

[DISCUSSION DRAFT]

111TH CONGRESS
1ST SESSION

H. R. _____

To establish a system of regulation and supervision for insurers, insurance agencies, and insurance producers chartered or licensed under Federal law that ensures the stability and financial integrity of those insurers, agencies, and producers and that protects policyholders and other consumers served by such insurers, agencies, or producers.

IN THE HOUSE OF REPRESENTATIVES

Ms. BEAN (for herself and Mr. ROYCE) introduced the following bill; which was referred to the Committee on _____

A BILL

To establish a system of regulation and supervision for insurers, insurance agencies, and insurance producers chartered or licensed under Federal law that ensures the stability and financial integrity of those insurers, agencies, and producers and that protects policyholders and other consumers served by such insurers, agencies, or producers.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “National Insurance Consumer Protection Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—OFFICE OF NATIONAL INSURANCE

**Subtitle A—Establishment of Office and Appointment of National Insurance
Commissioner**

- Sec. 101. Establishment of office and appointment of National Insurance Com-
missioner.
- Sec. 102. Duties and powers of the commissioner.
- Sec. 103. Independence and GAO audit.
- Sec. 104. Office personnel matters.
- Sec. 105. Division of Consumer Affairs.
- Sec. 106. Insurance self-regulatory organizations.
- Sec. 107. Office of the Ombudsman.
- Sec. 108. Relationship to State law.

**Subtitle B—Supervision of National Insurers and National Insurance
Agencies**

- Sec. 111. Prudential supervision.
- Sec. 112. Examinations.
- Sec. 113. Reports.
- Sec. 114. Annual assessments and other fees.
- Sec. 115. Appropriations during start-up period.
- Sec. 116. Disclosure of information.
- Sec. 117. Anti-money laundering compliance.

Subtitle C—Enforcement Powers of Commissioner

- Sec. 121. Revocation or suspension of charter or license.
- Sec. 122. Other enforcement powers.
- Sec. 123. Insurance fraud.
- Sec. 124. Foreign investigations.
- Sec. 125. Prompt corrective action.

**TITLE II—SYSTEMIC RISK REGULATION, COORDINATING COUNCIL
FOR FINANCIAL REGULATORS, INTERNATIONAL AGREEMENTS**

- Sec. 201. Systemic risk regulation.
- Sec. 202. Coordinating council for financial regulators.
- Sec. 203. International agreements.

**TITLE III—NATIONAL INSURANCE COMPANIES AND NATIONAL
INSURANCE AGENCIES**

Subtitle A—Organization, Chartering, and Powers

- Sec. 301. Organization and chartering.
- Sec. 302. Corporate governance.
- Sec. 303. Charter conversions.
- Sec. 304. Powers.
- Sec. 305. Chartering commencement date.

Subtitle B—Financial, Policy and Market Conduct Standards

- Sec. 311. Financial standards.
- Sec. 312. Policy standards.
- Sec. 313. Market conduct standards.
- Sec. 314. General principles.

Subtitle C—State Taxation

- Sec. 321. State taxation of national insurers.
- Sec. 322. State taxation of national insurance agencies.
- Sec. 323. State taxation of nonadmitted and surplus lines of insurance.

TITLE IV—NATIONAL INSURANCE PRODUCERS

- Sec. 401. Licensing of national insurance producers.
- Sec. 402. Supervision and examination.
- Sec. 403. Producer database.
- Sec. 404. Duty to supervise.
- Sec. 405. Relationship to State law.
- Sec. 406. Licensing commencement date.

TITLE V—CHANGE IN CONTROL AND INSURANCE HOLDING COMPANIES

- Sec. 501. Change in control.
- Sec. 502. Reports by and examinations of insurance holding companies.
- Sec. 503. Activities of insurance holding companies and subsidiaries.
- Sec. 504. Capital, liquidity, dividend, operational, and other standards.
- Sec. 505. Affiliate transactions.
- Sec. 506. Relationship to other laws.
- Sec. 507. No delegation permitted.

TITLE VI—CONSERVATORSHIP, RECEIVERSHIP, THE PAYMENT OF BENEFITS AND CLAIMS TO POLICYHOLDERS, AND ASSESSMENTS ON NATIONAL INSURERS

- Sec. 601. Appointment of Corporation as conservator or receiver.
- Sec. 602. Establishment of the National Insurance Guaranty Corporation.
- Sec. 603. Payment of claims to policyholders of national insurers.
- Sec. 604. Assessments of national insurers.
- Sec. 605. Participation in State guaranty associations.
- Sec. 606. Report to Congress.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Applicable law.
- Sec. 702. Application of the Federal antitrust laws.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to ensure the financial stability and integ-
4 rity of national insurers, national insurance agen-
5 cies, and national insurance producers through a
6 comprehensive system of national supervision and
7 regulation; and

8 (2) to ensure the fair and equitable treatment
9 of policyholders, claimants, and other consumers
10 served by national insurers, national insurance agen-
11 cies, and national insurance producers.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **AFFILIATE.**—The term “affiliate” means
15 any person that controls, is controlled by, or is
16 under common control with another person.

17 (2) **ANNUITY.**—The term “annuity” means all
18 agreements to make periodical payments for a period
19 certain or where the making or continuance of all or
20 some of a series of such payments, or the amount
21 of any such payment, depends upon the continuance
22 of human life.

23 (3) **BUSINESS OF INSURANCE.**—The term
24 “business of insurance” has the meaning given such
25 term in section 1033(f) of title 18, United States
26 Code.

1 (4) COMMISSIONER.—The term “Commis-
2 sioner” means the National Insurance Commissioner
3 appointed under section 101.

4 (5) COMPANY.—The term “company” means
5 any corporation, partnership, business trust, associa-
6 tion, or similar organization.

7 (6) CONTROL.—The term “control” means the
8 power, direct or indirect, of a person to direct the
9 management or policies of a national insurer or na-
10 tional insurance agency or to vote 25 percent or
11 more of any class of voting securities of a national
12 insurer or national insurance agency.

13 (7) CORPORATION.—The term “Corporation”
14 means the National Insurance Guaranty Corporation
15 established under section 601.

16 (8) FEDERAL BANKING AGENCIES.—The term
17 “Federal banking agencies” means the Office of the
18 Comptroller of the Currency, the Board of Gov-
19 ernors of the Federal Reserve System, the Federal
20 Deposit Insurance Corporation, and the Office of
21 Thrift Supervision.

22 (9) INSURANCE HOLDING COMPANY.—The term
23 “insurance holding company” means a company that
24 controls a national insurer or national insurance
25 agency.

1 (10) INSURANCE OPERATIONS.—The term “in-
2 surance operations” includes—

3 (A) the business of insurance;

4 (B) all acts and transactions relating to
5 the sale, solicitation, negotiation, and under-
6 writing of insurance;

7 (C) all acts and transactions relating to
8 claims adjustment and settlement;

9 (D) all acts and transactions relating to
10 the establishment of rates, rules, risk classifica-
11 tions, rating classifications, rating territories,
12 and forms (including, endorsements,
13 addendums, and policy language) for insurance;

14 (E) all acts and transactions relating to
15 marketing and sales practices;

16 (F) financial condition and solvency;

17 (G) holding company transactions; and

18 (H) corporate governance.

19 (11) INSURANCE PRODUCER.—The term “in-
20 surance producer” means any person that sells, so-
21 licits, or negotiates policies of insurance, non-
22 admitted insurance, and surplus lines of insurance,
23 but does not include a person that provides adminis-
24 trative services to an insurer.

1 (12) INSURER-AFFILIATED PARTY.—The term
2 “insurer-affiliated party” means—

3 (A) any director, officer, employee, or con-
4 trolling shareholder of, or agent for, a national
5 insurer or a national insurance agency;

6 (B) any shareholder, consultant, joint ven-
7 ture partner, and any other person as deter-
8 mined by the Commissioner who participates in
9 the conduct of the affairs of a national insurer
10 or a national insurance agency; and

11 (C) any independent contractor (including
12 any attorney, actuary, or accountant) of a na-
13 tional insurer or a national insurance agency
14 who in that capacity knowingly or recklessly
15 participates in any violation of any law or regu-
16 lation, any breach of fiduciary duty, or any con-
17 duct that involves an undue risk of loss to the
18 policyholders of a national insurer, and which
19 violation, breach, or conduct caused or is likely
20 to cause more than a minimal financial loss to,
21 or a significant adverse effect on, a national in-
22 surer or the policyholders of a national insurer.

23 (13) INSURER IN FRATERNAL FORM.—The
24 term “insurer in fraternal form” means an incor-

1 porated society, order, or supreme lodge without
2 capital stock that—

3 (A) is conducted solely for the benefit of
4 its members and their beneficiaries and not for
5 profit;

6 (B) is operated on a lodge system with rit-
7 ualistic form of work;

8 (C) has a representative form of govern-
9 ment;

10 (D) provides benefits to members and their
11 dependents; and

12 (E) operates for one or more social, intel-
13 lectual, educational, charitable, benevolent,
14 moral, fraternal, patriotic, or religious purposes
15 for the benefit of its members, which may also
16 be extended to others.

17 (14) LIFE INSURANCE.—The term “life insur-
18 ance” means every insurance upon the lives of
19 human beings, and every insurance appertaining
20 thereto, including disability, long-term care insur-
21 ance, and supplemental health insurance.

22 (15) NAIC.—The term “NAIC” means the Na-
23 tional Association of Insurance Commissioners.

1 (16) NATIONAL INSURANCE AGENCY.—The
2 term “national insurance agency” means a national
3 insurance agency chartered under section 301.

4 (17) NATIONAL INSURER.—The term “national
5 insurer” means a national insurance company char-
6 tered under section 301.

7 (18) NATIONAL LIFE INSURER.—The term “na-
8 tional life insurer” means a national insurer that is
9 chartered under section 301 to sell, solicit, negotiate,
10 and underwrite life insurance, annuities, disability
11 income insurance, long-term care insurance, funding
12 agreements, or supplemental health insurance.

13 (19) NATIONAL PRODUCER.—The term “na-
14 tional producer” means a national insurance agent
15 or broker licensed under section 401.

16 (20) NONADMITTED INSURANCE.—The term
17 “nonadmitted insurance” means property and cas-
18 ualty insurance permitted by the Commissioner to be
19 placed directly or through an insurance producer
20 with a nonadmitted insurer eligible to accept such
21 insurance.

22 (21) NONADMITTED INSURER.—The term
23 “nonadmitted insurer” means an insurer that is not
24 licensed to engage in the business of insurance in a
25 State and that—

1 (A) satisfies the eligibility requirements of
2 the State in which an insured maintains its
3 principal place of business, or, in the case of an
4 individual, maintains a principal residence; and

5 (B) is not a national insurer.

6 (22) OFFICE.—The term “Office” means the
7 Office of National Insurance established under sec-
8 tion 101.

9 (23) PERSON.—The term “person” means any
10 natural person, business entity, governmental body
11 or entity, voluntary organization, or similar organi-
12 zation.

13 (24) POLICY.—The term “policy” means a pol-
14 icy, contract, certificate, or other evidence of insur-
15 ance, or an annuity contract or a rider or endorse-
16 ment thereto, but does not include a funding agree-
17 ment, a reinsurance contract, or an agreement, spe-
18 cial rider, or endorsement relating only to the man-
19 ner of distributing benefits or to the reservation of
20 rights and benefits used at the request of the indi-
21 vidual policyholder.

22 (25) PROPERTY AND CASUALTY INSURANCE.—
23 The term “property and casualty insurance” means
24 a policy that insures, guarantees, or indemnifies
25 against liability, loss of life, loss of health, or loss

1 through damage to or destruction of property, in-
2 cluding surety bonds, private passenger or commer-
3 cial automobile, homeowners, mortgage guaranty, fi-
4 nancial guaranty, commercial multiperil, general li-
5 ability, professional liability, workers' compensation,
6 fire and allied lines, farm or ranch owners,
7 multiperil, aircraft, fidelity, surety, medical mal-
8 practice, ocean marine, inland marine, and boiler
9 and machinery insurance.

10 (26) PROTECTED CELL.—The term “protected
11 cell” means an identified pool of assets and liabil-
12 ities of a national insurer segregated and insulated
13 from the remainder of the national insurer’s assets
14 and liabilities.

15 (27) SUPPLEMENTAL HEALTH INSURANCE.—
16 The term “supplemental health insurance” means a
17 group or individual policy that provides coverage for
18 hospital, medical or surgical benefits and is sold sep-
19 arately and not dependent upon comprehensive
20 health or medical insurance, including a policy for
21 accidents, accidental death and dismemberment,
22 credit disability, dread disease, dental, hospital acci-
23 dent, hospital indemnity, hospital confinement in-
24 demnity, limited benefit medical, medical/surgical

1 policies, Medicare supplement, retiree medical, spe-
2 cific treatment policies, travel, and vision.

3 (28) STATE.—The term “State” means each of
4 the 50 States, the District of Columbia, the Com-
5 monwealth of Puerto Rico, any territory of the
6 United States, Guam, American Samoa, the Trust
7 Territory of the Pacific Islands, the United States
8 Virgin Islands, and the Commonwealth of the North-
9 ern Mariana Islands.

10 (29) SURPLUS LINES OF INSURANCE.—The
11 term “surplus lines of insurance” means insurance
12 on properties, risks, or exposures located or to be
13 performed in a State with a nonadmitted insurer
14 that is sold, solicited, or negotiated by a national in-
15 surance agency, national insurance producer, or
16 other insurance producer.

17 (30) TITLE INSURANCE.—The term “title in-
18 surance” or “business of title insurance” means any
19 of the following:

20 (A) A contract insuring or indemnifying
21 the owners of real or personal property, or
22 other persons lawfully interested therein,
23 against loss or damage arising from any of the
24 following conditions, or the reinsurance thereof:

1 (i) Defects in or any liens or encum-
2 brances on the insured title.

3 (ii) Unmarketability of the insured
4 title.

5 (iii) Invalidity, lack of priority, or un-
6 enforceability of any liens or encumbrances
7 on the stated property.

8 (iv) Lack of legal right of access to
9 the land.

10 (v) Unenforceability of rights in title
11 to the real or personal property.

12 (B) Insuring the correctness of searches
13 and examinations of all instruments, liens, or
14 charges affecting the title to real or personal
15 property.

16 (C) Procuring and furnishing information
17 relative to the title to real or personal property,
18 including abstracting, searching, and examining
19 titles.

20 (D) Handling escrows, settlements, or clos-
21 ings done in conjunction with subparagraph
22 (A), (B), (C), (E), or (F).

23 (E) Any product or service defined by the
24 laws of any State as title insurance.

