

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1290

To ensure the financial soundness and solvency of insurers, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1993

Mr. DINGELL introduced the following bill; which was referred to the Committee on Energy and Commerce

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NOVEMBER 22, 1993

Additional sponsors: Ms. MARGOLIES-MEZVINSKY, Mr. DE LUGO, Mr. HASTINGS, Mr. COLEMAN, Mr. ROMERO-BARCELÓ, and Miss COLLINS of Michigan

## A BILL

To ensure the financial soundness and solvency of insurers, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Federal Insurance Solvency Act of 1993”.

6 (b) TABLE OF CONTENTS.—

TITLE I—ESTABLISHMENT OF FEDERAL INSURANCE SOLVENCY  
COMMISSION

- Sec. 101. Establishment.
- Sec. 102. Duties of Commission.
- Sec. 103. Membership.
- Sec. 104. Staff of Commission; experts and consultants.
- Sec. 105. Offices and place of meeting.
- Sec. 106. Powers of commission.
- Sec. 107. Evaluations of insolvent insurers and reinsurers.
- Sec. 108. Referral to enforcement authorities; data base on violations.
- Sec. 109. Reports.
- Sec. 110. Federal Insurance Regulation Advisory Committee.
- Sec. 111. Fees.
- Sec. 112. Authorization of appropriations.
- Sec. 113. Budget Act compliance.

TITLE II—NATIONAL STANDARDS FOR THE FINANCIAL CONDI-  
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CERTIFICATES OF SOLVENCY FOR INSURERS

- Sec. 201. National standards for the financial soundness and solvency of insur-  
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- Sec. 202. Authority to issue Federal certificates of solvency.
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- Sec. 206. Suspension and revocation of Federal certificate of solvency or State  
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TITLE III—FEDERAL CERTIFICATES TO PROVIDE REINSURANCE

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- Sec. 405. Registration of insurers and reinsurers in holding companies.
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- Sec. 408. Transactions within a holding company system that includes an insurer or reinsurer.
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#### TITLE V—NATIONAL INSURANCE PROTECTION CORPORATION

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1 **TITLE I—ESTABLISHMENT OF**  
2 **FEDERAL INSURANCE SOL-**  
3 **VENCY COMMISSION**

4 **SEC. 101. ESTABLISHMENT.**

5 There is established an independent regulatory agen-  
6 cy to be known as the “Federal Insurance Solvency Com-  
7 mission” (hereinafter in this Act referred to as the “Com-  
8 mission”).

9 **SEC. 102. DUTIES OF COMMISSION.**

10 The Commission shall—

11 (1) establish national, preemptive standards to  
12 ensure the financial soundness and solvency of all in-  
13 surers in interstate commerce;

14 (2) regulate insurers that obtain federal sol-  
15 vency certificates for compliance with the national  
16 standards for financial soundness and solvency es-  
17 tablished under paragraph (1) and transmit to each  
18 State such standards so that each State will apply  
19 such standards to each insurer that is under its reg-  
20 ulatory jurisdiction that is in interstate commerce  
21 and that is not federally certified;

22 (3) establish procedures for financially sound  
23 insurers to apply to the Commission for a Federal

1 certificate of solvency to engage in the business of  
2 insurance;

3 (4) consider the applications for, and issue and  
4 renew on an annual basis, Federal certificates of sol-  
5 vency to each qualified insurer in interstate com-  
6 merce that meets the financial soundness and sol-  
7 vency standards established by the Commission;

8 (5) establish standards to ensure the financial  
9 soundness and solvency of federally certified reinsur-  
10 ers and the collectibility of reinsurance recoverables  
11 by United States ceding reinsurers with due consid-  
12 eration to the public interest in providing secure ca-  
13 pacity to the United States insurance marketplace;

14 (6) establish procedures for reinsurers to apply  
15 to the Commission for a Federal certificate of sol-  
16 vency to provide reinsurance for insurance on risks  
17 written in the United States;

18 (7) consider the applications for, and issue and  
19 renew on an annual basis, a Federal certificate to a  
20 reinsurer that meet the standards established by the  
21 Commission;

22 (8) determine whether State laws, rules, regula-  
23 tions, orders, or actions are preempted by this Act;

24 (9) establish procedures for monitoring the fi-  
25 nancial condition and solvency of insurers and rein-

1       surers under this Act, and for determining if such  
2       insurers and reinsurers may be financially impaired  
3       or insolvent;

4               (10) establish standards and procedures to in-  
5       tervene in the conduct of affairs of an insurer or re-  
6       insurer under this Act if such insurer or reinsurer  
7       becomes such that further transaction of business  
8       will be hazardous to United States policyholders or  
9       creditors or to the public and transmit such stand-  
10      ards to each State for the State to follow as to in-  
11      surers subject to State regulation for financial condi-  
12      tion;

13              (11) take appropriate steps to address the fi-  
14      nancial impairment of any insurer or reinsurer fed-  
15      erally certified under this Act and act as the receiver  
16      in the event such insurer or reinsurer requires either  
17      rehabilitation or liquidation;

18              (12) oversee the activities of the National In-  
19      surance Protection Corporation, including review of  
20      the Corporation's bylaws and rules and consultation  
21      with the Corporation concerning appropriate finan-  
22      cial soundness and solvency standards and the im-  
23      plementation of such standards;

1 (13) oversee the activities of the National Asso-  
2 ciation of Registered Agents and Brokers, including  
3 review of the Association's bylaws and rules; and

4 (14) conduct, on an ongoing basis, studies and  
5 research on any matter that may affect the financial  
6 condition and solvency of the insurance industry in  
7 the United States.

8 **SEC. 103. MEMBERSHIP.**

9 (a) NUMBER AND APPOINTMENT.—The Commission  
10 shall be composed of 5 members appointed by the Presi-  
11 dent by and with the advise and consent of the Senate.

12 (b) POLITICAL AFFILIATION.—Not more than 3  
13 members appointed under subsection (a) may be of the  
14 same political party.

15 (c) RESTRICTION ON OTHER EMPLOYMENT.—A  
16 Commissioner shall not engage in any business, vocation,  
17 or employment other than serving as a Commissioner.

18 (d) TERMS.—

19 (1) IN GENERAL.—Each member shall be ap-  
20 pointed for a term of 6 years except as provided in  
21 paragraphs (2) and (3).

22 (2) TERMS OF INITIAL APPOINTEES.—As des-  
23 igned by the President at the time of appointment,  
24 members first appointed shall be appointed as  
25 follows:

1 (A) 1 shall be appointed for a term of 2  
2 years.

3 (B) 2 shall be appointed for a term of 4  
4 years.

5 (C) 2 shall be appointed for a term of 6  
6 years.

7 (3) VACANCIES.—Any member appointed to fill  
8 a vacancy occurring before the expiration of the  
9 term for which the member's predecessor was ap-  
10 pointed shall be appointed only for the remainder of  
11 that term. A member may serve after the expiration  
12 of that member's term until a successor has taken  
13 office.

14 (e) QUORUM.—A majority of the members of the  
15 Commission shall constitute a quorum but a lesser number  
16 may hold hearings.

17 (f) CHAIRPERSON; VICE CHAIRPERSON.—The Chair-  
18 person and Vice Chairperson of the Commission shall be  
19 designated by the President at the time of the appoint-  
20 ment or from among the sitting members of the Commis-  
21 sion at such time as the post becomes vacant. The Chair-  
22 person shall have executive authority within the Commis-  
23 sion, including the authority to employ and direct the per-  
24 sonnel of the Commission, other than personnel employed

1 regularly and full time in the immediate offices of commis-  
2 sioners other than the chairperson.

3 (g) APPLICABILITY OF THE ADMINISTRATIVE PROCE-  
4 DURE ACT.—The Commission shall be an agency of the  
5 United States for purposes of subchapter II of chapter 5  
6 and chapter 7 of title 5, United States Code.

7 **SEC. 104. STAFF OF COMMISSION; EXPERTS AND CONSULT-**  
8 **ANTS.**

9 (a) STAFF.—The Commission is authorized to ap-  
10 point and fix the compensation of such officers, attorneys,  
11 examiners, and other experts as may be necessary for car-  
12 rying out its functions under this chapter, and the Com-  
13 mission may, subject to the civil service laws, appoint such  
14 other officers and employees as are necessary in the execu-  
15 tion of its functions and fix their salaries without regard  
16 to chapter 51 and subchapter III of chapter 53 of title  
17 5, United States Code.

