropriate supplemental assessments, if necessary, may be made pursuant to section 1027,

by the corporation as the Director finds necessary to effect the change in benefits provided under this subtitle.

SEC. 1024. ESTABLISHMENT OF THE NATIONAL PROPERTY AND CASUALTY INSURANCE GUARANTY CORPORATION; PROTECTION FOR RESIDENTS IN PREEMPTED STATES.

(a) ESTABLISHMENT OF THE CORPORATION.—There is established the National Property and Casualty Insurance Guaranty Corporation. The corporation shall be a nonprofit corporation and shall have succession until dissolved by Act of the Congress. The corporation—

(1) shall not be an agency or instrumentality of the United States Government; and

(2) except as otherwise provided in this subtitle, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act (section 29–301.01 et seq., D.C. Official Code).

(b) MEMBERSHIP IN THE CORPORATION.—The membership of the corporation shall consist of all member insurers.

(c) CORPORATE GOVERNANCE.—

(1) BOARD OF DIRECTORS.—The board of directors of the corporation shall be the governing

1 body of the corporation and shall be vested with all
2 powers necessary for the management and adminis-
3 tration of the affairs of the corporation and the pro-
4 motion of its purposes as authorized by this Act.
5 The board's authority shall be specified in the by-
6 laws of the corporation.

7 (2) INITIAL BOARD.—The initial board of the
8 corporation shall be elected by the membership of
9 the corporation, provided that if the membership
10 fails to elect the initial board of the corporation
11 within 3 years of the effective date of this Act, then
12 the initial board shall be appointed by the Director.
13 Membership on the board shall be fairly representa-
14 tive of member insurers of differing size and lines of
15 business written.

16 (3) BYLAWS AND RULES.—The Director shall
17 prescribe the initial bylaws and rules governing the
18 corporation which shall set forth the composition of
19 the board, the term of board members, filling of
20 board vacancies, board compensation, election of of-
21 ficers and procedures to call board meetings, and all
22 matters necessary for the governance of the corpora-
23 tion not addressed by the District of Columbia Non-
24 profit Corporation Act.

(4) AMENDMENTS TO BYLAWS AND RULES.—Amendments to the bylaws and rules of the corporation following the establishment of the initial bylaws and rules as provided in paragraph (3) shall be adopted by the board of the corporation following the approval thereof by the Director.

(d) RELATIONSHIP OF CORPORATION TO THE FEDERAL GOVERNMENT.—

(1) The corporation shall be subject to supervision and oversight of the Director.

(2) The obligations of the corporation shall not be backed, directly or indirectly, by the full faith and credit of the United States. The corporation shall receive no financial assistance from or have any authority to borrow from the United States.

(3) Funds held by or due to the corporation shall not be included in the budget of the United States, nor may the United States borrow or pledge such funds.

(e) CORPORATION TO PROVIDE PROTECTION IN PREEMPTED STATES.—The corporation shall provide the protections under this subtitle for covered claims in any State in which the operations and activities of the association have been preempted pursuant to section 1022.

(f) CONTRACTING WITH PERSON TO ADMINISTER BENEFITS.—The corporation may, with the approval of the Director, contract with another person to administer the claims submitted to the corporation under this subtitle.

(g) FUNDING OF CLAIMS.—Funds for the provision of covered claims by the corporation shall be in accordance with the formulas and procedures, and subject to the limitations of, section 1027. Premiums and other considerations for purposes of such assessments shall include all nationwide premiums of national insurers on the covered lines of business.

SEC. 1025. PROTECTIONS AGAINST INSOLVENCY; COVERAGE AND LIMITATIONS.

(a) COVERED CLAIMS.—This subtitle shall provide coverage for covered claims on policies specified in subsection (b)—

(1) existing prior to the order of liquidation,

(2) arising within thirty (30) days after the order of liquidation,

(3) arising before the policy expiration date if less than thirty (30) days after the order or liquidation, or

(4) arising before the insured replaces the policy or causes its cancellation, if the insured does so within thirty (30) days of the order of liquidation.