1 (F) Doing or proposing to do any business
2 substantially equivalent to any of the activities
3 described in this paragraph, in a manner de-
4 signed to evade the provisions of this Act.

5 (31) TITLE INSURER.—The term “title insurer”
6 means a company organized under the laws of a
7 State for the purpose of conducting the business of
8 title insurance.

9 **TITLE I—OFFICE OF NATIONAL**
10 **INSURANCE**
11 **Subtitle A—Establishment of Office**
12 **and Appointment of National In-**
13 **urance Commissioner**

14 **SEC. 101. ESTABLISHMENT OF OFFICE AND APPOINTMENT**
15 **OF NATIONAL INSURANCE COMMISSIONER.**

16 (a) IN GENERAL.—There is established in the De-
17 partment of the Treasury the Office of National Insur-
18 ance.

19 (b) NATIONAL INSURANCE COMMISSIONER.—

20 (1) IN GENERAL.—There is established the po-
21 sition of the National Insurance Commissioner, who
22 shall be the head of the Office.

23 (2) APPOINTMENT.—The Commissioner shall be
24 appointed by the President, by and with the advice
25 and consent of the Senate, from among individuals

1 who are citizens of the United States, for a term of
2 5 years, unless removed before the end of such term
3 for cause by the President.

4 (3) VACANCY.—A vacancy in the position of the
5 Commissioner shall be filled in the manner estab-
6 lished under paragraph (2). The Commissioner ap-
7 pointed to fill the vacancy shall be appointed only
8 for the remainder of the term of the preceding Com-
9 missioner.

10 (4) SERVICE AFTER TERM.—An individual may
11 serve as the Commissioner after the expiration of
12 the term for which appointed until such time as a
13 successor has been appointed in accordance with
14 paragraph (2).

15 (5) PROHIBITION ON FINANCIAL INTERESTS.—
16 The Commissioner may not have a direct or indirect
17 financial interest in any national insurer or national
18 insurance agency, except that the Commissioner may
19 own, directly or indirectly, or may have a direct or
20 indirect beneficial interest in an insurance policy
21 written or sold by a national insurer, national insur-
22 ance agency, or national insurance producer.

23 (6) GENERAL OVERSIGHT.—The Commissioner
24 shall be subject to the general oversight of the Sec-
25 retary of the Treasury, but the Secretary may not

1 intervene in any matter or proceeding before the
2 Commissioner unless otherwise specifically provided
3 by law.

4 (7) EXECUTIVE SCHEDULE.—Section 5314 of
5 title 5, United States Code, is amended by adding
6 at the end following new item:

7 “National Insurance Commissioner.”.

8 **SEC. 102. DUTIES AND POWERS OF THE COMMISSIONER.**

9 (a) DUTIES.—The Commissioner shall—

10 (1) oversee the organization, incorporation, op-
11 eration, regulation, and supervision of national in-
12 surers and national insurance agencies and shall
13 issue charters therefore; and

14 (2) license, regulate, and supervise national in-
15 surance producers.

16 (b) INCIDENTAL POWERS.—The Commissioner may
17 exercise such incidental powers as may be necessary to ful-
18 fill the duties specified in subsection (a).

19 (c) RULEMAKING POWERS.—The Commissioner may
20 issue such rules, regulations, orders, and interpretations
21 as the Commissioner determines to be necessary to carry
22 out the purposes of this Act. The Secretary of the Treas-
23 ury may not delay or prevent the issuance of any rule,
24 regulation, order, or interpretation by the Commissioner.

1 (d) LITIGATION POWERS.—The Commissioner may
2 sue and be sued, complain and defend, and otherwise liti-
3 gate, in the Commissioner’s name and through the Com-
4 missioner’s own attorney, in any Federal or State court.

5 (e) ENFORCEMENT POWERS.—The Commissioner
6 may apply to the United States district court for the jurisdic-
7 tion in which the main office of a national insurer or
8 national insurance agency is located, or in which an in-
9 surer-affiliated party, national insurance producer, or
10 other person is located, for the enforcement of any rule,
11 regulation, order, or interpretation issued pursuant to this
12 Act.

13 **SEC. 103. INDEPENDENCE AND GAO AUDIT.**

14 (a) INDEPENDENCE OF CONGRESSIONAL TESTIMONY
15 AND RECOMMENDATIONS.—Section 111 of Public Law
16 93–495 (12 U.S.C. 250) is amended by inserting “the Na-
17 tional Insurance Commissioner,” after “the Director of
18 the Office of Thrift Supervision,”.

19 (b) GAO AUDIT.—The Commissioner shall make
20 available to the Comptroller General of the United States
21 all books and records necessary to audit all of the activities
22 of the Office.

1 **SEC. 104. OFFICE PERSONNEL MATTERS.**

2 (a) IN GENERAL.—The Commissioner may employ
3 such persons as are necessary to carry out the provisions
4 of this Act.

5 (b) COMPENSATION.—The Commissioner shall fix the
6 compensation and number of employees of the Office with-
7 out regard to chapter 51 or subchapter III of chapter 53
8 of title 5, United States Code.

9 (c) ADDITIONAL COMPENSATION.—The Commis-
10 sioner may provide additional compensation and benefits
11 to employees of the Office if the same type of compensa-
12 tion or benefits are then being provided by any Federal
13 banking agency or, if not then being provided, could be
14 provided by any such agency under applicable provisions
15 of law or regulation. In setting and adjusting the total
16 amount of compensation and benefits for employees of the
17 Office, the Commissioner shall consult, and seek to main-
18 tain comparability with, the Federal banking agencies.

19 (d) ACTING COMMISSIONER.—The Commissioner
20 shall designate an employee of the Office to serve as the
21 Acting Commissioner during the absence or disability of
22 the Commissioner.

23 (e) DELEGATION OF POWERS.—

24 (1) EMPLOYEES AND OTHERS.—Unless other-
25 wise prohibited by this Act, the Commissioner may

1 delegate to any employee, representative, or agent
2 any power of the Commissioner.

3 (2) SELF-REGULATORY ORGANIZATIONS.—Un-
4 less otherwise prohibited by this Act, the Commis-
5 sioner may, by regulation, delegate to any insurance
6 self-regulatory organization any power of the Com-
7 missioner.

8 **SEC. 105. DIVISION OF CONSUMER AFFAIRS.**

9 (a) ESTABLISHMENT.—The Commissioner shall es-
10 tablish a Division of Consumer Affairs within the Office,
11 and shall appoint a Director of the Division of Consumer
12 Affairs, who shall report to the Commissioner.

13 (b) FUNCTION.—The Director of the Division of Con-
14 sumer Affairs shall—

15 (1) act as a liaison between the Office and con-
16 sumers of insurance;

17 (2) receive questions and complaints from con-
18 sumer regarding acts or practices of national insur-
19 ers, national insurance agencies, and national insur-
20 ance producers; and

21 (3) take actions to resolve such questions and
22 complaints.

23 (c) STATE OFFICES; CALL CENTER.—The Commis-
24 sioner shall establish an office of the Division of Consumer
25 Affairs in each State and a centralized call center, toll-

1 free telephone number, and Internet address order to re-
2 ceive and act upon questions and complaints from con-
3 sumers regarding acts or practices of national insurers,
4 national insurance agencies, and national insurance pro-
5 ducers.

6 (d) **REPORTS.**—The Commissioner shall annually
7 submit to the Committee on Financial Services of the
8 House of Representatives and the Committee on Banking,
9 Housing, and Urban Affairs of the Senate a report on the
10 volume of consumer complaints received by the Division
11 of Consumer Affairs and the ability of the Office to ad-
12 dress such complaints in a timely manner.

13 **SEC. 106. INSURANCE SELF-REGULATORY ORGANIZATIONS.**

14 (a) **AUTHORITY OF THE COMMISSIONER.**—The Com-
15 missioner may provide for the registration of 1 or more
16 insurance self-regulatory organizations, and supervise and
17 regulate any such organization.

18 (b) **AUTHORITY OF REGISTERED INSURANCE SELF-**
19 **REGULATORY ORGANIZATION.**—Except as otherwise pro-
20 vided in this Act, the Commissioner may authorize an in-
21 surance self-regulatory organization registered by the
22 Commissioner to carry out the purposes of this Act, and
23 enforce compliance by its members with the provisions of
24 this Act, applicable regulations issued by the Commis-
25 sioner, and the rules of the organization.

1 **SEC. 107. OFFICE OF THE OMBUDSMAN.**

2 (a) OFFICE OF THE OMBUDSMAN.—The Commis-
3 sioner shall establish an Office of the Ombudsman, and
4 appoint an Ombudsman, who shall report to the Commis-
5 sioner.

6 (b) DUTY OF THE OMBUDSMAN.—The Ombudsman
7 shall act as a liaison between the Office and any national
8 insurer, national insurance agency, national insurance
9 producer, or insurer-affiliated party adversely affected by
10 the supervisory or regulatory activities of the Office, in-
11 cluding the failure of the Office to take a requested action.
12 The Ombudsman shall assure that safeguards exist to en-
13 courage complainants to come forward and preserve con-
14 fidentiality.

15 (c) POWERS OF THE OMBUDSMAN.—The Ombuds-
16 man—

17 (1) with the prior consent of the Commissioner,
18 may stay any appealable decision or action during
19 the resolution of an appealable matter; and

20 (2) shall review and report any weakness in pol-
21 icy or procedures to the Commissioner, and make
22 recommendations to the Commissioner regarding
23 changes in such policies or procedures.

24 (d) APPEALABLE MATTERS.—Subject to such proce-
25 dures as the Commissioner may establish by regulation,
26 any national insurer, national insurance agency, national

1 insurance producer, or insurer-affiliated party adversely
2 affected by an Office decision or action may seek Ombuds-
3 man review of such decision or action, other than—

4 (1) the appointment of a receiver or conser-
5 vator;

6 (2) any preliminary examination conclusions
7 communicated to the regulated person before a final
8 examination report is issued;

9 (3) any formal enforcement-related action or
10 decision, including the issuance of a cease-and-desist
11 order, assessment of a civil money penalty, or com-
12 mencement of a formal investigation;

13 (4) any formal or informal rulemaking pursuant
14 to subchapter II of chapter 5 of title 5, United
15 States Code;

16 (5) any decision or recommended decision fol-
17 lowing a formal adjudication conducted pursuant to
18 subchapter II of chapter 5 of title 5, United States
19 Code; or

20 (6) any request for agency records pursuant to
21 section 552 of title 5, United States Code (com-
22 monly referred to as the Freedom of Information
23 Act).

24 (e) DECISIONS OF THE OMBUDSMAN.—The Ombuds-
25 man shall investigate each matter for which review is

1 sought under subsection (d) and, after consideration of all
2 relevant information provided to the Ombudsman by the
3 person seeking such review and the Commissioner, issue
4 a written determination of the appeal. Such determination
5 shall become the final decision of the Office, unless re-
6 versed, modified, or stayed by the Commissioner.

7 (f) RETALIATION PROHIBITED.—An employee of the
8 Office of National Insurance may not take any adverse
9 action against a complainant for appealing any decision
10 or action to the Ombudsman.

11 **SEC. 108. RELATIONSHIP TO STATE LAW.**

12 (a) IN GENERAL.—Except as authorized by this Act
13 or otherwise authorized under Federal law, no national in-
14 surer, national insurance agency, or national insurance
15 producer shall be subject to any form of licensing, exam-
16 ination, reporting, regulation, or supervision by a State
17 relating to the insurance operations of such insurer, such
18 agency, or such producer.

19 (b) APPLICABLE STATE LAWS.—Notwithstanding
20 subsection (a), a national insurers, national insurance
21 agencies, and national insurance producers shall be sub-
22 ject to—

- 23 (1) State unclaimed property and escheat laws;
- 24 (2) tax laws of a State, in accordance with sec-
25 tions 321, 322, and 323;

1 (3) State law relating to participation in an as-
2 signed risk plan, mandatory joint underwriting asso-
3 ciation, or any other mandatory residual market
4 mechanism designed to make insurance available to
5 those unable to obtain insurance in the voluntary
6 market, except to the extent that such State law—

7 (A) relates to participation in any vol-
8 untary joint underwriting association or similar
9 arrangement;

10 (B) results in rates in effect for an as-
11 signed risk plan, mandatory joint underwriting
12 association, or any other mandatory residual
13 market mechanism that fail to cover the ex-
14 pected value of all future costs associated with
15 insurance policies written by such residual mar-
16 ket mechanism;

17 (C) requires a national insurer to use any
18 particular rate, rating element, price, or form;
19 or

20 (D) is inconsistent with any provision of
21 this Act;

22 (4) State insurance law that prescribes the
23 compulsory coverage requirements for workers' com-
24 pensation or motor vehicle insurance, or both, that
25 every insurer must provide if the insurer issues in-

1 surance policies in such State, except to the extent
2 that such State law requires a national insurer to
3 use any particular rate, rating element, price, or
4 form;

5 (5) State insurance law mandating the partici-
6 pation of insurers in an advisory or statistical orga-
7 nization, except to the extent that such State law re-
8 quires a national insurer to use any particular rate,
9 rating element, price, or form; and

10 (6) State law relating to participation in a
11 workers' compensation administration mechanism,
12 except to the extent that such State law is incon-
13 sistent with any provision of this Act.

14 (c) DEFINITIONS.—In this section:

15 (1) ADVISORY OR STATISTICAL ORGANIZA-
16 TION.—The term “advisory or statistical organiza-
17 tion” does not include the National Association of
18 Insurance Commissioners.

19 (2) COMPULSORY COVERAGE.—The term “com-
20 pulsory coverage” does not include any State statu-
21 tory requirement other than those prescribing the
22 minimum extent of insurance protection afforded by
23 a policy of insurance.

24 (3) MANDATORY RESIDUAL MARKET.—The
25 term “mandatory residual market” means a facility,

1 entity, or plan required by and established pursuant
2 to State law to provide coverage for persons that
3 cannot obtain insurance in the private market.

4 **Subtitle B—Supervision of Na-**
5 **tional Insurers and National In-**
6 **surance Agencies**

7 **SEC. 111. PRUDENTIAL SUPERVISION.**

8 (a) SENSE OF CONGRESS.—It is the sense of Con-
9 gress that the Commissioner should—

10 (1) promote an open and continuous exchange
11 of information between national insurers, national
12 insurance agencies, and national insurance pro-
13 ducers and the Office; and

14 (2) encourage such insurers, agencies, and pro-
15 ducers to self-identify and self-correct actual or po-
16 tential violations of law, regulation, or any other su-
17 pervisory requirements that the Commissioner con-
18 siders necessary before such actions harm policy-
19 holders or other consumers.