18 (b) EXPERTS AND CONSULTANTS.—Subject to rules  
19 prescribed by the Commission, the Commission may pro-  
20 cure temporary and intermittent services under section  
21 3109(b) of title 5, United States Code.

22 **SEC. 105. OFFICES AND PLACE OF MEETING.**

23 The principal office of the Commission shall be in the  
24 city of Washington, District of Columbia, but it may meet  
25 and exercise its powers in any other place.

1 **SEC. 106. POWERS OF COMMISSION.**

2 (a) IN GENERAL.—The Commission shall have the  
3 power to carry out all duties and authority specifically  
4 granted by this Act, and such incidental powers as shall  
5 be necessary to carry out the powers so granted.

6 (b) RULES AND REGULATIONS.—The Commission  
7 shall promulgate rules and regulations under chapter 5 of  
8 title 5, United States Code, necessary to carry out its re-  
9 sponsibilities under this Act. The Commission is encour-  
10 aged to follow the procedures of subchapter III of chapter  
11 5 of title 5, United States Code (5 U.S.C. 561 et seq.),  
12 where appropriate.

13 (c) HEARINGS AND PROCEEDINGS.—The Commission  
14 may, for the purpose of carrying out this Act, hold hear-  
15 ings, sit and act at times and places, take testimony, and  
16 receive evidence as the Commission considers appropriate.  
17 The Commission may administer oaths or affirmations to  
18 witnesses appearing before it. Proceedings regarding cer-  
19 tificates and penalties shall be conducted pursuant to sec-  
20 tion 554 of chapter 5 of title 5, United States Code. The  
21 Commission is encouraged to follow the procedures of sub-  
22 chapter IV of title 5, United States Code (5 U.S.C. 571  
23 et seq.), where appropriate.

24 (d) DELEGATION OF FUNCTIONS BY COMMISSION.—  
25 (1) In addition to its existing authority, the Commission  
26 shall have the authority to delegate, by published order

1 or rule, any of its functions to a division of the Commis-  
2 sion, an individual Commissioner, an administrative law  
3 judge, or an employee or employee board, including func-  
4 tions with respect to hearing, determining, ordering, cer-  
5 tifying, reporting, or otherwise acting as to any work,  
6 business, or matter. Nothing in this subsection shall be  
7 deemed to supersede section 556(b) of title 5 or to author-  
8 ize the delegation of the function of rulemaking as defined  
9 in subchapter II of chapter 5 of title 5, United States  
10 Code, with reference to general rules as distinguished from  
11 rules of particular applicability or of the making of any  
12 rule pursuant to title V or VI of this Act.

13       (2) With respect to the delegation of any of its func-  
14 tions, as provided in paragraph (1) of this subsection, the  
15 Commission shall retain a discretionary right to review the  
16 action of any such division of the Commission, individual  
17 Commissioner, administrative law judge, employee, or em-  
18 ployee board, upon its own initiative or upon petition of  
19 a party to or an intervenor in such action, within such  
20 time and in such manner as the Commission by rule shall  
21 prescribe. The vote of 1 member of the Commission shall  
22 be sufficient to bring any such action before the Commis-  
23 sion for review. A person or party shall be entitled to re-  
24 view by the Commission if such person or party is  
25 adversely affected by action at a delegated level which

1 imposes a penalty or removes or refuses to grant a  
2 certificate.

3 (3) If the right to exercise such review is declined,  
4 or if no such review is sought within the time stated in  
5 the rules promulgated by the Commission, then the action  
6 of any such division of the Commission, individual Com-  
7 missioner, administrative law judge, employee, or em-  
8 ployee board, shall, for all purposes, including appeal or  
9 review thereof, be deemed the action of the Commission.

10 (e) SUBPOENA POWER.—

11 (1) IN GENERAL.—The Commission may issue  
12 subpoenas requiring the attendance and testimony of  
13 witnesses and the production of any evidence relat-  
14 ing to any matter under investigation by the Com-  
15 mission. The attendance of witnesses and the pro-  
16 duction of evidence may be required from any place  
17 within the United States at any designated place of  
18 hearing within the United States. The Commission  
19 may not delegate this authority.

20 (2) ENFORCEMENT OF A SUBPOENA.—A sub-  
21 poena issued by the Commission shall be subject to  
22 enforcement pursuant to section 555 of title 5,  
23 United States Code.

24 (3) SERVICE OF SUBPOENAS.—The subpoenas  
25 of the Commission shall be served in the manner

1 provided for subpoenas issued by a United States  
2 district court under the Federal Rules of Civil Pro-  
3 cedure for the United States district courts.

4 (4) SERVICE OF PROCESS.—All process of any  
5 court to which application is made under paragraph  
6 (2) may be served in the judicial district in which  
7 the person required to be served resides or may be  
8 found.

9 (f) JUDICIAL REVIEW OF COMMISSION ACTIONS.—

10 (1) Rules and regulations promulgated by the  
11 Commission shall be subject to judicial review in the  
12 Court of Appeals for the District of Columbia  
13 Circuit.

14 (2) Orders issued by the Commission shall be  
15 subject to judicial review in the appropriate circuit  
16 court of appeals or in the circuit court of appeals in  
17 which the petitioner resides or has its principal place  
18 of business.

19 (3) Judicial review of both regulations and or-  
20 ders, including the scope of review, shall otherwise  
21 be governed by chapter 7 of title 5 and by title 28,  
22 United States Code.

23 (g) SEAL.—The Commission shall have an official  
24 seal which shall be judicially noticed.

1 **SEC. 107. EVALUATIONS OF INSOLVENT INSURERS AND RE-**  
2 **INSURERS.**

3 The Commission shall investigate each insolvent in-  
4 surer or reinsurer which holds a Federal certificate of sol-  
5 vency to determine the causes of the insolvency. The Com-  
6 mission may also investigate the insolvencies of any other  
7 insurers if such are relevant to establishing standards for  
8 sound financial condition and solvency by the Commission  
9 or if they are relevant to the financial condition of the  
10 insurance industry in the United States. These investiga-  
11 tions shall include a review of the insurer's or reinsurer's  
12 records, as well as interviews with persons having knowl-  
13 edge of the operations of the insurer or reinsurer. The  
14 Corporation shall issue a report on the causes of insolven-  
15 cies at such times that it determines to be appropriate.

16 **SEC. 108. REFERRAL TO ENFORCEMENT AUTHORITIES;**  
17 **DATA BASE ON VIOLATIONS.**

18 (a) REFERRALS.—The Commission shall refer to the  
19 Department of Justice or to the appropriate State enforce-  
20 ment authorities any information or matters which it de-  
21 termines warrant investigation for possible civil or crimi-  
22 nal enforcement action.

23 (b) DATA BASE.—The Commission shall establish, by  
24 regulation, procedures and standards for creating a data  
25 base for information regarding persons who have been  
26 convicted of a crime or administratively disciplined for in-

1 surance related activity, or who have been senior officers  
2 or directors of insolvent insurers or reinsurers. The Com-  
3 mission shall maintain and regularly update this data  
4 base. Information contained in this system shall be shared  
5 with appropriate State and Federal regulators and law en-  
6 forcement officials. Each federally certified insurer and re-  
7 insurer shall, as a condition of continued certification,  
8 fully cooperate with the Commission's implementation of  
9 the data base. Each insurer regulated for financial condi-  
10 tion by a State shall, as a condition of obtaining a State  
11 insurance license, similarly cooperate with the Commis-  
12 sion.

13 **SEC. 109. REPORTS.**

14 (a) ANNUAL AND OTHER REPORTS.—The Commis-  
15 sion shall submit to the President and the Congress an  
16 annual report and such additional reports and rec-  
17 ommendations as the Commission considers appropriate.

18 (b) BUDGET ESTIMATES AND REQUESTS.—Whenever  
19 the Commission submits any budget estimate or request  
20 to the President or the Office of Management and Budget,  
21 it shall concurrently transmit a copy of that estimate or  
22 request to Congress.