(b) POLICIES COVERED.—

(1) SCOPE.—This subtitle shall provide coverage to the claims specified in subsection (a) for all kinds of direct insurance, other than—

(A) life, annuity or disability insurance;

(B) mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;

(C) fidelity or surety bonds, or any other bonding obligations;

(D) credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;

(E) insurance of warranties or service contracts including insurance that provides for the repair, replacement or service of goods or property, indemnification for repair, replacement or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear,

or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits;

(F) title insurance;

(G) ocean marine insurance;

(H) any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or

(I) any insurance provided by or guaranteed by government.

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term ''financial guaranty insurance'' includes—

(i) failure of any obligor or obligors on any debt instrument or other monetary obligation, including common or preferred stock, to pay when due the principal, interest, dividend or purchase price of such instrument or obligation, whether failure is the result of a financial default or insolvency and whether or not the obligation is

1 incurred directly or as guarantor by, or on
2 behalf of, another obligor which has also
3 defaulted;
4 (ii) changes in the level of interest
5 rates whether short-term or long-term, or
6 in the difference between interest rates ex-
7 isting in various markets;
8 (iii) changes in the rate of exchange
9 of currency, or from the inconvertibility of
10 one currency into another for any reason;
11 and
12 (iv) changes in the value of specific
13 assets or commodities, or price levels in
14 general.
15 (B) The term ''credit insurance'' means in-
16 surance on accounts receivable.
17 (C) The term ''ocean marine insurance''
18 means any form of insurance, regardless of the
19 name, label or marketing designation of the in-
20 surance policy, which insures against maritime
21 perils or risks and other related perils or risks,
22 which are usually insured against by traditional
23 marine insurance, such as hull and machinery,
24 marine builders risk, and marine protection and
25 indemnity. Perils and risk insured against in-

1 clude without limitation loss, damage, expense
2 or legal liability of the insured for loss, damage
3 or expense arising out of or incident to owner-
4 ship, operation, chartering, maintenance, use,
5 repair or construction of any vessel, craft or in-
6 strumentality in use in ocean or inland water-
7 ways for commercial purposes, including liabil-
8 ity of the insured for personal liability of the in-
9 sured for personal injury, illness or death or for
10 loss of damage to the property of the insured
11 or another person.
12 (c) COVERAGE LIMITATIONS.—
13 (1) IN GENERAL.—The obligation to a claimant
14 under this subtitle shall be satisfied by paying to the
15 claimant—
16 (A) the full amount of a covered claim for
17 the benefits under a workers' compensation in-
18 surance coverage; and
19 (B) an amount not exceeding $10,000 per
20 policy for a covered claim for the return of un-
21 earned premiums;
22 (2) OTHER LIMITATIONS.—In no event shall a
23 claimant be entitled to an amount in excess of the
24 obligation of the insolvent insurer under the policy
25 or coverage from which the claim arises. Notwith-

standing any other provisions of this subtitle, a covered claim shall not include a claim filed after the final date set by the receivership court for the filing of claims against the liquidator or receiver of an insolvent insurer.

SEC. 1026. BOARD OF DIRECTORS.

The board of directors of a qualifying State's association shall provide for representation of insurers on a basis that does not unfairly discriminate against national insurers or against insurers domiciled in other jurisdictions, and shall be fairly representative of insurers of differing sizes and lines of insurance written. State commissioners shall be member insurers and may be represented by officers at the discretion of the member insurer.

SEC. 1027. POWERS AND DUTIES OF THE CORPORATION.

(a) For purposes of administration and assessment, the corporation shall establish three separate accounts as follows:

(1) A workers' compensation insurance account.

(2) An automobile insurance account.

(3) An account for all other insurance to which this subtitle applies.

(b)(1) The corporation shall be deemed the national insurer to the extent of its obligation on covered claims and to that extent shall have all rights, duties and obliga-

1 tions of the insolvent insurer as if the national insurer
2 had not become insolvent, including but not limited to the
3 right to pursue and retain salvage and subrogation recov-
4 erable on covered claims obligations to the extent paid by
5 the corporation.