20 (b) REGULATIONS.—The Commissioner shall issue
21 regulations on prudential supervision to—

22 (1) require national insurers, national insurance
23 agencies, and national insurance producers to estab-
24 lish and implement internal risk control practices
25 and procedures that are designed to detect and pre-

1 vent violations of laws, regulations, and any other
2 supervisory requirements that the Commissioner
3 considers necessary;

4 (2) require national insurers, national insurance
5 agencies, and national insurance producers to self-
6 report violations of applicable laws, regulations, or
7 such other supervisory requirements and to correct
8 such violations;

9 (3) provide that if the Commissioner determines
10 a violation of a law, regulation, or other supervisory
11 requirement upon which an enforcement action may
12 be based is correctable, the Commissioner shall pro-
13 vide warning to a national insurer, national insur-
14 ance agency, or national insurance producer regard-
15 ing such violation before taking such action;

16 (4) identify the range of enforcement actions
17 the Commissioner may bring in response to a viola-
18 tion of law, regulation, or other supervisory require-
19 ment, and provide that, subject to subsection (c), the
20 Commissioner shall pursue a continuum of enforce-
21 ment actions that begins with the least severe sanc-
22 tion or penalty and gradually escalates to the most
23 severe sanction or penalty;

24 (5) identify the factors the Commissioner will
25 consider in determining whether to bring an enforce-

1 ment action and in determining the type of action to
2 be brought; and

3 (6) specify the Commissioner's practices and
4 procedures related to investigations, and provide
5 that the Commissioner shall—

6 (A) notify a national insurer, national in-
7 surance agency, or national insurance producer
8 within 10 days of completing an investigation;
9 and

10 (B) review the status of all open investiga-
11 tions on a semiannual basis and determine if
12 such matter should remain open or be closed.

13 **SEC. 112. EXAMINATIONS.**

14 (a) **IN GENERAL.**—The Commissioner may conduct
15 such examinations of a national insurer or national insur-
16 ance agency as the Commissioner considers necessary.

17 (b) **FREQUENCY.**—

18 (1) **NATIONAL INSURERS.**—The Commissioner
19 shall conduct a full-scope, on-site examination of
20 each national insurer not less than once during any
21 24-month period.

22 (2) **NATIONAL INSURANCE AGENCIES.**—The
23 Commissioner shall conduct an examination of a na-
24 tional insurance agency in response to a complaint

1 or evidence that such national insurance agency has
2 violated or is about to violate—

3 (A) a law, rule, or regulation;

4 (B) any condition imposed in writing by
5 the Commissioner in connection with issuing a
6 license for a Federally licensed insurance pro-
7 ducer; or

8 (C) any written agreement entered into
9 with the Commissioner.

10 (c) ACCESS TO PEOPLE AND RECORDS.—

11 (1) IN GENERAL.—In the course of examining
12 a national insurer or national insurance agency, the
13 Commissioner, upon request, shall be given prompt
14 and reasonable access to officers, employees, agents,
15 books, records, and documents of such insurer or
16 agency.

17 (2) COURT ORDER.—If prompt and reasonable
18 access is not given as required under paragraph (1),
19 the Commissioner may apply to the United States
20 district court for the judicial district in which the
21 main office of the national insurer or the national
22 insurance agency is located for an order requiring
23 that such information be promptly provided.

1 (3) SUBPOENA POWER.—In connection with ex-
2 amination of a national insurer or national insur-
3 ance agency, the Commissioner may—

4 (A) administer oaths and affirmations;

5 (B) examine, take, and preserve testimony
6 under oath as to any matter in respect of the
7 affairs or ownership of any such national in-
8 surer or national insurance agency;

9 (C) issue subpoenas; and

10 (D) in order to enforce a subpoena issued
11 under subparagraph (C), apply to the United
12 States district court for the judicial district—

13 (i) in which the main office of the na-
14 tional insurer or national insurance agency
15 is located; or

16 (ii) in which the witness resides or
17 carries on business.

18 **SEC. 113. REPORTS.**

19 Each national insurer and national insurance agency
20 shall submit to the Commissioner such reports, containing
21 such information and in such form, as the Commissioner
22 may prescribe by regulation.

23 **SEC. 114. ANNUAL ASSESSMENTS AND OTHER FEES.**

24 (a) IN GENERAL.—The Commissioner may impose on
25 national insurers, national insurance agencies, and na-

1 tional insurance producers an annual assessment and such
2 other fees, including examination fees, as the Commis-
3 sioner determines to be necessary and appropriate to fund
4 the expenses of the Office, and to repay and loan to the
5 Office provided under section 115.

6 (b) REGULATIONS.—The Commissioner shall, by reg-
7 ulation, establish a schedule for the annual assessment
8 and other fees authorized in this section.

9 (c) TREATMENT OF ASSESSMENTS AND FEES.—

10 (1) DEPOSITS.—The Commissioner may deposit
11 assessments and fees collected under this section
12 into any regular Government depository or any State
13 or national bank.

14 (2) GOVERNMENT FUNDS AND APPORTION-
15 MENT.—Notwithstanding any other provision of law,
16 assessments and fees imposed under this section
17 shall not be considered government or public funds
18 or appropriated money, and shall not be subject to
19 apportionment for purposes of chapter 15 of title 31,
20 United States Code, or under any other authority.

21 (d) WORKING CAPITAL FUND.—The Commissioner
22 may impose assessments and fees in excess of actual ex-
23 penses for any given year, to maintain an appropriate
24 working capital fund, provided that the Commissioner re-
25 mits to the payers of such assessments and fees any funds

1 collected in excess of what the Commissioner determines
2 to be necessary to maintain such working capital fund.

3 (e) USE OF FUNDS.—The Commissioner may use the
4 fees and assessments collected pursuant to this section to
5 pay all operating costs of the Office, including the salary
6 and administrative expenses of the Office.

7 **SEC. 115. APPROPRIATIONS DURING START-UP PERIOD.**

8 The Commissioner may borrow from the Secretary of
9 the Treasury such funds as the Commissioner determines
10 to be necessary and appropriate to organize and begin op-
11 erations of the Office. Any such loan shall be repaid, in
12 full (with interest at a rate set by the Secretary of the
13 Treasury), from assessments imposed under the terms of
14 section 114 not later than the date that is 30 years after
15 the date of the enactment of this Act, with individual pay-
16 ments on any loan to be made in such amounts and at
17 such times as the Commissioner determines to be appro-
18 priate.

19 **SEC. 116. DISCLOSURE OF INFORMATION.**

20 (a) REGULATIONS REQUIRED.—The Commissioner
21 shall issue regulations for the disclosure of reports, appli-
22 cations, filings, correspondence, records, and other infor-
23 mation prepared by, reported to, obtained by, or submitted
24 to the Commissioner.

1 (b) SUPERVISORY PRIVILEGE.—The regulations
2 issued pursuant to subsection (a) shall prohibit the disclo-
3 sure of confidential supervisory information, as such infor-
4 mation is defined by the Commissioner in such regulation.

5 (c) OTHER PRIVILEGES.—The submission by any
6 person of any information to the Commissioner for any
7 purpose in the course of any supervisory or regulatory
8 process of the Commissioner shall not be construed as
9 waiving, destroying, or otherwise affecting any privilege
10 that such person may claim with respect to such informa-
11 tion under Federal or State law as to any person or entity
12 other than the Commissioner.

13 **SEC. 117. ANTI-MONEY LAUNDERING COMPLIANCE.**

14 (a) REGULATION REQUIRED.—The Commissioner
15 shall, by regulation, require national insurers and national
16 insurance agencies to establish and maintain procedures
17 reasonably designed to assure and monitor compliance
18 with the recordkeeping and reporting requirements of sub-
19 chapter II of chapter 53 of title 31, United States Code,
20 and implementing regulations issued by the Department
21 of the Treasury, to the extent that those requirements
22 apply to a national insurer or national insurance agency.

23 (b) MINIMUM PROCEDURES.—The regulations issued
24 under subsection (a) shall require—

1 proval of an application, filing, statement, no-
2 tice, or other request by the insurer or agency;
3 or

4 (C) written agreement entered into be-
5 tween the insurer or agency and the Commis-
6 sioner.

7 (b) LICENSE REVOCATION.—The Commissioner may
8 order the revocation of the license of a national insurance
9 producer if the Commissioner determines that such pro-
10 ducer—

11 (1) is violating or has violated any applicable
12 law, regulation, order, condition imposed in writing
13 by the Commissioner in connection with the approval
14 of an application, filing, statement, notice or other
15 request by the producer, or written agreement en-
16 tered into between the producer and the Commis-
17 sioner;

18 (2) provided incorrect, misleading, incomplete,
19 or materially untrue information in an application
20 for a license;

21 (3) used fraudulent, coercive, or dishonest prac-
22 tices; or

23 (4) demonstrated incompetence,
24 untrustworthiness, or financial irresponsibility as an
25 insurance producer.

1 (c) **SUSPENSION ORDER.**—If the Commissioner, in
2 the course of a charter or license revocation proceeding
3 under this section, finds that a national insurer, national
4 insurance agency, or national insurance producer poses an
5 immediate threat to the interests of policyholders, the
6 Commissioner may order the suspension of the charter or
7 license of such insurer, agency or producer, as applicable.

8 (d) **NOTICE.**—If the Commissioner orders the revoca-
9 tion of a charter or a license under subsection (a) or (b),
10 the Commissioner shall provide the national insurer, na-
11 tional insurance agency, or national insurance producer
12 that is the subject of such revocation notice of such rev-
13 ocation. Such notice shall include—

14 (1) a statement of the reasons for such revoca-
15 tion, including any determination by the Commis-
16 sioner under subsection (a) or (b); and

17 (2) a date and place for a hearing before the
18 Commissioner with respect to such revocation.

19 (e) **HEARING; TERMINATION.**—If, on the basis of the
20 evidence presented at a hearing before the Commissioner
21 (or any person designated by the Commissioner for such
22 purpose), in which all issues shall be determined on the
23 record pursuant to section 554 of title 5, United States
24 Code, and the written findings of the Commissioner (or
25 such person) with respect to such evidence (which shall

1 be conclusive), the Commissioner finds that any unsafe or
2 unsound practice or condition or any violation specified
3 in the notice given under subsection (d) has been estab-
4 lished, the Commissioner may issue an order terminating
5 the charter or license of the national insurer, national in-
6 surance agency, or national producer effective as of a date
7 subsequent to that finding.

8 (f) JUDICIAL REVIEW.—

9 (1) IN GENERAL.—Any hearing provided for in
10 this section (other than the hearing provided for in
11 subsection (e)) shall be held in the Federal judicial
12 district or in the territory in which the home office
13 of the national insurer, national insurance agency,
14 or national insurance producer is located unless the
15 party afforded the hearing consents to another place,
16 and shall be conducted in accordance with the provi-
17 sions of chapter 5 of title 5 of the United States
18 Code. After such hearing, and within 90 days after
19 the Commissioner has notified the parties that the
20 case has been submitted to it for final decision, it
21 shall render its decision (which shall include findings
22 of fact upon which its decision is predicated) and
23 shall issue and serve upon each party to the pro-
24 ceeding an order consistent with the provisions of

1 this section. Judicial review of any such order shall
2 be exclusively as provided in this subsection .

3 (2) APPEAL.—Any party to a proceeding under
4 paragraph (1) may obtain a review of any order
5 issued pursuant to paragraph (1) (other than an
6 order issued with the consent of the national insurer,
7 national insurance agency, or national insurance
8 producer concerned) by the filing in the court of ap-
9 peals of the United States for the circuit in which
10 the home office of the national insurer, national in-
11 surance agency, or national insurance producer is lo-
12 cated, or in the United States Court of Appeals for
13 the District of Columbia Circuit, within 30 days
14 after the date of service of such order, a written pe-
15 tition for the order to be modified, terminated, or set
16 aside. The party filing such a petition shall transmit
17 to the Commissioner a copy of the petition and the
18 Commissioner shall file in the court the record in the
19 proceeding, as provided in section 2112 of title 28
20 of the United States Code. Review of such pro-
21 ceedings shall be had as provided in chapter 7 of
22 title 5 of the United States Code. The judgment and
23 decree of the court shall be final, except that the
24 same shall be subject to review by the Supreme

1 Court upon certiorari, as provided in section 1254 of
2 title 28 of the United States Code.

3 **SEC. 122. OTHER ENFORCEMENT POWERS.**

4 (a) IN GENERAL.—The Commissioner may issue
5 cease and desist orders, prohibition, suspension, removal
6 orders, and impose civil money penalties upon a national
7 insurer, national insurance agency, national insurance
8 producer, and any insurer-affiliated party on the same
9 grounds and the same terms and conditions applicable to
10 the issuance of such orders by a Federal banking agency
11 under section 8 of the Federal Deposit Insurance Act, as
12 if a national insurer, national insurance agency, or na-
13 tional insurance producer was an insured depository insti-
14 tution, an insurer-affiliated party was an institution-affili-
15 ated party, the Commissioner was a Federal banking
16 agency, and a policyholder was a depositor.

17 (b) HOLDING COMPANIES AND OTHER SUBSIDI-
18 ARIES.—This section shall apply to an insurance holding
19 company and to any subsidiary of an insurance holding
20 company in the same manner as such section applies to
21 a national insurer.

22 **SEC. 123. INSURANCE FRAUD.**

23 (a) INVESTIGATIONS.—The Commissioner may inves-
24 tigate suspected fraudulent insurance acts by national in-

1 surers, national insurance agencies, national insurance
2 producers, and other persons.

3 (b) PENALTY.—

4 (1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3), whoever commits a fraudulent
6 insurance act or whoever knowingly and intentionally
7 interferes with the investigations of a suspected
8 fraudulent insurance act shall be subject to a fine of
9 not more than \$500,000, imprisonment for not more
10 than 5 years or both.

11 (2) NATIONAL INSURERS, AGENCIES, INSUR-
12 ANCE PRODUCERS.—If the person committing an of-
13 fense referred to in paragraph (1) is a national in-
14 surer, national insurance agency, national insurance
15 producer, or insurer-affiliated party, such person
16 shall be subject to a fine of not more than
17 \$1,000,000 per violation per day, or imprisonment
18 for not more than 10 years, or both.

19 (3) LOW AMOUNTS.—If the person committing
20 an offense referred to in paragraph (1) is not a na-
21 tional insurer, national insurance agency, national
22 insurance producer, or insurer-affiliated party and
23 the offense is a fraudulent insurance act involving
24 an amount or value not exceeding \$5,000, such per-
25 son shall be subject to a fine of not more than

1 \$100,000, imprisonment for not more than 1 year,
2 or both.