23 (c) LEGISLATIVE MATTERS.—Whenever the Commis-  
24 sion submits any legislative recommendations, or testi-  
25 mony or comments on legislation to the President or the

1 Office of Management and Budget, it shall concurrently  
2 transmit a copy thereof to the Congress. No officer or  
3 agency of the United States shall have any authority to  
4 require the Commission to submit its legislative rec-  
5 ommendations, or testimony or comments on legislation  
6 to any officer or agency of the United States for approval,  
7 comments, or review prior to the submission of such rec-  
8 ommendations, testimony, or comments to the Congress.

9 **SEC. 110. FEDERAL INSURANCE REGULATION ADVISORY**  
10 **COMMITTEE.**

11 (a) ESTABLISHMENT.—There is established the Fed-  
12 eral Insurance Regulation Advisory Committee (herein-  
13 after referred to in this section as the “Committee”).

14 (b) MEMBERSHIP.—The Committee shall consist of  
15 25 members appointed by the Commission. The Commis-  
16 sion shall select those who can best represent the various  
17 segments of the insurance industry and the interests of  
18 the public and consumers so that the committee will pro-  
19 vide a range of information and perspectives that will be  
20 helpful to the Commission in carrying out its responsibil-  
21 ities. Such members shall be appointed by the Commission  
22 as follows:

23 (1) 5 members who are fairly representative of  
24 the various types and sizes of certified insurers and

1 who adequately represent the significant segments of  
2 the marketplace;

3 (2) 5 members who are fairly representative of  
4 the types and sizes of certified reinsurers and who  
5 adequately represent the significant segments of the  
6 marketplace;

7 (3) 5 members who are fairly representative of  
8 the types and sizes of insurance agents and brokers  
9 and who adequately represent significant segments  
10 of the marketplace;

11 (4) 5 members from among the State insurance  
12 regulators; and

13 (5) 5 members from among individuals who  
14 shall represent the public interest.

15 (c) VACANCIES.—Any vacancy on the Committee  
16 shall be filled in the same manner in which the original  
17 appointment was made.

18 (d) PAY AND EXPENSES.—Members of the Commit-  
19 tee shall serve without pay, but each member shall be re-  
20 imbursed, in such manner as the Commission shall pre-  
21 scribe by regulation, for expenses incurred in connection  
22 with attendance of such members at meetings of the  
23 Committee.

24 (e) TERMS.—Members shall be appointed for terms  
25 of 3 years.

1 (f) AUTHORITY OF THE COMMITTEE.—The Commit-  
2 tee may select its Chairperson, Vice Chairperson, and Sec-  
3 retary, and adopt methods of procedure, and shall have  
4 power—

5 (1) to confer with the Commission on general  
6 and special business conditions and regulatory and  
7 other matters affecting insurance and reinsurance,  
8 and

9 (2) to request information, and to make rec-  
10 ommendations, with respect to matters within the  
11 jurisdiction of the Commission.

12 (g) MEETINGS.—The Committee shall meet 2 times  
13 each year, and more frequently if requested by the  
14 Commission.

15 (h) REPORTS.—The Committee shall submit an an-  
16 nual written report to the Commission and to the Commit-  
17 tee on Energy and Commerce of the House and the Com-  
18 mittee on of the Senate. Such report shall describe the  
19 activities of the Committee for such annual period and  
20 contain such recommendations as the Committee considers  
21 appropriate. The Committee may submit such other re-  
22 ports as it determines necessary.

23 (i) PROVISION OF STAFF AND OTHER RESOURCES.—  
24 The Commission shall provide the Committee with the use  
25 of such resources, including staff, as the Committee rea-

1 sonably shall require to carry out its duties, including the  
2 preparation and submission of reports to Congress, under  
3 this section.

4 (j) FEDERAL ADVISORY COMMITTEE ACT.—The  
5 Federal Advisory Committee Act shall apply to the  
6 Committee.

7 **SEC. 111. FEES.**

8 (a) GENERAL AUTHORITY.—(1) The Commission, in  
9 accordance with this section, shall assess and collect an  
10 annual fee to be paid by applicants for certificates issued  
11 by the Commission and by holders of such certificates to  
12 recover the costs of such certification activities of the  
13 Commission. It shall also assess and collect fees to cover  
14 the costs of any specific other services and activities it pro-  
15 vides to such applicants and to other persons.

16 (2) The total fees charged to a federally certified in-  
17 surer or reinsurer or applicant for a Federal solvency cer-  
18 tificate shall not exceed, on an annual basis—

19 (A) for insurers,  $\frac{1}{4}$  of one percent of the sum  
20 of the net direct written premiums; or

21 (B) for reinsurers,  $\frac{1}{8}$  of one percent of net re-  
22 insurance premium.

23 (3) Prior to establishing the fees described in para-  
24 graph (1), the Commission shall obtain the views of feder-  
25 ally certified insurers and reinsurers concerning the pro-

1 posed formula or method for calculating fees, the proposed  
2 amount, and the proposed timing or schedule for assess-  
3 ment.

4 (4) The commission shall ensure that the schedule for  
5 fees allows small, financially sound insurers and reinsurers  
6 to apply for and maintain Federal certificates of solvency.

7 (b) FEES CONTINGENT ON APPROPRIATIONS.—The  
8 fees described in subsection (a) shall be collected only if,  
9 and only in the total amounts provided in appropriation  
10 Acts.

11 (c) ESTABLISHMENT AND ADJUSTMENT OF FEES.—  
12 The fees assessed under subsection (a) shall be estab-  
13 lished, in accordance with subsection (a)(2), at amounts  
14 that will result in collection, during each fiscal year follow-  
15 ing the first 2 years of operation of the Commission, of  
16 an amount equal to the amount appropriated for such fis-  
17 cal year for the performance of the activities described in  
18 subsection (a).

19 (d) NOTICE TO CONGRESS.—The Commission shall  
20 annually transmit to Congress a notification of the fees  
21 assessed pursuant to subsection (a) not later than 90 days  
22 before the effective date of such fees. This notification  
23 shall include an explanation of the estimates and calcula-  
24 tion upon which the fees are based and the management  
25 plan of the Commission which shows that the fees will

1 produce sufficient revenue to support the cost of the activi-  
2 ties for which they are assessed.

3 (e) PENALTIES FOR LATE PAYMENT.—

4 (1) IN GENERAL.—The Commission shall assess  
5 as a penalty for late payment of fees required by  
6 subsection (a) 25 percent of the amount of the  
7 charge which was not paid in a timely manner.

8 (2) DISMISSAL OF APPLICATIONS OR FIL-  
9 INGS.—The Commission may dismiss any applica-  
10 tion or other filing for failure to pay in a timely  
11 manner any fee or penalty assessed by the Commis-  
12 sion.

13 (3) REVOCATIONS.—The Commission may re-  
14 voke any certificate held by any insurer or reinsurer  
15 that has failed to make payment of a fee or penalty  
16 assessed pursuant to this section. Such revocation  
17 action may be taken by the Commission after notice  
18 of the Commission's intent to take such action is  
19 sent to the holder of the certificate by registered  
20 mail, return receipt requested, at the insurer's or re-  
21 insurer's last known address. The notice will provide  
22 the entity at least 30 days to either pay the fee or  
23 penalty or show cause why the fee or penalty does  
24 not apply or should otherwise be waived or payment  
25 deferred. The opportunity for a hearing on the

1 record is not required under this paragraph unless  
2 the response presents a substantial and material  
3 question of fact. Unless the insurer or reinsurer sub-  
4 stantially prevails in the hearing, the Commission  
5 may assess a fee for the costs of such hearing. Any  
6 Commission order adopted pursuant to this sub-  
7 section shall determine the amount due, if any, and  
8 provide the insurer or reinsurer with at least 30  
9 days to pay that amount or have its authorization  
10 revoked. No order of revocation under this sub-  
11 section shall become final until the insurer or rein-  
12 surer has exhausted its right to judicial review of  
13 such order under chapter 7 of title 5, United States  
14 Code.

15 (f) COLLECTION OF DELINQUENT FEES AND PEN-  
16 ALTIES.—

17 (1) IN GENERAL.—The Commission may re-  
18 cover the amount of any unpaid fee or penalty law-  
19 fully payable to the Commission.