6 (2) The corporation shall allocate claims paid and ex-
7 penses incurred among the 3 accounts separately, and as-
8 sess member insurers separately for each account,
9 amounts necessary to pay the obligations of the associa-
10 tion under section 1025(c) subsequent to an insolvency,
11 the expenses of handling covered claims subsequent to an
12 insolvency, and other expenses authorized by this Act, as
13 follows:

14 (A) PROPORTION.—The assessments of each
15 member insurer shall be in the proportion that the
16 net direct written premiums of the member insurer
17 for the calendar year preceding the assessment on
18 the kinds of insurance in the account bears to the
19 net direct written premiums of all member insurers
20 for the calendar year preceding the assessment on
21 the kinds of insurance in the account.

22 (B) NOTIFICATION.—Each member insurer
23 shall be notified of the assessment not later than
24 thirty (30) days before it is due.

1 (C) LIMITATION.—A member insurer may not
2 be assessed in any one year on any account an
3 amount greater than two percent (2%) of that mem-
4 ber insurer's net direct written premiums for the
5 calendar year preceding the assessment on the kinds
6 of insurance in the account. If the maximum assess-
7 ment, together with the other assets of the corpora-
8 tion in any account, does not provide in any one
9 year in any account an amount sufficient to make all
10 necessary payments from that account, the funds
11 available shall be pro-rated and the unpaid portion
12 shall be paid as soon thereafter as funds become
13 available.
14 (D) PAYMENT OF CLAIMS.—The corporation
15 shall pay claims in any order which it deems reason-
16 able, including the payment of claims as they are re-
17 ceived from the claimants or in groups or categories
18 of claims.
19 (E) EXEMPTION; DEFERRAL.—The corporation
20 may exempt or defer, in whole or in part, the assess-
21 ment of a member insurer, if the assessment would
22 cause the member insurer's financial statement to
23 reflect amounts of capital or surplus less than the
24 minimum amounts required for a certificate of au-
25 thority by a jurisdiction in which the member in-

1 surer is authorized to transact insurance. However,
2 during the period of deferment no dividends shall be
3 paid to shareholders or policyholders. Deferred as-
4 sessments shall be paid when the payment will not
5 reduce capital or surplus below required minimums.
6 (F) Refund.—Payments shall be refunded to
7 those member insurers receiving larger assessments
8 by virtue of such deferment, or at the election of the
9 member insurer, credited against future assess-
10 ments.
11 (G) SET OFF.—A member insurer may set off
12 against any assessment, authorized payments made
13 on covered claims and expenses incurred in the pay-
14 ment of claims by the member insurer if they are
15 chargeable to the account for which the assessment
16 is made.
17 (3) The corporation shall investigate claims brought
18 against the corporation and adjust, compromise, settle and
19 pay covered claims to the extent of the corporation's obli-
20 gation and deny all other claims. The corporation may re-
21 view settlements, releases and judgments to which the in-
22 solvent insurer or its insureds were parties to determine
23 the extent to which the settlements, releases and judg-
24 ments may be properly contested. The corporation shall
25 have the right to appoint or substitute and to direct legal

1 counsel retained under liability insurance policies for the
2 defense of covered claims.
3 (4) The corporation shall notify claimants in this
4 State as deemed necessary by the Director, to the extent
5 records are available to the corporation.
6 (5) The corporation shall handle claims through its
7 employees or through one or more insurers or through one
8 or more insurers or other persons designated as servicing
9 facilities. Designation of a servicing facility is subject to
10 the approval of the Director, but the designation may be
11 declined by a member insurer.
12 (6) The corporation shall reimburse each servicing fa-
13 cility for obligations of the corporation paid by the facility
14 and for expenses incurred by the facility while handling
15 claims on behalf of the corporation and shall pay the other
16 expenses of the corporation authorized by this Act.
17 (b) OTHER POWERS.—The corporation may:
18 (1) Employ or retain persons necessary to han-
19 dle claims and perform other duties of the corpora-
20 tion.
21 (2) Borrow funds necessary to affect the pur-
22 poses of this Act in accordance with the plan of op-
23 eration.
24 (3) Sue or be sued.

(4) Negotiate and become a party to contracts necessary to carry out the purpose of this Act.

(5) Perform other acts necessary or proper to effectuate the purpose of this Act.