3 (4) ADDITIONAL PENALTIES.—The penalties
4 under this subsection shall be in addition to any
5 other penalties imposed under this Act.

6 (5) RESTITUTION REQUIRED.—Any person con-
7 victed of an offense referred to in paragraph (1)
8 shall make monetary restitution for any financial
9 loss or damage sustained by any other person as a
10 result of such offense. Such restitution shall be the
11 exclusive monetary remedy available to the victim at
12 law or in equity after entry of judgment.

13 (c) FRAUDULENT INSURANCE ACT DEFINED.—In
14 this section, the term “fraudulent insurance act” means
15 an act or omission committed by a person who, knowingly
16 and with intent to defraud, and for the purpose of depriv-
17 ing another of property or for pecuniary gain, commits,
18 participates in, or aids, abets, or conspires to commit or
19 solicits another person to commit, or permits its employees
20 or its agents to commit, 1 or more of the following:

21 (1) Presenting, causing to be presented, or pre-
22 paring with knowledge or belief that it will be pre-
23 sented to or by a national insurer, national insur-
24 ance agency, or an insurance producer acting with
25 respect to a policy of insurance written by a national

1 insurer, false information as part of, in support of,
2 or concerning a fact material to one or more of the
3 following:

4 (A) An application for a new or renewal of
5 an insurance policy or reinsurance contract.

6 (B) The rating of a national insurer that
7 writes an insurance policy or enters into a rein-
8 surance contract.

9 (C) A claim for payment or benefit pursu-
10 ant to an insurance policy or reinsurance con-
11 tract.

12 (D) Premiums paid on an insurance policy
13 or reinsurance contract.

14 (E) Payments made in accordance with the
15 terms of an insurance policy or reinsurance con-
16 tract.

17 (F) A document filed with the Commis-
18 sioner.

19 (G) The financial condition of a national
20 insurer or national insurance agency.

21 (H) The formation, acquisition, merger,
22 consolidation, or dissolution of a national in-
23 surer or national insurance agency.

24 (I) The issuance of evidence of insurance.

1 (J) The reinstatement of an insurance pol-
2 icy.

3 (2) Solicitation or acceptance of new or renewal
4 insurance risks on behalf of a national insurer, na-
5 tional insurance agency, national insurance pro-
6 ducer, or other persons engaged in the business of
7 insurance by a person who knows or should know
8 that the national insurer is insolvent at the time of
9 the transaction.

10 (3) Removal, concealment, alteration, or de-
11 struction of the records of a national insurer, na-
12 tional insurance agency, or national insurance pro-
13 ducer.

14 (4) Transaction of the business of insurance in
15 violation of laws requiring a charter or license under
16 this Act.

17 (5) Attempting to commit, aiding or abetting in
18 the commission of, or conspiracy to commit the acts
19 or omissions specified in this subsection.

20 **SEC. 124. FOREIGN INVESTIGATIONS.**

21 (a) REQUESTING ASSISTANCE FROM FOREIGN GOV-
22 ERNMENTS.—In conducting any investigation, examina-
23 tion, or enforcement action under this subtitle, the Com-
24 missioner may request the assistance of any foreign gov-
25 ernment.

1 (b) PROVIDING ASSISTANCE TO FOREIGN GOVERN-
2 MENTS.—The Commissioner may assist any foreign gov-
3 ernment that is conducting an investigation to determine
4 whether any person has violated, is violating, or is about
5 to violate any law or regulation relating to insurance mat-
6 ters or currency transactions administered or enforced by
7 such foreign government.

8 **SEC. 125. PROMPT CORRECTIVE ACTION.**

9 (a) RULEMAKING.—

10 (1) IN GENERAL.—Not later than the expira-
11 tion of the 6-month period beginning upon the date
12 of submission of the report under subsection (b)(3)
13 to the Commissioner, the Commissioner shall pro-
14 mulgate such regulations, applicable to national in-
15 surers, as the Commissioner determines appropriate
16 and consistent with the recommendation in that re-
17 port to ensure that prompt corrective action is taken
18 to resolve any hazardous financial condition of a na-
19 tional insurer.

20 (2) REQUIRED CONTENT.—Rules required by
21 this subsection shall include such capital measures
22 and categories, capital standards, supervisory cri-
23 teria, restrictions on permissible actions of such in-
24 surers, requirements for such insurers, procedures,
25 provisions regarding conservatorship and receiver-

1 ship of such insurers, and other provisions as the
2 Commissioner considers are appropriate and con-
3 sistent with any recommendations in the report and
4 the standards established pursuant to section 312 of
5 this Act.

6 (b) GAO STUDY AND REPORT.—

7 (1) IN GENERAL.—The Comptroller General of
8 the United States shall conduct a study to identify
9 an appropriate structure of procedures and require-
10 ments for taking prompt corrective actions with re-
11 spect to national insurers, to ensure that any haz-
12 ardous financial condition of such a national insurer
13 is resolved effectively and efficiently, with the fewest
14 possible losses.

15 (2) REQUIREMENTS.—In conducting the study
16 required by this subsection, the Comptroller General
17 shall analyze and evaluate various proposals, struc-
18 tures, methods, and systems for taking prompt cor-
19 rective actions with respect to various financial enti-
20 ties and institutions, including—

21 (A) the prompt corrective action require-
22 ments under section 38 of the Federal Deposit
23 Insurance Act (12 U.S.C. 1831o) with respect
24 to insured depository institutions; and

1 (B) the “Model Regulation to Define
2 Standards and Commissioner’s Authority for
3 Companies Deemed to be in Hazardous Finan-
4 cial Condition” of the NAIC.

5 (3) REPORT.—

6 (A) IN GENERAL.—Not later than the ex-
7 piration of the 6-month period beginning on the
8 date of enactment of this Act, the Comptroller
9 General shall submit a report to the Committee
10 on Banking, Housing, and Urban Affairs of the
11 Senate, the Committee on Financial Services of
12 the House of Representatives, and the Commis-
13 sioner, regarding the study required under this
14 subsection.

15 (B) CONTENTS.—The report required
16 under this paragraph shall describe the study
17 and the results of the evaluations conducted
18 under the study, and shall include a specific
19 recommendation to the Commissioner for estab-
20 lishment of an appropriate structure of proce-
21 dures and requirements for taking prompt cor-
22 rective actions with respect to national insurers,
23 to ensure that any hazardous financial condi-
24 tion of a national insurer is resolved effectively
25 and efficiently with the fewest possible losses.

1 **TITLE II—SYSTEMIC RISK REGU-**
2 **LATION, COORDINATING**
3 **COUNCIL FOR FINANCIAL**
4 **REGULATORS, INTER-**
5 **NATIONAL AGREEMENTS**

6 **SEC. 201. SYSTEMIC RISK REGULATION.**

7 (a) DELEGATION OF AUTHORITY.—Not later than 90
8 days after the date of enactment of this Act, the President
9 shall designate a systemic risk regulator for covered insti-
10 tutions. In making this designation the President shall
11 consult with the Chairman of the Senate Committee on
12 Banking, Housing and Urban Affairs, and the House
13 Committee on Financial Services, and shall designate a
14 Federal agency, other than the Office of National Insur-
15 ance, that has experience in financial regulation and su-
16 pervision as the systemic risk regulator for covered institu-
17 tions.

18 (b) POWERS OF SYSTEMIC RISK REGULATOR.—Not-
19 withstanding any other provision of law, the agency des-
20 ignated pursuant to subsection (a) shall have the power
21 to—

22 (1) request information on the activities and op-
23 erations of a covered institution, or any affiliate of
24 a covered institution, from such institution or such
25 affiliate, and from the Office or a State insurance

1 authority responsible for supervising such covered
2 institution, as applicable;

3 (2) participate with the Office or a State insur-
4 ance authority, as applicable, in an examination of
5 a covered institution and any affiliate of such cov-
6 ered institution;

7 (3) if such agency determines that a covered in-
8 stitution, any affiliate of a covered institution, any
9 category of covered institutions, or any product or
10 service offered by a covered institution is having, or
11 would have, serious adverse effects on economic con-
12 ditions or financial stability, and an action by the
13 agency would mitigate or avoid such adverse effects,
14 the agency may, by order—

15 (A) restrict or prohibit the covered institu-
16 tion, any affiliate of the covered institution, or
17 any category of covered institutions from en-
18 gaging in such activity or practice or offering
19 such product or service; or

20 (B) take any other action that the agency
21 deems appropriate to mitigate or avoid the ad-
22 verse effects of such activity, practice, product
23 or service; and

24 (4) in consultation with the Commissioner—

1 (A) determine if a covered institution is
2 systemically important; and

3 (B) if such covered institution is deter-
4 mined to be systemically important, determine
5 how best to regulate such covered institution.

6 (c) ENFORCEMENT.—The agency designated pursu-
7 ant to subsection (a) may apply to the United States dis-
8 trict court for the jurisdiction in which a covered institu-
9 tion or an affiliate of a covered institution is located for
10 the enforcement of any order issued under this section to
11 such institution or such affiliate.

12 (d) JUDICIAL REVIEW.—Any covered institution or
13 affiliate of a covered institution that is the subject of an
14 order issued pursuant to this section may obtain review
15 of such order in the United States Court of Appeals within
16 any circuit where such institution or such affiliate has its
17 principal place of business, or in the Court of Appeals in
18 the District of Columbia, by filing in the court, within 30
19 days of after issuance of such order, a petition praying
20 that the order be set aside. Such covered institution or
21 affiliate shall transmit to the agency designated pursuant
22 to subsection (a) a copy of such petition and the agency
23 shall file in the court the record made before the agency,
24 as provided in section 2112 of title 28, United States
25 Code. Upon the filing of such petition, the court shall have

1 jurisdiction to affirm, set aside, or modify the order and
2 to require the agency to take such action with regard to
3 the matter under review as the court deems proper. The
4 findings of the agency as to the facts, if supported by sub-
5 stantial evidence, shall be conclusive.

6 (e) COSTS.—The agency designated pursuant to sub-
7 section (a) shall recover all direct and indirect costs associ-
8 ated with the exercise of its authority under this section
9 through the imposition of an assessment on each covered
10 institution that is equal to the product of—

11 (1) an assessment rate established by the agen-
12 cy, by regulation; and

13 (2) the amount of the covered institution's aver-
14 age total assets during the preceding year.

15 (f) NOTICE TO CONGRESS AND GAO REVIEW.—

16 (1) NOTICE TO CONGRESS.—The agency des-
17 igned pursuant to subsection (a) shall provide a
18 written notice to the Congress of any determination
19 made under paragraph (3) or (4) of subsection (b),
20 and an explanation of the basis for such determina-
21 tion.

22 (2) GAO REVIEW.—The Comptroller General of
23 the United States shall review and report to Con-
24 gress on any determination under subsection (b)(3),

1 including the basis for the determination and the
2 purpose for which any action was taken.

3 (g) COVERED INSTITUTION DEFINED.—In this sec-
4 tion, the term “covered institution” means a national in-
5 surer and any insurance company organized and super-
6 vised under State law.

7 **SEC. 202. COORDINATING COUNCIL FOR FINANCIAL REGU-**
8 **LATORS.**

9 (a) ESTABLISHMENT AND PURPOSE.—There is es-
10 tablished the Coordinating National Council for Financial
11 Regulators (in this section referred to as the “Council”)
12 to serve as a forum for financial regulators to collectively
13 identify and consider issues related to the regulation and
14 supervision of financial services firms, including the sta-
15 bility and integrity of financial markets, investor and con-
16 sumer protection, the efficiency and effectiveness of regu-
17 lation and supervision, and other matters of mutual con-
18 cern.

19 (b) FUNCTIONS OF THE COUNCIL.—

20 (1) The Council shall—

21 (A) monitor and measure the health and
22 competitiveness of the financial services indus-
23 try in the United States, including its compo-
24 nent segments;

1 (B) develop early warning systems to de-
2 tect potential points of weakness or strains in
3 financial markets;

4 (C) recommend coordinated actions for na-
5 tional and State financial regulators and finan-
6 cial services firms, especially in times of market
7 stress or financial crisis; and

8 (D) develop model supervisory policies for
9 national and State financial regulators.

10 (2) The Council shall not have any independent
11 supervisory or regulatory authority.

12 (c) COMPOSITION.—The Council shall be composed
13 of—

14 (1) the Secretary of the Treasury, who shall
15 serve as the chair of the Council;

16 (2) the Chairman of the Board of Governors of
17 the Federal Reserve System;

18 (3) the Chairman of the Securities and Ex-
19 change Commission;

20 (4) the Chairman of the Commodities Futures
21 Trading Commission;

22 (5) the Comptroller of the Currency;

23 (6) the Director of the Office of Thrift Super-
24 vision;

1 (7) the Chairman of the Federal Deposit Insur-
2 ance Corporation;

3 (8) the Commissioner of National Insurance;

4 (9) an individual appointed by the President, by
5 and with the advice and consent of the Senate, who
6 is knowledgeable in State regulation of depository in-
7 stitutions and other State licensed lenders;

8 (10) an individual appointed by the President,
9 by and with the advice and consent of the Senate,
10 who is knowledgeable in State regulation of the busi-
11 ness of insurance; and

12 (11) an individual appointed by the President,
13 by and with the advice and consent of the Senate,
14 who is knowledgeable in State regulation of securi-
15 ties activities.

16 (d) CONDITIONS APPLICABLE TO APPOINTED MEM-
17 BERS OF THE COUNCIL.—

18 (1) CONSULTATION.—In making the appoint-
19 ments under paragraphs (9), (10), and (11) of sub-
20 section (c), the President shall consult with the Con-
21 ference of State Bank Supervisors, the National As-
22 sociation of Insurance Commissioners, and the
23 North American Securities Administrators Associa-
24 tion, or any successor organizations formed to rep-

1 resent the interests of State banking, insurance, and
2 securities regulators.

3 (2) TERM AND VACANCY.—Members appointed
4 under paragraphs (9), (10), and (11) of subsection
5 (c) shall serve for a term of 5 years. A vacancy in
6 the Council of a member appointed under one of
7 such paragraphs shall be filled in the same manner
8 in which the original appointment was made. The
9 member appointed to fill the vacancy shall be ap-
10 pointed only for the remainder of the term of the
11 preceding member.

12 (3) TRAVEL EXPENSES.—Members appointed
13 under paragraphs (9), (10), and (11) of subsection
14 (c) shall receive travel expenses, including per diem
15 in lieu of subsistence, in accordance with applicable
16 provisions under subchapter I of chapter 57 of title
17 5, United States Code.