20 (2) STATUTE OF LIMITATIONS.—No action or  
21 proceeding shall be brought for the recovery of any  
22 fee or penalty due to the Commission, or for the re-  
23 covery of any amount paid to the Commission, in ex-  
24 cess of the amount due to it, unless such action or

1 proceeding shall have been brought within 5 years  
2 after the right accrued for which the claim is made.

3 (g) WAIVER AND DEFERMENT.—The Commission  
4 may waive or defer payment of a fee in any specific in-  
5 stance for good cause shown, where such action would pro-  
6 mote the public interest.

7 (h) DEPOSIT OF COLLECTIONS.—Moneys received  
8 from fees established under this section shall be deposited  
9 as an offsetting collection in, and credited to, the account  
10 providing appropriations for the Commission, and shall re-  
11 main available until expended. No fees may be so depos-  
12 ited for any fiscal year unless funds are authorized to be  
13 appropriated for such fiscal year pursuant to this Act.

14 (i) REGULATIONS.—

15 (1) IN GENERAL.—The Commission shall pre-  
16 scribe appropriate regulations to carry out this sec-  
17 tion.

18 (2) TIME FOR PAYMENT.—Such regulations  
19 shall require the payment of fees at the beginning of  
20 the fiscal year for which such fees are in effect or  
21 at such other time during the fiscal year as the  
22 Commission may determine in accordance with the  
23 efficient operation of the Commission. Such regula-  
24 tions shall permit payment by installments in the  
25 case of fees in large amounts.

1           (3) MULTIPLE-YEAR PAYMENTS.—If the Com-  
2           mission determines that, because of the small  
3           amount of fee involved relative to the cost of annual  
4           collection, it would be inefficient to collect any fee  
5           each year, such regulations may also require the  
6           payment of the fee in advance for a number of  
7           years.

8           (j) LIMITATION ON JUDICIAL REVIEW.—The fees es-  
9           tablished by the Commission under this section shall not  
10          be subject to judicial review.

11   **SEC. 112. AUTHORIZATION OF APPROPRIATIONS.**

12          (a) IN GENERAL.—There is authorized to be appro-  
13          priated for the operations and expenses of the Commission  
14          for each of fiscal years 1994 through 1999 the sum of  
15          \$300,000,000 to carry out this Act.

16          (b) REHABILITATION AND LIQUIDATION EX-  
17          PENSES.—In addition to the sums authorized to be appro-  
18          priated by subsection (a), there are authorized to be ap-  
19          propriated such sums as may be necessary to carry out  
20          the Commission's responsibilities as receiver in  
21          rehabilitations and liquidations under this Act. These  
22          sums shall be repaid to the Commission from the estate  
23          of the insurer or reinsurer as provided in this Act.

1 **SEC. 113. BUDGET ACT COMPLIANCE.**

2 Any spending authority (as defined in subparagraphs  
3 (A) and (C) of section 401(c)(2) of the Congressional  
4 Budget Act of 1974 (2 U.S.C. 651(c)(2)(A) and (C))) au-  
5 thorized by this Act shall be effective only to such extent  
6 and in such amounts as are provided in appropriation  
7 Acts.

8 **TITLE II—NATIONAL STAND-**  
9 **ARDS FOR THE FINANCIAL**  
10 **CONDITION OF INSURERS IN**  
11 **INTERSTATE COMMERCE AND**  
12 **FEDERAL CERTIFICATES OF**  
13 **SOLVENCY FOR INSURERS**

14 **SEC. 201. NATIONAL STANDARDS FOR THE FINANCIAL**  
15 **SOUNDNESS AND SOLVENCY OF INSURERS IN**  
16 **INTERSTATE COMMERCE.**

17 (a) **AUTHORITY.**—The Commission shall establish  
18 national standards for the financial soundness and sol-  
19 vency of all insurers in interstate commerce in accordance  
20 with the criteria set forth in section 203.

21 (b) **ENFORCEMENT.**—

22 (1) **IN GENERAL.**—The Commission shall regu-  
23 late the financial condition of insurers in interstate  
24 commerce that obtain a Federal certificate of sol-  
25 vency under the standards established under sub-  
26 section (a). No State insurance regulatory agency

1 may regulate the financial condition of such an in-  
2 surer.

3 (2) STATE ENFORCEMENT.—The State regu-  
4 latory agency shall regulate the financial condition  
5 of each insurer in interstate commerce that holds an  
6 insurance license in the State of such agency if the  
7 insurer does not obtain a Federal certificate of sol-  
8 vency. Such agency shall apply the standards estab-  
9 lished under subsection (a) in regulating such insur-  
10 ers and may not impose additional or different  
11 standards on such insurers. In enforcing such stand-  
12 ards, the State regulatory agency shall follow the in-  
13 terpretative and enforcement guidelines established  
14 by the Commission for such standards.

15 **SEC. 202. AUTHORITY TO ISSUE FEDERAL CERTIFICATES**  
16 **OF SOLVENCY.**

17 The Commission is authorized to issue a Federal cer-  
18 tificate of solvency to an insurer pursuant to the financial  
19 standards and procedures adopted by the Commission if  
20 the Commission determines that the insurer meets such  
21 standards. This authority is intended to establish strong  
22 and effective financial standards for federally certified in-  
23 surers; to ensure that such insurers are closely monitored  
24 by the Commission for compliance with these standards;  
25 and to enable the Commission to identify financial prob-

1 lems at the earliest possible stage and intervene to prevent  
2 harm to policyholders and the public.

3 **SEC. 203. CRITERIA FOR THE NATIONAL STANDARDS FOR**  
4 **FINANCIAL SOUNDNESS AND SOLVENCY.**

5 (a) CRITERIA FOR NATIONAL STANDARDS FOR DO-  
6 MESTIC INSURERS.—

7 (1) IN GENERAL.—The Commission shall estab-  
8 lish, by regulation, the criteria for the national  
9 standards for financial soundness and solvency  
10 which are to be established under section 201 and  
11 which are to be met by domestic insurers, including  
12 the United States branches of foreign insurers. Such  
13 criteria shall include—

14 (A) net worth requirements and other fi-  
15 nancial standards based on financial analysis  
16 appropriate to maintaining reasonable net  
17 worth for the various types of insurers and the  
18 different types of risks;

19 (B) appropriate criteria for accounting and  
20 valuation of investments, reserves, and other as-  
21 sets and liabilities relating to net worth;

22 (C) limitations and controls on the use of  
23 reinsurance, and standards for ceding, report-  
24 ing on, and credit for such reinsurance;

1 (D) requirements governing the activities  
2 of and transactions with managing general  
3 agents and reinsurance intermediaries to the  
4 extent that such transactions affect the finan-  
5 cial conditions of insurers;

6 (E) limitations on the amount of risk that  
7 may be retained on a single risk where such  
8 limits are appropriate;

9 (F) accounting standards and actuarial  
10 standards for the valuation of reserves for  
11 losses and expenses that will promote the  
12 strong and appropriate financial monitoring of  
13 insurers;

14 (G) bonding, trust fund, and liquidity re-  
15 quirements appropriate to the various kinds of  
16 insurance operations;

17 (H) requirements for audits by independ-  
18 ent accountants of the annual financial state-  
19 ments reporting the financial position and the  
20 financial activities of insurers;

21 (I) requirements for annual opinions by  
22 appointed actuaries on the reasonableness of re-  
23 serves, of reports of findings that support such  
24 opinions, and of any internal management re-

1 ports the Commission determines necessary for  
2 promoting financial soundness and solvency;

3 (J) regulation of financial transactions  
4 within holding company systems;

5 (K) procedures for initial and special ex-  
6 aminations of insurers, and for the annual fi-  
7 nancial review of such insurers;

8 (L) procedures for ongoing monitoring and  
9 enforcement of the compliance of insurers with  
10 Commission standards;

11 (M) criteria as to the minimum qualifica-  
12 tions of the management of insurers;

13 (N) criteria governing the fiduciary duties  
14 of officers and directors of insurers;

15 (O) criteria for determining when insurers  
16 are financially impaired, in a financially hazard-  
17 ous condition, or insolvent;

18 (P) disclosure requirements, in addition to  
19 those enumerated above, for information to be  
20 provided to the Commission or the State insur-  
21 ance regulator and the public; and

22 (Q) such other criteria as the Commission  
23 determines to be necessary to evaluate and  
24 maintain the sound financial condition of insur-  
25 ers.