(6) Refund to member insurers in proportion to the contribution of each member insurer to the corporation that amount by which the assets of the corporation exceed the liabilities, if at the end of any calendar year, the board of directors finds that the assets of the corporation exceed the liabilities of the corporation as estimated by the board of directors for the coming year.

SEC. 1028. DUTIES AND POWERS OF DIRECTOR.

(a) DIRECTOR'S DUTIES AND POWERS.—The Director shall—

(1) notify the corporation of the existence of an insolvent insurer not later than three days after the Director receives notice of the determination of the insolvency. The corporation shall be entitled to a copy of a complaint seeking an order of liquidation with a finding of insolvency against a member insurer at the same time that the complaint is filed with a court of competent jurisdiction; and

(2) provide the corporation with a statement of the net direct written premiums of each member insurer upon request of the board of directors.

(b) ADDITIONALLY DUTIES AND POWERS.—The Director may—

(1) suspend or revoke, after notice and hearing, the Federal license of a national insurer that fails to pay an assessment when due; or

(2) levy a fine on a member insurer that fails to pay an assessment, not to exceed five percent of the unpaid assessment per month, except that a fine shall not be less than $100 per month.

(c) JUDICIAL REVIEW.—A final action or order of the Director under this subtitle shall be subject to judicial review under the terms of section 803.

SEC. 1029. EFFECT OF PAID CLAIMS.

(a) IN GENERAL.—A person recovering under this subtitle shall be deemed to have assigned any rights under the policy to the corporation to the extent of his or her recovery from the corporation. Every insured or claimant seeking the protection of this subtitle shall cooperate with the corporation to the same extent as the person would have been required to cooperate with the insolvent insurer. The corporation shall have no cause of action against the insured of the insolvent insurer for sums it has paid out

1 except causes of action the insolvent insurer would have
2 had if the sums had been paid by the insolvent insurer
3 and except as provided in subsection (b). In the case of
4 an insolvent insurer subject to assessment liability, the
5 payments of claims of the corporation shall not operate
6 to reduce the liability of the insureds to the receiver, liqui-
7 dator, or statutory successor for unpaid assessments.

8 (b) RIGHT TO RECOVER.—The corporation shall have
9 the right to recover from the following persons the amount
10 of any covered claim paid on behalf of the person pursuant
11 to this subtitle—

12 (1) an insured whose net worth on December
13 31 of the year immediately preceding the date the
14 member insurer becomes an insolvent insurer ex-
15 ceeds $50 million and whose liability obligations to
16 other persons are satisfied in whole or in part by
17 payments made under this subtitle; and

18 (2) any person who is an affiliate of the insol-
19 vent insurer and whose liability obligations to other
20 persons are satisfied in whose or in part by pay-
21 ments made under this subtitle.

22 (c) CORPORATION AS CLAIMANT.—The corporation
23 shall be recognized as a claimant in the liquidation of an
24 insolvent insurer for amounts paid by the corporation on
25 covered claims as determined under this subtitle and shall

1 receive dividends and other distributions at the priority
2 established by section 975, or applicable state law. The
3 receiver, liquidator or statutory successor of an insolvent
4 insurer shall be bound by determinations of covered claim
5 eligibility under this subtitle and by settlement of claims
6 made by the corporation to the extent such determinations
7 or settlements satisfy obligations of the corporation. The
8 receiver shall not be bound in any way by such determina-
9 tions or settlements to the extent there remains a claim
10 against the insolvent insurer. The receivership court shall
11 grant the claims priority equal to that which the claimant
12 would have been entitled against the assets of the insolvent
13 insurer in the absence of this subtitle.

14 (d) FILINGS.—The corporation shall periodically file
15 with the receiver or liquidator of the insolvent insurer
16 statements of the covered claims paid by the corporation
17 and estimates of anticipated claims on the corporation
18 which shall preserve the rights of the corporation against
19 the assets of the insolvent insurer.

20 **SEC. 1030. EXHAUSTION OF OTHER COVERAGE.**

21 (a) IN GENERAL.—Any person having a claim
22 against an insolvent insurer, whether or not the insurer
23 is a member insurer, under any provision in an insurance
24 policy other than a policy of an insolvent insurer which
25 is also a covered claim, shall be required to exhaust first

his or her rights under the policy. An amount payable on a covered claim under this subtitle shall be reduced by the amount of recovery under the insurance policy.