18 (4) PROHIBITION ON FINANCIAL INTERESTS.—
19 A member appointed under paragraph (9), (10), or
20 (11) of subsection (c) may not have a direct finan-
21 cial interest in any financial services firm.

22 (e) MEETINGS.—The Council shall meet at least
23 every 90 days upon the call of the Chair. Each member
24 of the Council (other than the members appointed under
25 paragraphs (9), (10), and (11) of subsection (c)) may des-

1 designate a senior policymaking official to represent such
2 member at a meeting of the Council, as necessary and ap-
3 propriate.

4 (f) CONSULTATION.—The Council shall consult, as
5 appropriate, with major market participants, the various
6 exchanges, clearinghouses, self-regulatory bodies, trade as-
7 sociations and others, and shall seek private sector solu-
8 tions to issues whenever possible.

9 (g) INFORMATION SHARING.—The members of the
10 Council shall, to the extent permitted by law, share infor-
11 mation as may be necessary to fulfill the functions of the
12 Council.

13 (h) ANNUAL REPORT.—The Council shall submit an
14 annual report to the President, Congress, and the gov-
15 ernors and legislatures of each State on its activities.

16 (i) ADMINISTRATIVE SUPPORT.—The Secretary of
17 the Treasury shall provide the Council with such adminis-
18 trative support services as may be necessary for the per-
19 formance of its functions.

20 (j) AUTHORIZATION.—There is authorized to be ap-
21 propriated such funds as may be necessary to carry out
22 this section.

23 **SEC. 203. INTERNATIONAL AGREEMENTS.**

24 (a) IN GENERAL.—The Commissioner may engage in
25 international efforts to secure bilateral and multilateral

1 agreements with foreign insurance regulators and regional
2 and global regulatory organizations in order to—

3 (1) promote the stability and integrity of insur-
4 ance markets;

5 (2) encourage open and fair competition in such
6 markets; and

7 (3) improve the quality and uniformity of insur-
8 ance supervision and regulation internationally and
9 provide the regulation of cross-border provisions of
10 insurance and reinsurance services.

11 (b) TECHNICAL ASSISTANCE.—The Commissioner
12 may provide technical assistance to, and cooperation with,
13 foreign insurance regulators and regional and global regu-
14 latory organizations, including the development and imple-
15 mentation of international regulatory standards for insur-
16 ance, and the development and implementation of bilateral
17 and multilateral mutual recognition agreements on the li-
18 censing of insurers and insurance producers.

19 (c) CONSULTATION.—In exercising the authority
20 granted under this section, the Commissioner shall consult
21 and cooperate with the Executive Office of the President
22 and the United States Trade Representative.

1 **TITLE III—NATIONAL INSUR-**
2 **ANCE COMPANIES AND NA-**
3 **TIONAL INSURANCE AGEN-**
4 **CIES**

5 **Subtitle A—Organization,**
6 **Chartering, and Powers**

7 **SEC. 301. ORGANIZATION AND CHARTERING.**

8 (a) **AUTHORIZATION.**—The Commissioner shall,
9 under such regulations as the Commissioner prescribes,
10 provide for the organization of national insurers and na-
11 tional insurance agencies in stock, mutual, reciprocal, or
12 fraternal form, and to issue charters therefore. A charter
13 may limit a national insurer or national insurance agency
14 to a specified line of insurance and shall only be issued
15 for property and casualty insurance, life insurance, or the
16 reinsurance of property and casualty insurance and life
17 insurance.

18 (b) **CHARTERING CRITERIA.**—In determining wheth-
19 er to issue a charter for a national insurer or national
20 insurance agency, the Commissioner shall consider the
21 character and competency of the parties seeking the char-
22 ter, and the financial resources and future prospects of
23 the proposed national insurer or proposed national insur-
24 ance agency.

1 (c) LICENSING OF NON-UNITED STATES INSUR-
2 ERS.—

3 (1) IN GENERAL.—A non-United States insurer
4 may transact insurance in the United States through
5 a United States branch by chartering the United
6 States branch to do business as a national insurer
7 under this Act, under such regulations as the Com-
8 missioner may prescribe.

9 (2) OTHER APPLICABLE LAWS.—Nothing in
10 this section shall be construed to prohibit a non-
11 United States insurer from doing business as an in-
12 surer without a charter under this Act on any basis
13 permitted under applicable State laws.

14 (3) NONDISCRIMINATION.—

15 (A) IN GENERAL.—Except as provided in
16 this section, the Commissioner may not impose
17 any condition for the issuance of a charter
18 under this section to a national insurer solely
19 because the national insurer is—

20 (i) a subsidiary of a non-United
21 States person;

22 (ii) partially owned by a non-United
23 States person; or

24 (iii) a United States branch of a non-
25 United States insurer.

1 (B) EXCEPTION.—Notwithstanding sub-
2 paragraph (A), the Commissioner may impose
3 conditions for the issuance of a charter under
4 this section that are different from those im-
5 posed on other national insurers if—

6 (i) the conditions attached are con-
7 tained in the charter under which the na-
8 tional insurer chooses to operate; and

9 (ii) the Commissioner makes a written
10 finding that the conditions are related to
11 the protection of policyholders and are the
12 minimum conditions necessary to achieve
13 the purposes of this Act.

14 (d) NO DELEGATION PERMITTED.—The Commis-
15 sioner may not delegate the authorities of the Commis-
16 sioner under this section to any insurance self-regulatory
17 organization.

18 **SEC. 302. CORPORATE GOVERNANCE.**

19 (a) MAIN OFFICE.—A national insurer or national in-
20 surance agency may designate any office at which it con-
21 ducts insurance operations as its main office, and for pur-
22 poses of jurisdiction, a national insurer or national insur-
23 ance agency shall be deemed a citizen of the State in which
24 its main office is located and of the State in which it has
25 its principal place of business.

1 (b) APPLICABLE LAW.—A national insurer or na-
2 tional insurance agency may elect to follow the corporate
3 governance procedures of the law of the State in which
4 the main office of the such insurer or agency is located,
5 the law of the State in which a company that controls the
6 insurer or agency is incorporated, title 8 of the Delaware
7 Code (Delaware General Corporation Law), , or the Model
8 Business Corporation Act of the American Bar Associa-
9 tion. A national insurer or national insurance agency shall
10 designate in its bylaws the body of law selected.

11 (c) INDEPENDENT AUDIT COMMITTEE FOR NA-
12 TIONAL INSURERS.—

13 (1) IN GENERAL.—Each national insurer and
14 national insurance agency shall establish an audit
15 committee of the board of directors of such insurer
16 or such agency, which shall be composed entirely of
17 outside directors who are independent of manage-
18 ment of such insurer or such agency.

19 (2) SATISFACTION.—The requirement described
20 in paragraph (1) shall be satisfied if a company that
21 controls a national insurer or national insurance
22 agency has established an audit committee of its
23 board of directors entirely composed of outside direc-
24 tors who are independent of management of such
25 controlling person, and such committee reviews the

1 financial statements of the national insurer or na-
2 tional insurance agency.

3 (d) PARTICIPATING POLICY PROCEDURES.—

4 (1) IN GENERAL.—A national insurer in mutual
5 form shall elect to either adhere to participating pol-
6 icy procedures of the relevant law of the State in
7 which its main office is located, or adhere to the
8 participating policy procedures established by the
9 Commissioner under paragraph (2).

10 (2) REGULATIONS.—The Commissioner shall,
11 by regulation, establish participating policy proce-
12 dures, as the Commissioner determines to be appro-
13 priate to carry out paragraph (1)

14 (e) CONSUMER LIAISON.—

15 (1) IN GENERAL.—Each national insurer and
16 national insurance agency shall appoint a liaison to
17 serve consumers and address complaints or disputes.

18 (2) PROCEDURES.—Each national insurer and
19 national insurance agency shall establish policies and
20 procedures designed to reasonably ensure fair and
21 expeditious handling of consumer complaints and
22 disputes.

23 (3) REGULATIONS.—The Commissioner shall
24 issue regulations governing the standards for the li-
25 aison referred to in paragraph (1).

1 **SEC. 303. CHARTER CONVERSIONS.**

2 (a) CONVERSION FROM STATE TO NATIONAL CHAR-
3 TER.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, the Commissioner may, pursuant to
6 regulations issued by the Commissioner, allow a
7 State insurer to convert to a national insurer and a
8 State insurance agency to convert to a national in-
9 surance agency.

10 (2) EFFECT OF CONVERSION.—A State insurer
11 or State insurance agency that converts under this
12 section shall, by operation of law and without fur-
13 ther action, hold and be subject to all rights, privi-
14 leges, liabilities, property interests, and other inter-
15 ests and obligations that the State insurer or State
16 insurance agency held, or was subject to, imme-
17 diately before the conversion.

18 (3) SPECIAL AUTHORITY.—The Commissioner
19 may, subject to such conditions as the Commissioner
20 may prescribe by regulation, permit a national in-
21 surer or national insurance agency resulting from
22 the conversion of a State insurer or State insurance
23 agency, as applicable, to retain, hold, or exercise as-
24 sets, liabilities, powers, and authorities that do not
25 conform to the legal requirements otherwise applica-
26 ble to national insurers or national insurance agen-

1 cies to the extent the Commissioner determines is
2 appropriate.

3 (b) CONVERSION FROM NATIONAL TO STATE CHAR-
4 TER.—

5 (1) IN GENERAL.—A national insurer may con-
6 vert to a State insurer and a national insurance
7 agency may convert to a State insurance agency in
8 accordance with applicable State law if—

9 (A) such national insurer or such national
10 insurance agency notifies the Commissioner of
11 the intention to convert in accordance with such
12 procedures as the Commissioner may prescribe
13 by regulation; and

14 (B) after conducting a review of such na-
15 tional insurer or such national insurance agen-
16 cy, the Commissioner approves the conversion.

17 (2) SAVINGS PROVISION.—Nothing in this sec-
18 tion or in the conversion of a national insurer to a
19 State insurer or a national insurance agency to a
20 State insurance Agency shall operate to abrogate
21 any rights, privileges, liabilities, property interests,
22 or other interests or obligations that a national in-
23 surer or national insurance agency held or was sub-
24 ject to immediately before the conversion.

1 (c) NO DELEGATION PERMITTED.—The Commis-
2 sioner may not delegate any authority under this section
3 to any insurance self-regulatory organization.

4 **SEC. 304. POWERS.**

5 (a) IN GENERAL.—

6 (1) NATIONAL INSURER.—A national insurer
7 may, pursuant to such regulations as the Commis-
8 sioner prescribes—

9 (A) engage in the sale, solicitation, nego-
10 tiation, and underwriting of life insurance and
11 annuities, property and casualty insurance
12 (other than title insurance), disability income
13 insurance, long-term care insurance, funding
14 agreements, and supplemental health insurance;

15 (B) establish and maintain 1 or more sepa-
16 rate accounts and allocate amounts to such ac-
17 counts, and establish and maintain 1 or more
18 protected cells in connection with an insurance
19 securitization and attribute to such cells insur-
20 ance and reinsurance obligations with respect to
21 its general account, obligations relating to the
22 insurance securitization, and assets to fund
23 such obligations;

24 (C) hold and accumulate funds pursuant to
25 funding agreements;

1 (D) provide investment advice and invest-
2 ment management services; and

3 (E) engage in all other insurance oper-
4 ations and exercise all such incidental powers as
5 shall be necessary to carry on insurance oper-
6 ations.

7 (2) NATIONAL INSURANCE AGENCY.—A na-
8 tional insurance agency may, pursuant to such regu-
9 lations and the Commissioner prescribes—

10 (A) engage in the sale, solicitation, and ne-
11 gotiation of policies of insurance issued by any
12 national insurer or State insurer, and the sale,
13 solicitation and negotiation of surplus lines of
14 insurance and nonadmitted insurance for a non-
15 admitted insurer; and

16 (B) exercise all such incidental powers as
17 shall be necessary to carry out such activities,
18 including claims adjustment and settlement,
19 risk management, employee benefits advice, re-
20 tirement planning, and any other insurance-re-
21 lated consulting activities.

22 (b) OTHER POWERS.—A national insurer or national
23 insurance agency may, subject to such regulations as the
24 Commissioner prescribes—

1 (1) adopt and use a corporate seal, or a fac-
2 simile of it;

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

6 (3) adopt, amend, and repeal by-laws;

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

11 (5) make contracts and guarantees, incur liabil-
12 ities, borrow money, issue notes, bonds, and other
13 obligations (which may be convertible into or include
14 the option to purchase other securities of the na-
15 tional insurer or national insurance agency), and se-
16 cure any of its obligations by mortgage or pledge of
17 any of its property, franchises, or income;

18 (6) purchase, receive, subscribe for, or other-
19 wise acquire, own, hold, vote, improve, employ, use,
20 and otherwise deal in and with real and personal
21 property or other assets, or any interest therein, and
22 sell, convey, mortgage, lease, exchange, transfer, or
23 otherwise dispose of, or mortgage or pledge, all or
24 any of its property and assets, or any interest there-
25 in;

1 (7) lend money, invest, and reinvest its funds
2 and receive and hold real and personal property as
3 security for repayment;

4 (8) participate with others in any corporation,
5 partnership, limited partnership, joint venture, or
6 other association, or in any transaction, under-
7 taking, or arrangement, which the national insurer
8 or national insurance agency would have power to
9 conduct by itself, whether or not such participation
10 involves sharing or delegating control with or to oth-
11 ers;

12 (9) elect or appoint directors, officers, employ-
13 ees, and agents of the national insurer or national
14 insurance agency, define their duties, fix their com-
15 pensation, and lend them money and credit;

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

20 (11) engage in any other lawful activity that is
21 necessary or convenient to further its activities and
22 affairs.

23 (c) SUBSIDIARIES.—No national insurer or national
24 insurance agency may establish or acquire a subsidiary
25 without prior notice to the Commissioner, and shall con-

1 duct the activities in accordance with regulations and or-
2 ders of the Commissioner.

3 (d) OTHER CORPORATE TRANSACTIONS.—No na-
4 tional insurer or national insurance agency shall engage
5 in mutual to stock conversions, stock to mutual conver-
6 sions, mergers, acquisitions, asset transfers, and other
7 similar corporate transactions without the prior approval
8 of the Commissioner, and subject to regulations and or-
9 ders of the Commissioner.

10 (e) PROHIBITED ACTIVITIES.—No national insurer or
11 national insurance agency may engage in any activity that
12 the Commissioner determines, by regulation or order,
13 poses a serious risk to the solvency of a national insurer
14 or national insurance agency, jeopardizes the interests of
15 policyholders of a national insurer or national insurance
16 agency, or otherwise is incompatible with the public inter-
17 est.