1           (2) GUIDELINES FOR ESTABLISHING NET  
2 WORTH REQUIREMENTS FOR DOMESTIC INSURERS  
3 UNDER PARAGRAPH (1).—

4           (A) IN GENERAL.—The Commission, in es-  
5 tablishing net worth requirements for domestic  
6 insurers under paragraph (1), shall—

7           (i) establish requirements that recog-  
8 nize differences in reserve, pricing, credit,  
9 asset, and business risk among categories  
10 of insurers in different lines of business;

11           (ii) address, to the extent appropriate,  
12 factors that may substantially modify an  
13 insurer’s capital requirements, including  
14 size, growth rate, and age of the insurer,  
15 degree of asset and liability mismatching,  
16 degree of concentration of assets, overall  
17 level of risk retention, and limitations on  
18 various categories of investments; and

19           (iii) consider a range of methodolo-  
20 gies, including one that incorporates risk-  
21 based capital schemes, fixed dollar mini-  
22 mums, and actuarial assessments.

23           (B) SMALL INSURERS.—To ensure that fi-  
24 nancially sound small insurers may meet the  
25 national standards established under paragraph

1 (1), the Commission shall not establish net  
2 worth requirements that would automatically  
3 exclude any insurer the net worth of which  
4 equals at least \$500,000.

5 (C) ADJUSTMENTS.—The Commission  
6 shall adjust, for inflation, the dollar values es-  
7 tablished under subparagraphs (A) and (B).  
8 This adjustment shall be made every fifth year  
9 unless for good cause the Commission deter-  
10 mines that it should be adjusted more fre-  
11 quently.

12 (b) CRITERIA FOR NATIONAL STANDARDS FOR FOR-  
13 EIGN INSURERS.—The Commission shall establish, by reg-  
14 ulation, criteria for the national standards for financial  
15 soundness and solvency which are to be established under  
16 section 201 and which are to be met by foreign insurers.  
17 Such criteria shall include the following:

18 (1) AUTHORIZATION BY DOMICILIARY JURISDIC-  
19 TION.—The insurer must be authorized by the laws  
20 of its domiciliary jurisdiction to write insurance.

21 (2) INTEGRITY AND MANAGEMENT EX-  
22 PENSES.—The criteria shall require information that  
23 demonstrates that the insurer has sufficient finan-  
24 cial integrity and management experience to safe-  
25 guard the public interest.

1           (3) TRUST FUND.—The insurer shall maintain  
2 a trust fund meeting the requirements of paragraph  
3 (2) for the payment of the valid claims of, and other  
4 contractual obligations owed to, its United States  
5 policyholders or their beneficiaries, assigns, and suc-  
6 cessors in interest under such policies which trust  
7 fund shall be in an amount not less than the re-  
8 serves for claims and unearned premiums and other  
9 actuarial reserves and liabilities of the insurer’s  
10 United States policyholders plus an amount equal to  
11 the net worth required for an insurer under para-  
12 graph (1)(A) of subsection (a). The trust fund re-  
13 quired by this paragraph shall meet the following  
14 requirements:

15           (A) The trust fund shall be exclusively for  
16 the purpose of securing the payment of valid  
17 claims of, and other contractual obligations  
18 owed to, the insurer’s United States policy-  
19 holders and the claimants and their assigns,  
20 beneficiaries, and successors in interest under  
21 such policies.

22           (B) Assets may be held in trust by a quali-  
23 fied financial institution the principal place of  
24 business of which is outside the United States  
25 if the insurer demonstrates that a beneficiary of

1 the trust can obtain immediate payment from a  
2 United States branch, subsidiary, or representa-  
3 tive office of the institution. The Commission  
4 shall establish, by regulation, appropriate cri-  
5 teria for a qualified financial institution to act  
6 as a trustee. Foreign banks with a United  
7 States presence may apply for acceptance.

8 (C) The trust fund shall be established in  
9 a qualified financial institution that satisfies  
10 criteria established by the Commission. The  
11 Commission shall establish acceptable criteria  
12 for assets held in trust, which shall include  
13 cash; securities; bonds; commercial paper; clean,  
14 irrevocable, unconditional, and automatically re-  
15 newable letters of credit issued by a qualified fi-  
16 nancial institution; or any other appropriate as-  
17 sets, whether United States or non-United  
18 States which provide the stability necessary for  
19 adequate protection of the trust beneficiaries.

20 (D) The trust instrument shall provide for  
21 the circumstances under which claims and other  
22 contractual obligations shall be paid as provided  
23 under the policies of the insurer. The insurer  
24 may freely substitute and withdraw assets in  
25 the trust so long as the value of the assets

1 maintained in the trust equals or exceeds the  
2 amount set forth in paragraph (1).

3 (E) No later than the date set by the Com-  
4 mission by regulation, the trustees of the trust  
5 shall report annually to the Commission or the  
6 State insurance regulator in writing, setting  
7 forth the balance of the trust, listing the trust's  
8 investments at the preceding year's end, and  
9 certifying the date of termination of the trust  
10 as to new business, if so planned, or certifying  
11 that the trust shall not expire prior to the next  
12 following December 31. The trust shall be sub-  
13 ject to examination by the Commission or the  
14 State insurance regulator and shall remain in  
15 effect as long as the insurer has outstanding  
16 obligations under the agreements to which the  
17 trust pertains.

18 (F) The trust instrument shall provide  
19 that, in the event the insurer is placed in super-  
20 vision, rehabilitation, or liquidation, or its  
21 equivalent by its State or country of domicile,  
22 or if the Commission or State insurance regu-  
23 lator determines, pursuant to regulations adopt-  
24 ed by the Commission, that the condition of the  
25 insurer is such that further transaction of busi-

1           ness will be hazardous to United States policy-  
2           holders, creditors, or to the public, the Commis-  
3           sion or State insurance regulator shall be au-  
4           thorized to take control of the trust in the man-  
5           ner described in this Act.

6           (4) OTHER REQUIREMENTS.—Any foreign in-  
7           surer shall also—

8                   (A) have been doing business in its country  
9                   or jurisdiction of domicile for at least 3 years,  
10                  or be an affiliate of an insurer which has been  
11                  doing business in a state, country, or jurisdic-  
12                  tion of domicile for at least 3 years, unless the  
13                  Commission or State insurance regulator, for  
14                  good cause shown, waives this 3-year operating  
15                  requirement;

16                  (B) file an annual financial statement with  
17                  its domiciliary regulator and have established  
18                  satisfactory evidence of good repute and finan-  
19                  cial integrity;

20                  (C) file with the Commission or State in-  
21                  surance regulator—

22                          (i) a list identifying its officers and di-  
23                          rectors (or similar principals) along with a  
24                          biographical sketch for each, including a  
25                          description of their role in any financial

1           entity that was the subject of a bankruptcy  
2           or receivership proceeding during their em-  
3           ployment or within one year of the termi-  
4           nation of such employment and a descrip-  
5           tion of any criminal proceeding involving  
6           financial misconduct to which they have  
7           been subject;

8           (ii) a certification that such persons  
9           have not been convicted of a felony involv-  
10          ing financial misconduct; and

11          (iii) an annual update of the informa-  
12          tion described in clauses (i) and (ii);

13          (D) file with the Commission or State in-  
14          surance regulator, on an annual basis, a copy of  
15          the financial statement filed with its domiciliary  
16          regulator (which the Commission or State in-  
17          surance regulator may require to be translated  
18          from its original language) and a report show-  
19          ing the volume of written premiums with regard  
20          to United States policyholders in the past year;

21          (E) agree to allow the Commission or  
22          State insurance regulator to examine its books  
23          and records and to waive any protection it has  
24          under any secrecy laws of its domiciliary juris-  
25          diction, except that such examinations will only

1 take place upon the Commission's or State in-  
2 surance regulator's showing of good cause for  
3 concern about the financial condition of the  
4 subject insurer;