(b) MULTIPLE ASSOCIATIONS.—A person having a claim which may be recovered from more than one association in a qualifying or nonqualifying State, or from one or more such associations and the corporation, shall seek recovery first from the association of the place of residence of the insured (or, if the insured resides in a nonqualifying State, from the corporation), except that if it is a first party claim for damages to property with a permanent location, the person shall seek recovery first from the association of the location of the property. If it is a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant (or, if the claimant resides in a nonqualifying State, from the corporation). A recovery under this subtitle shall be reduced by the amount of recovery from another association.

SEC. 1031. COOPERATION BETWEEN DIRECTOR AND STATE COMMISSIONERS.

(a) NOTICE TO STATE COMMISSIONERS.—The Director shall notify the State commissioner in each State in which a national insurer is doing business within 30 days of taking any of the following actions against a national insurer—

(1) revocation or suspension of the national insurer's authority to transact insurance;

(2) the entry of a formal order that the national insurer restrict its premium writing, obtain additional contributions to surplus, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyowners or creditors; or

(3) the Director has reasonable cause to believe from an examination, whether completed or in process, of any national insurer that such national insurer may be an insolvent insurer.

(b) NOTICE TO DIRECTOR.—Each State commissioner shall notify the Director when any action listed in subsection (a)(1) is taken or condition is believed to exist with respect to a State insurer that is a member insurer.

(c) REPORT TO ASSOCIATIONS.—The Director shall also report to the boards of directors of the appropriate associations when the Director has taken any of the actions set forth in subsection (a). Any report to the boards of directors shall contain all significant details of the action taken and may be provided with the cooperation of the corporation.

(d) OBLIGATIONS OF THE CORPORATION.—The corporation may make reports and recommendations to the

Director, as appropriate, upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. The reports and recommendations shall not be considered public documents. The corporation shall also provide such information and advice as requested by the Director when providing protection and benefits under this title in a nonqualifying State.

(e) NOTICE BY THE CORPORATION.—The corporation may notify the Director of any information indicating a member insurer in a nonqualifying State may be an insolvent insurer.

SEC. 1032. PROHIBITED DISCRIMINATION IN TAX TREATMENT.

No State law may discriminate between national insurers and other insurers with respect to deductions or offsets of assessments against premium, franchise or income tax liability to the State, and any State law that does so shall not be effective.

SEC. 1033. EXAMINATION OF THE CORPORATION; ANNUAL REPORT.

The corporation shall be subject to examination and regulation by the Director. The corporation shall submit to the Director each year, not later than 120 days after the end of its fiscal year, a financial report in a form approved by the Director and a report of its activities during

the preceding fiscal year, as they relate to the duties and functions carried out under this subtitle.

SEC. 1034. IMMUNITY.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the corporation or its agents or employees, members of the board of directors, or the Director or the Director's representatives, for any action or omission by them in the performance of their powers and duties under this subtitle.

SEC. 1035. STAY OF PROCEEDINGS.

(a) STAY.—All proceedings in which an insolvent insurer is a party in any Federal or State court shall, subject to waiver by the corporation in specific cases involving covered claims, be stayed for six (6) months and additional time that may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted, whichever is later, to permit proper defense by the corporation of all pending causes of action. As to covered claims arising from a judgment under decision, verdict or finding based on the default of an insolvent insurer or its failure to defend an insured, the corporation, either on its own behalf or on behalf on an insured, may apply to have the judgment, order, decision, verdict or finding set aside by the same court or administrator that made

the judgment, order, decision, verdict or finding and shall be permitted to defend the claim on the merits.

(b) RECORDS.—The liquidator, receiver or statutory successor of an insolvent insurer covered by this subtitle shall permit access by the corporation or its authorized representative to the insolvent insurer's records which are necessary for the corporation in carrying out its functions under this subtitle with regard to covered claims. The liquidator, receiver, or statutory successor shall provide the corporation or its representative with copies of those records upon the request of the corporation and at the expense of the corporation.

TITLE XI—EFFECTIVE DATE

SEC. 1101. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act, this Act shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this Act.