18 (f) EFFECT OF STATE LAW.—No State may, by stat-
19 ute, regulation, order, interpretation, or otherwise, prevent
20 or restrict a national insurer or national insurance agency
21 from exercising any power conferred by this section or by
22 any regulation authorized by this section.

23 **SEC. 305. CHARTERING COMMENCEMENT DATE.**

24 The Commissioner may not charter a national insurer
25 or national insurance agency until the Commissioner noti-

1 files Congress that the Office is operational and that all
2 regulations necessary to govern the organization, forma-
3 tion, operations, and supervision of such insurers and
4 agencies have been issued in final or interim final form.
5 The Commissioner shall provide a notification to Congress
6 not later than 2 years after the date of the enactment of
7 this Act.

8 **Subtitle B—Financial, Policy and**
9 **Market Conduct Standards**

10 **SEC. 311. FINANCIAL STANDARDS.**

11 The Commissioner shall establish, by regulation,
12 standards for national insurers and national insurance
13 agencies on—

- 14 (1) accounting and disclosure;
- 15 (2) auditing;
- 16 (3) risk management;
- 17 (4) internal controls;
- 18 (5) investments;
- 19 (6) capital and liquidity;
- 20 (7) actuarial opinions;
- 21 (8) reinsurance; and
- 22 (9) such other matters as the Commissioner
23 deems necessary to ensure the financial stability and
24 integrity of national insurers and national insurance
25 agencies.

1 **SEC. 312. POLICY STANDARDS.**

2 (a) **POLICY STANDARDS.**—The Commissioner shall
3 establish, by regulation, general policy requirements and
4 requirements for different categories of policies issued by
5 national insurers.

6 (b) **FILING REQUIREMENT.**—No national insurer
7 may issue a policy until the form of the policy has been
8 filed with the Commissioner. The form shall be accom-
9 panied by written certification by an officer of the national
10 insurer that the policy complies with requirements estab-
11 lished under subsection (a).

12 (c) **LAW APPLICABLE.**—

13 (1) **LAW SPECIFIED BY PARTIES.**—Subject to
14 any applicable Federal law, the provisions of any in-
15 surance policy or other product of a national insurer
16 shall be interpreted in accordance with the law of
17 the jurisdiction specified by the parties to the insur-
18 ance policy or other product if the parties have spec-
19 ified the law of—

20 (A) the jurisdiction in which the main of-
21 fice of the national insurer is located;

22 (B) the jurisdiction in which the principal
23 place of business of the national insurer is lo-
24 cated; or

25 (C) the jurisdiction in which the insurance
26 policy or other product is delivered.

1 (2) DEFAULT LAW.—If the parties to an insur-
2 ance policy or other product of a national insurer
3 have not specified the jurisdiction whose law shall
4 govern the provisions of the insurance policy or
5 other product, such provisions shall be interpreted in
6 accordance with the law of the jurisdiction in which
7 the insurance policy or other product is delivered.

8 (3) RULEMAKING.—The Commissioner shall es-
9 tablish, by regulation, choice of law rules under this
10 subsection.

11 (d) INTERPRETIVE RULINGS.—

12 (1) PROCEDURES.—The Commissioner shall es-
13 tablish procedures by which national insurers may
14 obtain interpretive rulings from the Office regarding
15 the interpretation and application of the require-
16 ments established under this section.

17 (2) PUBLIC AVAILABILITY.—Except as provided
18 under paragraph (3), requests by national insurers
19 for interpretive rulings from the Office and the com-
20 plete text of such interpretive rulings shall not be
21 made available to the public.

22 (3) PUBLICATION OF SUMMARIES.—Notwith-
23 standing paragraph (2), the Commissioner shall pub-
24 lish a summary of each interpretive opinion, exclud-
25 ing the name of the national insurer and any other

1 identifying information, either promptly after the
2 issuance of such opinion or, upon the request of the
3 national insurer, after such delay as the Commis-
4 sioner determines appropriate.

5 (e) RATES, RATING ELEMENTS, AND PRICE.—The
6 Commissioner may not require a national insurer to use
7 any particular rate, rating element, or price.

8 **SEC. 313. MARKET CONDUCT STANDARDS.**

9 (a) STANDARDS.—The Commissioner shall establish,
10 by regulation, market conduct standards for national in-
11 surers, national insurance agencies, and national insur-
12 ance producers.

13 (b) CONTENTS.—The standards established under
14 subsection (a) shall—

15 (1) ensure that policyholders and other con-
16 sumers served by national insurers, national insur-
17 ance agencies, and national insurance producers—

18 (A) are treated fairly in all phases of an
19 insurance transaction;

20 (B) are provided with written explanations
21 of key terms and conditions in policies that are
22 easily understood;

23 (C) receive products and services in a se-
24 cure and efficient manner;

25 (D) have their privacy protected; and

1 (E) have disputes resolved in a timely
2 manner; and

3 (2) implement the model laws of the NAIC enti-
4 tled “Unfair Trade Practices Act” and “Unfair
5 Claims Settlement Practices Act”.

6 (c) DISCLOSURE.—

7 (1) IN GENERAL.—Subject to paragraph (2),
8 the Commissioner shall require each policy issued by
9 a national insurer to include the following disclosure
10 on the cover page:

11 “This policy has been issued by a national in-
12 surer, which is supervised by the Office of National
13 Insurance. If you have any questions or complaints
14 about this policy, you may contact the Division of
15 Consumer Affairs, Office of National Insurance,
16 _____.”.

17 (2) ADDRESS.—The disclosure required under
18 paragraph (1) shall, in place of the blank at the end,
19 include the appropriate address, toll-free number,
20 and Internet address of the Division of Consumer
21 Affairs for the office of the Division located in the
22 State in which the policyholder resides.

1 **SEC. 314. GENERAL PRINCIPLES.**

2 (a) GENERAL PRINCIPLES.—The financial, policy,
3 and market conduct standards issued by the Commis-
4 sioner pursuant to this subtitle shall—

5 (1) promote the stability and integrity of na-
6 tional insurers and national insurance agencies;

7 (2) protect policyholders and other consumers
8 and investors; and

9 (3) encourage innovation and competition by
10 national insurers and national insurance agencies.

11 (b) NAIC STANDARDS.—In establishing the finan-
12 cial, policy, and market conduct standards required by this
13 subtitle, the Commissioner shall take into consideration
14 standards, models, practices, and instructions established
15 by the NAIC.

16 **Subtitle C—State Taxation**

17 **SEC. 321. STATE TAXATION OF NATIONAL INSURERS.**

18 (a) STATE TAXATION RULE.—Except as provided in
19 subsection (b) and section 605(b), a national insurer doing
20 business in any State shall be subject to all applicable
21 State and local taxes, assessments, and charges, including
22 insurance retaliatory taxes or other similar taxes, and
23 shall be entitled to all applicable tax credits, deductions,
24 and offsets provided under State law, as well as all policy-
25 holder surcharge provisions under State law, to the same
26 extent and in the same manner as an insurer licensed to

1 do business in such State and chartered in the State where
2 the national insurer is considered domiciled under sub-
3 section (c) or (d), except that, such national insurer shall
4 not be subject to—

- 5 (1) any additional taxes, assessments, and
6 charges imposed by such State (or local government)
7 by reason of the failure of the national insurer to be
8 licensed or otherwise authorized to conduct business
9 or write or sell insurance policies, by such State; or
10 (2) special assessments and charges that fund
11 services that the State does not provide with respect
12 to the national insurer.

13 (b) EXCEPTION.—No State shall have the power to
14 impose an insurance retaliatory tax on any national in-
15 surer, unless—

- 16 (1) for any tax purpose for which the State of
17 domicile is relevant, every national insurer is treated
18 by such State as domiciled in the State designated
19 by each national insurer under subsection (c); and
20 (2) the insurance retaliatory tax is imposed by
21 such State on every national insurer to the same ex-
22 tent and in the same manner as it is imposed on
23 every insurer chartered in the State where the na-
24 tional insurer is considered domiciled under sub-
25 section (c).

1 (c) DESIGNATION OF DOMICILE.—

2 (1) IN GENERAL.—A national insurer may des-
3 ignate as its State of domicile, by filing such des-
4 ignation in writing with the Commissioner—

5 (A) the State in which the national insur-
6 er's principal place of business in the United
7 States is located; or

8 (B) in the case of an insurer that has con-
9 verted from a State insurer to a national in-
10 surer under this Act, the State in which such
11 insurer was domiciled immediately before such
12 conversion.

13 (2) NO DESIGNATION BY NATIONAL INSURER.—
14 If a national insurer does not make a designation of
15 a State of domicile under this subsection, the na-
16 tional insurer shall be deemed to have designated as
17 its State of domicile the State in which its principal
18 place of business in the United States is located.

19 (3) CHANGE IN DOMICILE.—A national insurer
20 may change its State of domicile, with the approval
21 of the Commissioner, to any other State in accord-
22 ance with paragraph (1).

23 (d) STATUS OF NATIONAL INSURER.—For purposes
24 of State taxation, except as provided in this section, a na-
25 tional insurer shall not be exempt from any State tax or

1 subject to a lesser burden of any State tax, solely by rea-
2 son of its status as a national insurer under this Act.

3 **SEC. 322. STATE TAXATION OF NATIONAL INSURANCE**
4 **AGENCIES.**

5 (a) STATE TAXATION RULE.—A national insurance
6 agency shall be subject to all taxes imposed under any ap-
7 plicable provision of State law, to the same extent and in
8 the same manner as an agency chartered in the State in
9 which the national insurance agency is considered domi-
10 ciled pursuant to subsection (b).

11 (b) STATE OF DOMICILE.—For purposes of this sec-
12 tion, the State of domicile of a national insurance agency
13 shall be deemed to be the State in which the principal
14 place of business of the national insurance agency in the
15 United States is located.

16 (c) STATUS OF NATIONAL INSURANCE AGENCY.—
17 For purposes of State taxation, except as provided in this
18 section, a national insurance agency shall not be exempt
19 from any State tax or subject to a lesser burden of any
20 State tax, solely by reason of its status as a national insur-
21 ance agency under this Act.

22 **SEC. 323. STATE TAXATION OF NONADMITTED AND SUR-**
23 **PLUS LINES OF INSURANCE.**

24 No State, other than the State in which an insured
25 maintains its principal place of business or, in the case

1 of an individual, maintains a principal residence, may re-
2 quire a tax, fee, assessment, or other charge imposed on
3 an insured, either directly or through a producer, that is
4 based upon any payment made as consideration for non-
5 admitted insurance or surplus lines insurance, and any
6 other compensation given in consideration for a contract
7 of insurance.

8 **TITLE IV—NATIONAL**
9 **INSURANCE PRODUCERS**

10 **SEC. 401. LICENSING OF NATIONAL INSURANCE PRO-**
11 **DUCERS.**

12 (a) **AUTHORITY.—**

13 (1) **IN GENERAL.—**The Commissioner may li-
14 cense an individual person as a national insurance
15 producer.

16 (2) **REQUIREMENTS FOR SALE OF NATIONAL**
17 **INSURANCE.—** No individual may sell, solicit, or ne-
18 gotiate insurance for a national insurer unless such
19 individual—

20 (A) is licensed by the Commissioner under
21 paragraph (1); and

22 (B) is an employee or agent of a national
23 insurer or national insurance agency.

24 (b) **SCOPE OF LICENSE.—**

1 (1) IN GENERAL.—A national insurance pro-
2 ducer may sell, solicit, or negotiate insurance in any
3 State for a national insurer or a State insurer, and
4 exercise all such incidental powers as shall be nec-
5 essary to carry out such activities, including claims
6 adjustments and settlement, risk management, em-
7 ployee benefits advice, retirement planning, and any
8 other insurance-related consulting activities.

9 (2) LIMITATIONS.—The Commissioner may
10 limit a license to one or more specified lines or types
11 of insurance.

12 (c) QUALIFICATIONS.—The Commissioner shall, by
13 regulation, specify educational and examination require-
14 ments for obtaining a national insurance producer license,
15 and may impose different requirements for different lines
16 or types of insurance.

17 **SEC. 402. SUPERVISION AND EXAMINATION.**

18 (a) EXAMINATIONS.—

19 (1) IN GENERAL.—The Commissioner may ex-
20 amine a national insurance producer to assess the
21 producer's compliance with this Act and the regula-
22 tions issued pursuant to this Act.

23 (2) MANDATORY EXAMINATIONS.—The Com-
24 missioner shall provide for the examination of a na-
25 tional insurance producer in response to a complaint

1 or any evidence that such producer has violated or
2 is about to violate—

3 (A) a law, rule, or regulation;

4 (B) any condition imposed in writing by
5 the Commissioner in connection with issuing a
6 national insurance producer license; or

7 (C) any written agreement entered into
8 with the Commissioner.

9 (b) REPORTS.—The Commissioner may require a na-
10 tional insurance producer to make such reports, con-
11 taining such information and in such form, as the Com-
12 missioner may prescribe by regulation.

13 (c) POWERS.—The powers authorized the Commis-
14 sioner in section 1122(c) of this Act shall apply to reports
15 by and examinations of national insurance producers.

16 (d) LIMITATION ON LIABILITY.—

17 (1) IN GENERAL.—Subject to paragraph (2), no
18 civil liability shall be imposed on and no cause of ac-
19 tion shall arise from a national insurer or national
20 insurance agency, an insurer-affiliated party, or a
21 national insurance producer submitting a statement
22 or information required under this Act, or any regu-
23 lation thereunder, or requested in writing by the
24 Commissioner relating to the conduct of a national
25 insurance producer.

1 (2) EXCEPTION.—Paragraph (1) shall not
2 apply with respect to false statements made with ac-
3 tual malice.

4 **SEC. 403. PRODUCER DATABASE.**

5 (a) IN GENERAL.—The Commissioner shall develop
6 and implement an electronic database consisting of infor-
7 mation relating to national insurance producers and an
8 electronic communication network that links the Commis-
9 sioner with State insurance regulators and national insur-
10 ers, national insurance agencies, and State insurers for
11 an electronic exchange of such information.

12 (b) MAINTENANCE.—The Commissioner may dele-
13 gate authority over the maintenance of each database de-
14 scribed in subsection (a) to an insurance self-regulatory
15 organization.

16 **SEC. 404. DUTY TO SUPERVISE.**

17 (a) NATIONAL INSURERS.—A national insurer shall
18 supervise the sales and marketing practices of a national
19 insurance producer with respect to the sale, solicitation,
20 or negotiation of insurance policies of such national in-
21 surer, if—

22 (1) such producer is an—

23 (A) employee of the national insurer; or

24 (B) agent of the national insurer; and

1 (2) the principal business activity of such pro-
2 ducer is devoted to the sale, solicitation, or negotia-
3 tion of insurance policies for such insurer, the super-
4 vision of the agents for such insurer, or both.