5 (F) appoint an agent in the United States  
6 upon whom may be served any lawful process in  
7 any action, suit, or proceeding instituted by or  
8 on behalf of any U.S. person, and agree that,  
9 in the event such process may not be served  
10 upon the appointed agent, process may be  
11 served upon the Commission or State insurance  
12 regulator;

13 (G) submit to the jurisdiction of any Unit-  
14 ed States court or State court of competent ju-  
15 risdiction for the resolution of any dispute aris-  
16 ing out of an insurance policy or to respond to  
17 any allegations or charges made against it by  
18 any United States Government official or agen-  
19 cy or State insurance regulator, except that  
20 such requirement does not override any contrac-  
21 tual agreement of the parties to a contract to  
22 resolve disputes between them pursuant to  
23 other procedures;

24 (H) provide the Commission, on an annual  
25 basis, with—

1 (i) a statement from the appointed ac-  
2 tuary that the reserves and liabilities re-  
3 ferred to in paragraph (1)(B) of this sub-  
4 section are reasonable to meet United  
5 States contractual obligations and related  
6 expenses and that, where appropriate, the  
7 anticipated cash flows from the trust fund  
8 are reasonable to meet obligations as they  
9 come due, and

10 (ii) an accompanying statement from  
11 the independent accountant that the trust  
12 contains the assets referred to in such ac-  
13 tuarial statement and such other assets as  
14 are required to meet the Commission's  
15 standards.

16 (I) comply with the credit for reinsurance  
17 requirements of section 305 and the single risk  
18 limits of subsection (a)(1)(E); and

19 (J) respond to any disclosure requests  
20 from the Commission or State insurance regu-  
21 lator, in addition to those required in subpara-  
22 graphs (C), (D), and (H).

23 (c) OPERATIONAL AND INVESTMENT REQUIRE-  
24 MENTS.—In establishing the criteria for national stand-  
25 ards pursuant to subsections (a) and (b), the Commission

1 shall differentiate, as appropriate, to accommodate the dif-  
2 ferent operational and investment requirements of prop-  
3 erty and casualty insurers and life and health insurers.

4 (d) PROCEDURES FOR OBTAINING A FEDERAL CER-  
5 TIFICATE OF SOLVENCY.—The Commission shall estab-  
6 lish, by regulation, procedures by which an insurer in  
7 interstate commerce that has met the standards adopted  
8 pursuant to subsection (a) or (b) may obtain a Federal  
9 certificate of solvency for compliance with these standards.  
10 The Commission shall grant such a certificate only if it  
11 has determined that an insurer has met the national  
12 standards for financial soundness and solvency adopted  
13 pursuant to subsection (a) or (b).

14 (e) ADDITIONAL REQUIREMENTS FOR FOREIGN IN-  
15 SURERS.—A foreign insurer may transact the business of  
16 insurance in the United States (subject to any applicable  
17 Federal or State law, including this Act) only if such in-  
18 surer has a Federal solvency certificate or is authorized  
19 to write insurance pursuant to applicable State law. Any  
20 foreign insurer that does not comply with the requirement  
21 of this subsection shall be subject to penalties under this  
22 Act in addition to any other penalties that may be imposed  
23 under any State or Federal law. The Commission or the  
24 State insurance regulator in any State in which the trans-

1 action allegedly occurred may bring an action for the im-  
2 position of such penalties.

3 (f) ISSUANCE OF FEDERAL CERTIFICATE OF SOL-  
4 VENCY.—Upon submission of an application in the form  
5 prescribed by the Commission, the Commission shall ex-  
6 amine the information submitted and may conduct such  
7 further examination and investigation, as it finds nec-  
8 essary, to determine whether the applicant satisfies the  
9 national standards for financial soundness and solvency  
10 established under subsection (a) or (b). Upon conclusion  
11 of its examination and investigation, the Commission shall  
12 publish its findings and determination. Upon a determina-  
13 tion that the applicant for a Federal certificate of solvency  
14 has satisfied such requirements, the Commission shall  
15 issue such certificate.

16 (g) FORM AND CONTENT OF SUBMISSIONS BY INSUR-  
17 ERS AND REINSURERS.—The Commission shall establish,  
18 by regulation, the form and contents of the submissions  
19 by insurers and reinsurers pursuant to this Act, includ-  
20 ing—

21 (1) the initial and annual reports that shall be  
22 submitted by each insurer to the Commission or  
23 State insurance regulator, which shall provide a  
24 complete report on the financial condition of the in-  
25 surer;

1           (2) the quarterly filing of the update of signifi-  
2           cant financial factors and ratios that will provide an  
3           early indication of any significant change in the fi-  
4           nancial condition of such insurer; and

5           (3) any other submission the Commission deter-  
6           mines to be necessary for the appropriate monitoring  
7           of the financial condition of insurers and reinsurers.

8 **SEC. 204. SURPLUS LINES APPROVAL FOR FEDERALLY CER-**  
9 **TIFIED INSURERS.-**

10 (a) FEDERAL SURPLUS LINES APPROVAL.—

11           ((1) The Commission may approve any domes-  
12           tic or foreign insurer holding a Federal solvency cer-  
13           tificate to write surplus lines insurance if such do-  
14           mestic or foreign insurer meets the additional re-  
15           quirements of this section. The Commission shall es-  
16           tablish, by regulation, the standards for issuing such  
17           approvals.

18           (2) Among the additional standards to be estab-  
19           lished by the Commission for domestic insurers pur-  
20           suant to paragraph (1) shall be a requirement that  
21           the insurer have a net worth of not less than  
22           \$15,000,000. The net worth requirement set forth in  
23           this paragraph shall be subject to periodic adjust-  
24           ment for inflation pursuant to section 202(c)(2).

1           (3) A foreign insurer may obtain approval to  
2 write surplus lines insurance in the same manner as  
3 a domestic insurer or it may obtain this approval if  
4 it meets all of the requirements for a certificate of  
5 solvency under section 202, except that the trust  
6 fund required of such insurer under section 202  
7 shall be satisfied if it consists of no less than  
8 \$15,000,000. The Commission may, in its discretion,  
9 require an amount higher than \$15,000,000 if it de-  
10 termines a higher amount is necessary to adequately  
11 protect United States policy holders. In determining  
12 what amount is adequate, the Commission shall con-  
13 sider such factors as the types and amounts of cov-  
14 erage which the insurer writes in the United States  
15 and the assets which comprise the trust and their  
16 valuation. The trust fund established pursuant to  
17 this paragraph shall comply with the establishment,  
18 management, and examination requirements of sec-  
19 tion 202(d)(2).

20           (4) An insurance exchange established under  
21 the laws of a State may obtain approval to write  
22 surplus lines insurance if it is federally certified.  
23 Such exchange must maintain a net worth of not  
24 less than \$50,000,000 in the aggregate. In addition,  
25 each individual syndicate of such exchange seeking

1 to accept placement of surplus lines insurance must  
2 meet either of the following requirements:

3 (A) For an insurance exchange which  
4 maintains funds in the amount of at least  
5 \$12,000,000 for the protection of all exchange  
6 policyholders, the syndicate shall maintain a  
7 minimum net worth of not less than  
8 \$3,000,000.

9 (B) For an insurance exchange that does  
10 not maintain funds in the amount of at least  
11 \$12,000,000 for the protection of all exchange  
12 policyholders, the syndicate shall meet the mini-  
13 mum net worth requirements set by the Com-  
14 mission for qualification as a surplus lines in-  
15 surer.

16 (5) Upon submission of an application for ap-  
17 proval in the form prescribed by the Commission,  
18 the Commission shall examine the information sub-  
19 mitted and shall conduct such further examinations  
20 and investigations, as it finds necessary, to deter-  
21 mine whether the applicant satisfies the require-  
22 ments of this section. Upon the conclusion of its ex-  
23 amination and investigation, the Commission shall  
24 publish its findings and determination and, if the

1 applicant has met such requirements, the Commis-  
2 sion shall issue the surplus lines approval.

3 (6) The Commission may revoke or suspend its  
4 approval of a surplus lines insurer in accordance  
5 with section 206. The Commission may, in its dis-  
6 cretion, suspend or revoke only the insurer's ap-  
7 proval as a surplus lines insurer or both such ap-  
8 proval and the insurer's certificate of solvency.