5 (b) NATIONAL INSURANCE AGENCIES AND OTHER
6 NATIONAL INSURER PRODUCERS.—A national insurance
7 agency shall supervise the sales and marketing practices
8 of a national insurance producer with respect to the sale,
9 solicitation, or negotiation of insurance policies, if such
10 producer—

11 (1) is an employee of such agency and the sale,
12 solicitation, and negotiation of insurance is within
13 the scope of employment of the producer; or

14 (2) is an agent of such agency and the sale, so-
15 licitation, and negotiation of insurance is pursuant
16 to the terms of an agreement between the agent and
17 such agency.

18 (c) STANDARDS FOR SUPERVISION.—The Commis-
19 sioner shall, by regulation, establish standards for the du-
20 ties under subsections (a) and (b). Such standards shall
21 not conflict with the rules adopted by any self-regulatory
22 organization approved by the Securities and Exchange
23 Commission pursuant to its authority under section
24 19(b)(1) of the Securities Exchange Act of 1934 (15

1 U.S.C. 78s(b)(1)) for broker-dealer supervision of reg-
2 istered representatives.

3 (d) EXEMPTION.—The Commissioner may, by regula-
4 tion, exempt any class of persons from the duties under
5 subsections (a) and (b), if the Commissioner determines
6 that, given the nature of the business relationship with
7 the national insurance producer, it would be unreasonable
8 or inappropriate to require the class member to supervise
9 such producer.

10 (e) NO DUTY.—A national insurer or national insur-
11 ance agency is not required to supervise the sales and mar-
12 keting practices of persons other than those referred to
13 in subsections (a) or (b).

14 (f) OVERSIGHT OF INDEPENDENT NATIONAL INSUR-
15 ANCE PRODUCERS.—

16 (1) IN GENERAL.—The Commissioner shall
17 oversee the sales and marketing practices of a na-
18 tional insurance producer with respect to the sale,
19 solicitation, or negotiation of insurance policies if
20 such producer is not a person subject to supervision
21 under subsection (a) or (b).

22 (2) STANDARDS AND PROCEDURES.—The Com-
23 missioner shall, by regulation, establish standards
24 and procedures for the oversight of the sales and

1 marketing practices of national insurance producers
2 described in paragraph (1).

3 **SEC. 405. RELATIONSHIP TO STATE LAW.**

4 (a) NO STATE RESTRICTIONS.—No State may pre-
5 vent or restrict a national insurer or national insurance
6 agency from engaging in the acts described in subsection
7 (b) or from engaging the services of a person who engages
8 in such acts for the national insurer or national insurance
9 agency, nor shall any State require that a person be li-
10 censed by reason of engaging in such acts for a national
11 insurer or national insurance agency.

12 (b) ACTS PROTECTED FROM STATE RESTRIC-
13 TIONS.—The acts referred to in subsection (a) are the fol-
14 lowing:

15 (1) Investigating, evaluating, ascertaining, or
16 determining the amount of or negotiating, settling,
17 or adjusting or otherwise participating in the dis-
18 posal of claims, losses, or damages arising under in-
19 surance policies written by a national insurer.

20 (2) Soliciting, negotiating, or placing reinsur-
21 ance cessions or retrocessions on behalf of a ceding
22 national insurer without the authority or power to
23 bind reinsurance on behalf of such national insurer.

24 (3) Binding or managing all or part of the as-
25 sumed reinsurance business of a national insurer

1 that is a reinsurer (including the management of a
2 separate division, department, or underwriting of-
3 fice) and acting as an agent for such reinsurer.

4 (4) Directly or indirectly underwriting, col-
5 lecting charges or premiums, or adjusting or settling
6 claim, in connection with policies of insurance writ-
7 ten by a national insurer.

8 (c) ACTIVITIES OF NATIONAL INSURANCE PRO-
9 DUCERS.—No State may—

10 (1) prevent or restrict a national insurance pro-
11 ducer from engaging in any activity authorized by
12 this title; or

13 (2) require such producer to be licensed by rea-
14 son of engaging in such activity on behalf of a na-
15 tional insurer, national insurance agency, State in-
16 surer, or a United States branch of a non-United
17 States insurer.

18 (d) ACTIVITIES OF STATE INSURANCE PRO-
19 DUCERS.—No State may prevent or restrict an insurance
20 producer licensed by such State from selling, soliciting, or
21 negotiating insurance in such State on behalf of a national
22 insurer or being employed by a national insurance agency.

23 **SEC. 406. LICENSING COMMENCEMENT DATE.**

24 The Commissioner shall not license a national insur-
25 ance producer until the Commissioner notifies Congress

1 that the Office is operational and that all regulations nec-
2 essary to govern the licensing, operations, and supervision
3 of such producer have been issued in final or interim final
4 form. The Commissioner shall provide a notification to
5 Congress not later than 2 years after the date of the en-
6 actment of this Act.

7 **TITLE V—CHANGE IN CONTROL**
8 **AND INSURANCE HOLDING**
9 **COMPANIES**

10 **SEC. 501. CHANGE IN CONTROL.**

11 (a) IN GENERAL.—

12 (1) LIMITATION.—A person shall not, directly
13 or indirectly or through or in concert with 1 or more
14 other persons, acquire control of a national insurer
15 or national insurance agency until—

16 (A) such person has submitted a written
17 notice as described in subsection (f) to the
18 Commissioner of the intention of such person to
19 acquire control of such national insurer or such
20 national insurance agency; and

21 (B) the expiration of the disapproval pe-
22 riod and all extensions of such period referred
23 to in paragraph (2).

24 (2) DISAPPROVAL PERIOD.—

1 (A) IN GENERAL.—The Commissioner may
2 disapprove the acquisition of effective control of
3 a national insurer or national insurance agency
4 by issuing notice to the person wishing to ac-
5 quire such effective control within 60 days of
6 receiving a notice referred to in paragraph
7 (1)(A).

8 (B) EXTENSION AUTHORIZED.—The pe-
9 riod for disapproval under subparagraph (A)
10 may be extended not more than twice for a pe-
11 riod of not more than 45 days each time, if—

12 (i) the Commissioner determines that
13 an acquiring person has not furnished all
14 the information required under this sec-
15 tion;

16 (ii) in the judgment of the Commis-
17 sioner, any material information submitted
18 is substantially inaccurate;

19 (iii) the Commissioner has been un-
20 able to complete the investigation of an ac-
21 quiring person required under this section
22 because of any delay caused by, or the in-
23 adequate cooperation of, such acquiring
24 person; or

1 (iv) the Commissioner determines that
2 additional time is needed—

3 (I) to investigate and determine
4 that no acquiring person has a record
5 of failing to comply with the require-
6 ments of subchapter II of chapter 53
7 of title 31, United States Code; or

8 (II) to analyze the safety and
9 soundness of any plans or proposals
10 described in subsection (f)(6) or the
11 future prospects of the national in-
12 surer or national insurance agency.

13 (b) INVESTIGATION OF PRINCIPALS.—

14 (1) IN GENERAL.—Upon receiving a notice
15 under subsection (a)(1), the Commissioner shall—

16 (A) conduct an investigation of the com-
17 petence, experience, integrity, and financial
18 ability of each person named in a notice of a
19 proposed acquisition as a person by whom or
20 for whom such acquisition is to be made; and

21 (B) make an independent determination of
22 the accuracy and completeness of any informa-
23 tion described in subsection (f) with respect to
24 such person.

1 (2) REPORT.—The Commissioner shall prepare
2 a written report of any investigation under para-
3 graph (1) that includes a summary of the results of
4 such investigation and shall make such report pub-
5 licly available in accordance with regulations issued
6 by the Commissioner for the publication of reports
7 under this paragraph.

8 (c) PUBLIC COMMENT.—Upon receiving notice of a
9 proposed acquisition, the Commissioner shall, unless the
10 Commissioner determines that an emergency exists, within
11 a reasonable period of time—

12 (1) publish the name of the national insurer or
13 national insurance agency to be acquired and the
14 name of each person identified in such notice as a
15 person by whom or for whom such acquisition is to
16 be made; and

17 (2) solicit public comment on such proposed ac-
18 quisition, particularly from persons in the geo-
19 graphic area where the national insurer or national
20 insurance agency is located, before final consider-
21 ation of such notice by the Commissioner.

22 (d) GROUNDS FOR DISAPPROVAL.—The Commis-
23 sioner may disapprove a proposed acquisition, if—

24 (1) either the financial condition of any acquir-
25 ing person or the future prospects of the institution

1 is such as might jeopardize the financial stability of
2 the national insurer or national insurance agency or
3 prejudice the interests of the customers of such in-
4 surer or agency;

5 (2) the competence, experience, or integrity of
6 any acquiring person or of any of the proposed man-
7 agement personnel indicates that it would not be in
8 the interest of the customers of the national insurer
9 or national insurance agency, or in the interest of
10 the public to permit such person to control the na-
11 tional insurer or national insurance agency; or

12 (3) any acquiring person neglects, fails, or re-
13 fuses to furnish the Commissioner with all the infor-
14 mation required by the Commissioner.

15 (e) NOTICE OF DISAPPROVAL, HEARING.—

16 (1) NOTICE OF DISAPPROVAL.—Not later than
17 3 days after a decision to disapprove a proposed ac-
18 quisition under this section, the Commissioner shall
19 notify the acquiring person in writing of the dis-
20 approval. Such notice shall provide a statement of
21 the basis for the disapproval.

22 (2) HEARING.—

23 (A) IN GENERAL.—Not later than 10 days
24 after the receipt of a notice of disapproval
25 under paragraph (1), a person may request a

1 hearing before a United States district court
2 with jurisdiction on the proposed acquisition.

3 (B) STANDARD OF REVIEW.—A judge re-
4 viewing a notice of disapproval under paragraph
5 (1) shall determine whether the decision of the
6 Commissioner is reasonable.

7 (3) JUDICIAL REVIEW.—A person whose pro-
8 posed acquisition is disapproved after a hearing
9 under paragraph (2) may obtain review by the
10 United States court of appeals for the circuit in
11 which the main office of the national insurer or na-
12 tional insurance agency is to be acquired is located,
13 or the United States Court of Appeals for the Dis-
14 trict of Columbia Circuit, by filing a notice of appeal
15 in such court within 10 days from the date of such
16 order, and simultaneously sending a copy of such no-
17 tice by registered or certified mail to the Commis-
18 sioner. The Commissioner shall promptly certify and
19 file in such court the record upon which the dis-
20 approval was based. The findings of the Commis-
21 sioner shall be set aside if found to be arbitrary or
22 capricious or if found to violate procedures estab-
23 lished by this section.

24 (f) INFORMATION.—A notice described in this sub-
25 section is a notice that includes such relevant information

1 in such form as the Commissioner may require by regula-
2 tion or by specific request in connection with a particular
3 notice.

4 **SEC. 502. REPORTS BY AND EXAMINATIONS OF INSURANCE**
5 **HOLDING COMPANIES.**

6 (a) **REPORTS.**—Each insurance holding company and
7 each subsidiary of such company, other than a national
8 insurer or national insurance agency, shall file with the
9 Commissioner such reports as may be required by the
10 Commissioner. Such reports shall be made under oath,
11 and shall be in such form and for such periods as the Com-
12 missioner may prescribe. Each report shall contain such
13 information concerning the operations of such insurance
14 holding company and its subsidiaries as the Commissioner
15 may require.

16 (b) **EXAMINATIONS.**—Each insurance holding com-
17 pany and each subsidiary thereof shall be subject to such
18 examinations as the Commissioner may prescribe. The
19 cost of such examinations shall be assessed against and
20 paid by such insurance holding company.

21 (c) **REPORTS AND EXAMINATIONS FILED WITH**
22 **OTHER AGENCIES.**—The Commissioner shall, to the full-
23 est extent deemed feasible, use for the purposes of this
24 section reports filed with and examinations made by other
25 Federal agencies.

1 (d) POWERS.—The powers authorized for the Com-
2 missioner in section 122(c) shall apply to reports by and
3 examinations of insurance holding companies and their
4 subsidiaries.

5 **SEC. 503. ACTIVITIES OF INSURANCE HOLDING COMPANIES**
6 **AND SUBSIDIARIES.**

7 (a) IN GENERAL.—No insurance holding company
8 and no subsidiary of an insurance holding company shall
9 engage in any activity that the Commissioner determines
10 poses a significant risk to the solvency of a national in-
11 surer or national insurance agency, jeopardizes the inter-
12 ests of the policyholders of such insurer or agency, or is
13 incompatible with the public interest.

14 (b) DETERMINATION AND NOTICE FOR CORRECTIVE
15 ACTION.—If the Commissioner determines that an insur-
16 ance holding company or subsidiary of an insurance hold-
17 ing company is engaged, or has engaged, or the Commis-
18 sioner has reasonable cause to believe is about to engage
19 in an activity in violation of the terms of subsection (a),
20 the Commissioner shall provide a written notice to such
21 company or subsidiary, which shall specify the action or
22 actions the company or subsidiary must take to correct
23 the violation and a time period for taking such corrective
24 action or actions. The issuance of a notice under this sec-
25 tion does not prevent the Commissioner from taking any

1 other enforcement action against the company or sub-
2 sidiary.

3 (c) HEARING.—

4 (1) IN GENERAL.—Not later than 10 days after
5 the date of receipt of a notice issued pursuant to
6 subsection (b), an insurance holding company or
7 subsidiary of such company may request a hearing
8 before a United States district court with jurisdic-
9 tion on the corrective action or actions specified in
10 the notice and the time period for taking such action
11 or actions.

12 (2) STANDARD OF REVIEW.—A judge reviewing
13 a notice issued pursuant to subsection (b) shall de-
14 termine whether the decision of the Commissioner is
15 reasonable.

16 (d) JUDICIAL REVIEW.—An insurance holding com-
17 pany or subsidiary of an insurance holding company that
18 remains subject to a notice for corrective action following
19 a hearing under subsection (c) may obtain review of the
20 notice by the United States court of appeals for the circuit
21 in which the main office of the national insurer or national
22 insurance agency to be acquired is located, or the United
23 States Court of Appeals for the District of Columbia Cir-
24 cuit, by filing an appeal in such court not later than 10
25 days after the date on which the Commissioner has af-

1 firmed or modified the notice, and simultaneously sending
2 a copy of such appeal by registered or certified mail to
3 the Commissioner. The Commissioner shall promptly cer-
4 tify and file in such court the record upon which the notice
5 was based. The determination of the Commissioner shall
6 be set aside if found to be arbitrary or capricious.