9 (7) A nonadmitted insurer holding a surplus  
10 lines approval issued by the Commission shall be an  
11 eligible surplus lines insurer under the laws of all  
12 States but shall remain subject to applicable State  
13 law on a nondiscriminatory basis as to the types of  
14 insurance that may be provided in a surplus line's  
15 market and as to the procedures to be followed in  
16 selling in this market.

17 (b) STANDARDS FOR SURPLUS LINES LICENSEES.—

18 (1) Any person licensed as a surplus lines li-  
19 censee in the State where the insured or risk is lo-  
20 cated may procure coverage for the insured or risk  
21 from any nonadmitted insurer holding a Federal  
22 surplus lines approval, notwithstanding any contrary  
23 provisions in State laws.

24 (2) Any surplus lines licensee making a place-  
25 ment with a federally certified insurer approved

1 under this section shall comply with all requirements  
2 imposed upon such licensees under State law to the  
3 same extent that such laws apply to the transaction  
4 of surplus lines insurance placed with insurers eligi-  
5 ble or approved under State law except to the extent  
6 that such requirements are expressly preempted by  
7 this Act.

8 (c) MISCELLANEOUS PROVISIONS.—

9 (1) Federally certified insurers approved pursu-  
10 ant to this section to write insurance shall not par-  
11 ticipate in any residual market mechanism or any  
12 market assistance plan on the basis of insurance  
13 provided under a Federal surplus lines approval.

14 (2) Coverages written by insurers approved pur-  
15 suant to this section shall not be subject to restric-  
16 tions or requirements imposed upon policy forms or  
17 rates under State law.

18 (3) No insurance consumer in the United  
19 States shall be required to seek coverage in any re-  
20 sidual market mechanism as a precondition to seek-  
21 ing coverage from an insurer approved pursuant to  
22 this section.

23 (4) This section does not limit or in any way  
24 restrict the ability of insurance consumers in the  
25 United States to access surplus lines insurers pursu-

1 ant to alternative, established means recognized by  
2 the United States Constitution and the law of the  
3 several States. Without limiting the generality of the  
4 foregoing, this section should not be construed as  
5 limiting the ability of insurance consumers in the  
6 United States to procure insurance from the surplus  
7 lines insurer of the consumer's choice pursuant to  
8 any—

- 9 (A) industrial insured provision;
- 10 (B) aviation insurance exemption;
- 11 (C) railroad insurance exemption;
- 12 (D) wet marine and transportation insur-  
13 ance exemption;
- 14 (E) direct placement provision; or
- 15 (F) any other similar exemption recognized  
16 by the law of the State in which the risk is lo-  
17 cated.

18 **SEC. 205. MEMBERSHIP IN NATIONAL INSURANCE PROTEC-**  
19 **TION CORPORATION.**

20 Each federally certified insurer shall be a member of  
21 the National Insurance Protection Corporation which is  
22 established by section 501. These insurers shall be subject  
23 to assessments by the Corporation. Federally certified in-  
24 surers that are approved surplus lines insurers as provided  
25 in section 204 shall not participate in the National Insur-

1 ance Protection Corporation for the purpose of business  
2 written as a nonadmitted insurer pursuant to the surplus  
3 lines law of any State.

4 **SEC. 206. SUSPENSION AND REVOCATION OF FEDERAL**  
5 **CERTIFICATE OF SOLVENCY OR STATE IN-**  
6 **SURANCE LICENSE.**

7 (a) SUSPENSION OR REVOCATION OF CERTIFICATE  
8 OF SOLVENCY BY THE COMMISSION.—

9 (1) CERTIFICATE OF SOLVENCY.—The Commis-  
10 sion shall suspend or revoke a Federal certificate of  
11 solvency at any time the Commission determines the  
12 standards for holding a certificate are no longer  
13 being satisfied. The Commission shall provide the  
14 opportunity for a hearing on the record before mak-  
15 ing a determination to suspend or revoke such cer-  
16 tification.

17 (2) EFFECT OF SUSPENSION OR REVOCATION.—If the Commission suspends or revokes a  
18 Federal certificate of solvency, an insurer will no  
19 longer be a member of NIPC and will be prohibited  
20 from selling insurance in the United States or its  
21 territories.

23 (3) NOTICE OF SUSPENSION OR REVOCATION.—The Commission shall notify the State or  
24 country of domicile of a federally certified insurer of  
25

1 the suspension or revocation of that insurer's certifi-  
2 cate of solvency. This notification shall be made at  
3 the earliest possible date.

4 (b) **SUSPENSION OR REVOCATION OF STATE INSUR-**  
5 **ANCE LICENSE BY STATE INSURANCE REGULATOR.**—The  
6 State insurance regulator shall suspend or revoke the  
7 State insurance license of any insurer subject to regulation  
8 for financial condition and solvency by the regulator's  
9 State if such regulator determines the national standards  
10 established by the Commission under section 201 are no  
11 longer being satisfied by the insurer. The State insurance  
12 regulator shall follow the procedures of applicable State  
13 law in suspending or revoking such license.

14 **SEC. 207. RELATIONSHIP OF FEDERALLY CERTIFIED IN-**  
15 **SURERS TO STATE INSURANCE REGULATION.**

16 (a) **PERMISSIBLE STATE REGULATION.**—Except as  
17 otherwise provided in this Act, every federally certified in-  
18 surer shall be subject to State laws, rules, regulations, or-  
19 ders, or actions which regulate insurers, including the fol-  
20 lowing:

21 (1) Regulation of rates and policy forms.

22 (2) Regulation of unfair insurance trade prac-  
23 tices and unfair claims settlement practices.

24 (3) Participation in an assigned risk plan, joint  
25 underwriting association, or any similar mechanism

1 designed to make insurance available to those unable  
2 to obtain it in the voluntary market.

3 (4) Filing of copies of financial statements with  
4 State insurance regulators. Each federally certified  
5 insurer shall file with each State in which it trans-  
6 acts the business of insurance a copy of the annual  
7 and quarterly statements its files with the Commis-  
8 sion. Such filings shall only be for information pur-  
9 poses and shall not be used by any State for the  
10 purpose of financial or solvency regulation.

11 (5) Liability for State taxes. No tax shall be ap-  
12 plied to federally certified insurers on a basis that  
13 discriminates between such insurers and insurers  
14 regulated solely by a State. Assessments imposed on  
15 federally certified insurers pursuant to title V shall  
16 be credited against any State taxes levied against  
17 such insurers, or shall be subject to recoupment  
18 through rate filings, to the same extent that assess-  
19 ments by State guaranty funds on insurers regulated  
20 solely by a State are credited against State taxes or  
21 recouped in rate filings.

22 (6) Regulation of insurance company incorpora-  
23 tion, organization, corporate governance, voting  
24 rights, and related matters by the insurer's State of  
25 domicile, including regulation pursuant to State cor-

1       poration laws of general applicability, except that  
2       such regulation shall not include regulation of finan-  
3       cial condition or solvency.

4               (7) Registration with and designation of the  
5       State insurance regulator as its agent solely for or  
6       the purpose of receiving service of legal documents  
7       or process.

8               (8) Requirements that insurers that it licenses  
9       shall obtain a Federal certificate of solvency.

10              (9) Regulation of insurance producers, as that  
11       term is defined by the National Association of Reg-  
12       istered Agents and Brokers, except as provided by  
13       title VI.

14       (b) PREEMPTION OF STATE LAWS.—The following  
15       shall apply with respect to State laws, rules, regulations,  
16       orders, or actions purporting to regulate federally certified  
17       insurers:

18              (1) No State shall apply its laws, rules, regula-  
19       tions, orders, or actions to a federally certified in-  
20       surer or an applicant for a Federal certificate, or an  
21       affiliate of either, on any basis different from that  
22       applied to insurers regulated solely at the State  
23       level.

24              (2) No State shall apply any law, rule, regula-  
25       tion, order, or action to any insurer or insurance

1 producer or any other intermediary procuring insur-  
2 ance from or placing insurance with any federally  
3 certified insurer, any applicant for a Federal certifi-  
4 cate, or any affiliate of either, on a basis different  
5 from that applied to insurers, insurance producers,  
6 or intermediaries procuring insurance from or plac-  
7 ing insurance with insurers that are regulated solely  
8 at the State level.