7 **SEC. 504. CAPITAL, LIQUIDITY, DIVIDEND, OPERATIONAL,**
8 **AND OTHER STANDARDS.**

9 The Commissioner shall establish, by rule or order,
10 capital, liquidity, dividend, operational, and any other
11 standards for an insurance holding company that the
12 Commissioner deems appropriate to ensure the solvency
13 and sound operation of each insurance holding company.

14 **SEC. 505. AFFILIATE TRANSACTIONS.**

15 (a) IN GENERAL.—Transactions between a national
16 insurer and a national insurance agency and any affiliate
17 shall be subject to the following standards:

18 (1) The terms shall be fair, reasonable, and at
19 least as favorable to the national insurer as those
20 that would be offered to, or would apply to, a non-
21 affiliate.

22 (2) Charges or fees for services performed shall
23 be reasonable and at least as favorable to the na-
24 tional insurer as those that would be offered to, or
25 would apply to, a nonaffiliate.

1 (3) Expenses incurred and payment received
2 shall be allocated to the national insurer in con-
3 formity with customary insurance accounting prac-
4 tices consistently applied.

5 (4) The books, accounts, and records of each
6 party to all such transactions shall be so maintained
7 as to clearly and accurately disclose the nature and
8 details of the transactions including such accounting
9 information as is necessary to support the reason-
10 ableness of the charges or fees to the respective par-
11 ties.

12 (5) The national insurer's surplus following any
13 dividends or distributions to shareholders shall be
14 reasonable in relation to the outstanding liabilities of
15 the national insurer and adequate to meet its finan-
16 cial needs.

17 (b) APPROVAL OF CERTAIN TRANSACTIONS.—The
18 Commissioner may, by regulation, specify certain trans-
19 actions involving a national insurer and any affiliate that
20 are not permissible for a national insurer, unless the na-
21 tional insurer has notified the Commissioner in writing of
22 its intention to enter into the transaction and the Commis-
23 sioner has either approved or failed to approve the trans-
24 action within a specified time period.

1 **SEC. 506. RELATIONSHIP TO OTHER LAWS.**

2 (a) PERMITTED AFFILIATION.—A national insurer
3 may be affiliated with an insurer or agency that is not
4 chartered or licensed under this Act.

5 (b) REINSURANCE POOLING AGREEMENTS.—The
6 Commissioner shall have exclusive jurisdiction over rein-
7 surance pooling agreements to which 1 or more national
8 insurers and affiliated State insurers are parties under
9 which policies of insurance sold, solicited, negotiated, and
10 underwritten by, and reinsurance assumed by, affiliated
11 national insurers and State insurers are pooled.

12 (c) CONFLICT WITH OTHER FEDERAL LAWS.—This
13 title shall not be construed to conflict with or supersede
14 the provisions of any other Federal law or regulation gov-
15 erning the regulation of holding companies, including fi-
16 nancial holding companies, as defined in section 2 of the
17 Bank Holding Company Act of 1956 (12 U.S.C. 1841),
18 and savings and loan holding companies, as defined in sec-
19 tion 10 of the Home Owners' Loan Act (12 U.S.C.
20 1467a).

21 **SEC. 507. NO DELEGATION PERMITTED.**

22 The Commissioner may not delegate to any insurance
23 self-regulatory organization any authority conferred under
24 this title with respect to regulation of a national insurer
25 that is an affiliate of an insurance holding company.

1 **TITLE VI—CONSERVATORSHIP,**
2 **RECEIVERSHIP, THE PAY-**
3 **MENT OF BENEFITS AND**
4 **CLAIMS TO POLICYHOLDERS,**
5 **AND ASSESSMENTS ON NA-**
6 **TIONAL INSURERS**

7 **SEC. 601. APPOINTMENT OF CORPORATION AS CONSER-**
8 **VATOR OR RECEIVER.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law, if any of the grounds under subsection (b)
11 exist, the Commissioner may appoint the Director of the
12 National Insurance Guaranty Corporation as a conser-
13 vator or receiver for a national insurer or national insur-
14 ance agency.

15 (b) GROUNDS FOR APPOINTMENT.—The grounds for
16 establishing a conservatorship or receivership are as fol-
17 lows:

18 (1) INSOLVENCY.—The national insurer or na-
19 tional insurance agency is insolvent.

20 (2) SUBSTANTIAL DISSIPATION.—The national
21 insurer or national insurance agency has substantial
22 dissipation of assets or earnings due to—

23 (A) a violation of any provision of Federal
24 or State law; or

25 (B) a hazardous practice.

1 (3) HAZARDOUS CONDITION.—The national in-
2 surer or national insurance agency is in such condi-
3 tion that the further transaction of business would
4 be hazardous, financially or otherwise, to policy-
5 holders, creditors, or the public.

6 (4) CEASE-AND-DESIST ORDER.—The national
7 insurer or national insurance agency has willfully
8 violated a cease-and-desist order.

9 (5) CONCEALMENT.—The national insurer or
10 national insurance agency has concealed the books,
11 papers, records, or assets of the insurer or agency,
12 or has refused to submit the books, papers, records,
13 or affairs of the insurer or agency, for inspection to
14 any examiner or to any lawful agent of the Commis-
15 sioner.

16 (6) INABILITY TO MEET OBLIGATIONS.—The
17 national insurer or national insurance agency is like-
18 ly to be unable to pay its obligations or meet the de-
19 mands of its creditors in the normal course of busi-
20 ness.

21 (7) VIOLATION OF LAW.—The national insurer
22 or national insurance agency has willfully and con-
23 tinuously violated any law or regulation, or com-
24 mitted any hazardous practice or condition, that is
25 likely to—

1 (A) cause insolvency or substantial dissipa-
2 tion of assets or earnings; or

3 (B) weaken the condition of the national
4 insurer or national insurance agency.

5 (8) CONSENT.—The national insurer or na-
6 tional insurance agency, by resolution of its board of
7 directors or its shareholders or members, consents to
8 the appointment.

9 (9) MONEY LAUNDERING.—The Attorney Gen-
10 eral notifies the Commissioner in writing that the
11 national insurer or national insurance agency has
12 been found guilty of a criminal offense under section
13 1956 or 1957 of title 18, United States Code, or
14 section 5322 or 5324 of title 31, United States
15 Code.

16 **SEC. 602. ESTABLISHMENT OF THE NATIONAL INSURANCE**
17 **GUARANTY CORPORATION.**

18 (a) ESTABLISHMENT.—There is established the Na-
19 tional Insurance Guaranty Corporation.

20 (b) DIRECTOR.—The head of the National Insurance
21 Guaranty Corporation shall be the Director of the Na-
22 tional Insurance Guaranty Corporation, who shall be ap-
23 pointed by the Commissioner.

1 (c) NONPROFIT AND SUCCESSION.—The Corporation
2 shall be a nonprofit corporation and shall have succession
3 until dissolved by an Act of Congress.

4 (d) APPLICATION OF DISTRICT OF COLUMBIA NON-
5 PROFIT CORPORATION ACT.—The Corporation shall, ex-
6 cept as otherwise provided in this title, be subject to, and
7 have all the powers conferred upon a nonprofit corporation
8 by the District of Columbia Nonprofit Corporation Act
9 (D.C. Code, 29-301.01 et seq., or any successor thereto).

10 **SEC. 603. PAYMENT OF CLAIMS TO POLICYHOLDERS OF NA-**
11 **TIONAL INSURERS.**

12 (a) LIFE INSURANCE POLICIES.—If a national in-
13 surer is placed into receivership for purposes of liquida-
14 tion, the Director of the Corporation shall pay the claims
15 on life insurance policies issued by such insurer in a man-
16 ner that is consistent with the terms and limits of the
17 “Life and Health Insurance Guaranty Association Model
18 Act” of the NAIC in effect on January 1, 2009, or as
19 subsequently modified by the NAIC.

20 (b) PROPERTY AND CASUALTY POLICIES.—If a na-
21 tional insurer is placed into receivership for purposes of
22 liquidation, the Director of the Corporation shall pay the
23 claims of property and casualty insurance policies issued
24 by such insurer in a manner that is consistent with the
25 terms and limits of the “Property and Casualty Guaranty

1 Association Model Act” of the NAIC in effect on January
2 1, 2009, or as subsequently modified by the NAIC.

3 **SEC. 604. ASSESSMENTS OF NATIONAL INSURERS.**

4 (a) ASSESSMENTS AUTHORIZED.—For the purpose of
5 paying the claims of policyholders and other claims
6 against a national insurer that is placed into receivership,
7 the Director of the Corporation shall impose an assess-
8 ment against all other national insurers in accordance
9 with this section.

10 (b) NOTICE AND IMPOSITION OF ASSESSMENTS.—

11 (1) WRITTEN NOTICE REQUIRED.—The Direc-
12 tor of the Corporation shall provide each national in-
13 surer a written notice of an assessment, and assess-
14 ments shall be payable not later than 30 days after
15 the date of receipt of such notice.

16 (2) LATE PAYMENT.—A national insurer that
17 fails to pay an assessment when due shall be subject
18 to an interest charge on the assessment, as set by
19 the Director of the Corporation.

20 (3) ASSESSMENTS NOT IMPOSED UNTIL NEED-
21 ED.—The Director of the Corporation shall not im-
22 pose an assessment upon a national insurer until
23 such funds are needed.

24 (4) AMOUNT OF ASSESSMENT.—Each national
25 insurer shall be assessed its share of all claims in-

1 curred by the receivership, including administrative
2 costs of the Director of the Corporation, in an
3 amount equal to the product of—

4 (A) an assessment rate established by the
5 Director of the Corporation by regulation; and

6 (B) the average total assets of the insurer
7 in the year preceding the assessment.

8 (c) ABATED OR DEFERRED ASSESSMENTS.—The Di-
9 rector of the Corporation may abate or defer, in whole or
10 in part, an assessment imposed on a national insurer if
11 payment of the assessment would endanger the ability of
12 the insurer to fulfill its contractual obligations. In the
13 event an assessment against a national insurer is abated
14 or deferred, in whole or in part, the amount by which the
15 assessment is abated or deferred may be assessed against
16 all other national insurers, in a manner consistent with
17 the basis for assessments set forth in this section. Once
18 the conditions that caused action under this subsection
19 have been removed or rectified, the insurer shall pay all
20 assessments that were deferred pursuant to a repayment
21 plan approved by the Director of the Corporation.

22 **SEC. 605. PARTICIPATION IN STATE GUARANTY ASSOCIA-**
23 **TIONS.**

24 (a) IN GENERAL.—A national insurer shall partici-
25 pate in the State guaranty association for a line of insur-

1 ance in each State in which such insurer is doing business
2 in such line of insurance.

3 (a) **TAXATION.**—No State shall impose a premium
4 tax, franchise tax, income tax, retaliatory tax, or other pri-
5 mary tax applicable to insurance companies on any na-
6 tional insurer, unless such State allows the national in-
7 surer to recoup assessments allocable to such State in the
8 same manner and to the same extent that a State insurer
9 is allowed to recoup such assessments.

10 **SEC. 606. REPORT TO CONGRESS.**

11 Not later than two years after the date of the enact-
12 ment of this Act, the Director of the Corporation shall
13 submit to Congress a recommendation on—

14 (1) whether national insurers should continue
15 to be members of State guaranty associations;

16 (2) whether national insurers should contribute
17 to a fund, to be administered by the Director, for
18 the resolution of claims against any national insurer
19 that is placed into receivership;

20 (3) whether State insurance commissioners
21 should be given the opportunity to require State in-
22 surers to be covered by the National Insurance
23 Guaranty Corporation instead of State guaranty as-
24 sociations; and

1 (4) whether policyholders of national insurers
2 would be better protected if assessments under sec-
3 tion 604 were imposed before such funds are nec-
4 essary to make payments on claims against a na-
5 tional insurer that is placed into receivership.

6 **TITLE VII—MISCELLANEOUS**
7 **PROVISIONS**

8 **SEC. 701. APPLICABLE LAW.**

9 (a) INAPPLICABILITY OF STATE LAW.—Except to the
10 extent expressly provided in this Act, national insurers,
11 national insurance agencies, and national insurance pro-
12 ducers shall not be subject under State law to any form
13 of licensing, examination, reporting, regulation, or other
14 supervision relating to the sale, solicitation, or negotiation
15 of insurance, to the underwriting of insurance, or to any
16 other insurance operations.

17 (b) NO DISCRIMINATION.—No State may discrimi-
18 nate against—

19 (1) any State insurer because such insurer or
20 any affiliate has applied to become, or has declared
21 its intention to become, a national insurer chartered
22 under this Act;

23 (2) any State-licensed insurance producer be-
24 cause such insurance producer or an affiliate has ap-
25 plied to become, or has declared its intention to be-

1 come, a national insurance agency chartered under
2 this Act or a national insurance producer licensed
3 under this Act;

4 (3) any affiliate of a national insurer, national
5 insurance agency, or a national insurance producer
6 because the affiliate is so affiliated;

7 (4) any policyholder, insured, claimant, State-li-
8 censed insurance producer, or any person engaged in
9 the acts described in section 405(b) because of any
10 dealing with a national insurer, national insurance
11 agency, a national insurance producer, or an affiliate
12 of a national insurer, national insurance agency, or
13 a national insurance producer; or

14 (5) any State-licensed insurance producer (in-
15 cluding with respect to such producer's sales, solici-
16 tation, or negotiation of any insurance policy written
17 or sold by a State insurer) because it sells, solicits,
18 or negotiates an insurance policy written or sold by
19 a national insurer.

20 **SEC. 702. APPLICATION OF THE FEDERAL ANTITRUST**
21 **LAWS.**

22 The Sherman Act (15 U.S.C. 1 et seq.), the Clayton
23 Act (15 U.S.C. 12 et seq.), the Federal Trade Commission
24 Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936
25 (49 Stat. 1526) (commonly known as the Robinson-Pat-

1 man Antidiscrimination Act), shall be applicable to na-
2 tional insurers, national insurance agencies, and national
3 insurance producers to the same extent as other busi-
4 nesses are subject to such laws, except as follows:

5 (1) Such laws shall not apply to the develop-
6 ment, dissemination, or use of standard insurance
7 policy forms (including standard endorsements,
8 addendums, and policy language), or to activities in-
9 cidental thereto, by national insurers, national insur-
10 ance agencies, and national insurance producers.

11 (2) Section 3 of the Act of March 9, 1945 (59
12 Stat. 33; 15 U.S.C. 1013), shall apply to national
13 insurers, national insurance agencies, and national
14 insurance producers to the extent that such insurers
15 and producers are subject to State law.