9 (3) Federally certified insurers shall not be sub-  
10 ject to any State regulation which pertains to sol-  
11 vency or financial condition, including such regula-  
12 tion exercised through the power to issue, suspend,  
13 or revoke a license.

14 (4) Federally certified insurers shall remain  
15 subject to State guaranty fund laws and assessments  
16 to the extent provided by section 518(b).

17 (5) No State shall prevent or impede any feder-  
18 ally certified insurer from withdrawing from any line  
19 or subline of insurance, or from any market or terri-  
20 tory, or from the entire State by threatening forfeit-  
21 ure of licenses, certificates of authority, or other au-  
22 thorizations to do business; limiting the cir-  
23 cumstances under which withdrawal is permitted;  
24 placing conditions on withdrawal; or otherwise; ex-  
25 cept that where a State law, rule, regulation, order,

1 or action is preempted because it places conditions  
2 on withdrawal intended to prevent undue disruption  
3 of the applicable insurance market, the Commission  
4 shall determine before the withdrawal occurs wheth-  
5 er withdrawal actually would cause undue disruption  
6 and, if so, may impose reasonable conditions on  
7 withdrawal, such as a transition period for the wind-  
8 ing down of an insurer's business, so as to avoid  
9 such undue disruption while permitting withdrawal  
10 within a reasonable time frame.

11 (6) No State shall regulate any federally cer-  
12 tified insurer in a manner which would place that in-  
13 surer's business in such State in the applicable line  
14 or subline of insurance in an unsafe or unsound fi-  
15 nancial condition or require that insurer to engage  
16 in a practice relating to the applicable line or subline  
17 of insurance that would be financially unsafe or un-  
18 sound.

19 (7) A federally certified insurer applying for a  
20 State license shall not be required to demonstrate  
21 that it previously has been licensed or has done busi-  
22 ness for any minimum period of time.

23 (c) PREEMPTION AUTHORITY OF THE COMMIS-  
24 SION.—

1           (1) The Commission shall have authority, by  
2 regulation or order, to specify the State laws, rules,  
3 regulations, orders, and actions that are preempted  
4 by this Act. Any federally certified insurer may peti-  
5 tion the Commission for the issuance of such a regu-  
6 lation or order. The Commission shall also have the  
7 authority to stay the enforcement of any State law,  
8 rule, regulation, order, or action until the Commis-  
9 sion can determine whether there was a preemption  
10 under this Act. Judicial review of any regulation,  
11 order, or enforcement under this paragraph shall be  
12 in the Court of Appeals for the District of Columbia  
13 Circuit.

14           (2) When a State applies or threatens to apply  
15 any law, rule, regulation, or order to a federally cer-  
16 tified insurer, an applicant for a Federal certificate,  
17 or any affiliate of either on any basis different than  
18 that applied to insurers that are not so regulated, or  
19 takes any action contrary to paragraphs (1) and (2)  
20 of subsection (b), the Commission may stay the ap-  
21 plication of that law, rule, regulation, order, or ac-  
22 tion if the Commission determines that a federally  
23 certified insurer is thereby subject to discrimination  
24 by such State. Any federally certified insurer af-  
25 fected by the application of such rule, regulation,

1 order, or action may petition the Commission for a  
2 stay or statement of preemption therefrom. Judicial  
3 review of any Commission determination or stay  
4 under this paragraph shall be in the Court of Ap-  
5 peals for the District of Columbia Circuit.

6 (d) HIGHLY CAPITALIZED COMMERCIAL INSUR-  
7 ERS.—

8 (1) Notwithstanding the authority of States to  
9 require federally certified insurers to comply with  
10 those laws and regulations specified in subsection  
11 (a), a federally certified insurer that is designated as  
12 highly capitalized by the Commission may provide  
13 commercial insurance coverage to a large insurance  
14 buyer, and in such circumstance, shall be exempt as  
15 to that coverage from any State law or regulation  
16 specified in paragraphs (1) and (2) of subsection  
17 (a).

18 (2) The Commission shall be responsible for the  
19 establishment, by regulation, of the standards appli-  
20 cable to highly capitalized insurers in the issuance of  
21 an insurance policy to a large insurance buyer and  
22 the settlement of any claims related thereto.

23 (3) The Commission shall be the only Federal  
24 Government agency with jurisdiction over complaints  
25 related to the conduct of highly capitalized insurers

1 as to the issuance of an insurance policy to a large  
2 insurance buyer and the settlement of any claims re-  
3 lated hereto. Each such policy must state, in a for-  
4 mat approved by the Commission, that complaints  
5 regarding the insurer are to be directed to the Com-  
6 mission.

7 **TITLE III—FEDERAL CERTIFI-**  
8 **CATES TO PROVIDE REINSUR-**  
9 **ANCE**

10 **SEC. 301. FEDERAL INSURANCE SOLVENCY COMMISSION**

11 **AUTHORITY TO CERTIFY PROVIDERS OF RE-**  
12 **INSURANCE.**

13 (a) **IN GENERAL.**—The Commission shall have the  
14 authority to establish, by regulation, the standards and  
15 procedures for granting certificates for professional rein-  
16 surers under section 302 and certificates to provide rein-  
17 surance for other reinsurers and insurers under section  
18 303.

19 (b) **COMMISSION DETERMINATION.**—Upon submis-  
20 sion of an application, the Commission shall examine the  
21 information submitted and conduct such further examina-  
22 tion and investigation, as it finds necessary, to determine  
23 whether the applicant satisfies the requirements for a pro-  
24 fessional reinsurer certificate under section 302 or a cer-  
25 tificate to provide reinsurance under section 303. Upon

1 conclusion of its examination and investigation, the Com-  
2 mission shall publish its findings and determination. Upon  
3 a determination that the applicant has satisfied the appli-  
4 cable requirements of section 302 or 303, the Commission  
5 shall issue the appropriate certificate.

6 (c) ANNUAL REPORTS.—The Commission shall re-  
7 quire each holder of a certificate to submit an annual re-  
8 port of its financial condition and an annual report on the  
9 condition of any trust fund regulated under section  
10 303(c).

11 (d) QUALIFIED FINANCIAL INSTITUTION.—The Com-  
12 mission shall establish, by regulation, appropriate criteria  
13 for becoming a qualified financial institution for purposes  
14 of the establishment of a trust fund under section 303(c).  
15 Foreign banks with a United States presence may apply  
16 for acceptance.

17 **SEC. 302. CERTIFICATION OF PROFESSIONAL REINSURERS.**

18 (a) IN GENERAL.—The Commission is authorized to  
19 certify and otherwise regulate professional reinsurers. A  
20 professional reinsurer shall be subject to regulation solely  
21 by the Commission as to the business of reinsurance in  
22 the United States.

23 (b) ESTABLISHMENT OF STANDARDS.—The Commis-  
24 sion shall, by regulation, establish standards and proce-  
25 dures for the certification and regulation of professional

1 reinsurers. Such standards shall give due consideration to  
2 the public interest in providing secure reinsurance capac-  
3 ity in the United States and to the need for promptly col-  
4 lectible reinsurance recoverables.

5 (c) STANDARDS.—Certification standards for profes-  
6 sional reinsurers promulgated by the Commission under  
7 subsection (b) shall include the following:

8 (1) Minimum net worth requirements, risk-  
9 based or otherwise, appropriate to the nature of the  
10 reinsurance written by the different types and sizes  
11 of reinsurers, except that the Commission shall set  
12 the minimum at an amount not less than  
13 \$50,000,000 and shall establish additional net worth  
14 requirements for appropriate categories of profes-  
15 sional reinsurers based upon their operations, in-  
16 cluding such factors as premium volume, volatility,  
17 and loss development characteristics of the types of  
18 reinsurance provided by such reinsurers. The Com-  
19 mission shall adjust such minimum for inflation  
20 every fifth year unless for good cause the Commis-  
21 sion determines that it should be adjusted more fre-  
22 quently.

23 (2) Appropriate standards for investments, re-  
24 serves, and asset valuations relating to minimum net  
25 worth, including percentage limitations for various

1 categories of investments; except that investments in  
2 excess of minimum net worth and reserves shall be  
3 subject to the prudent person standard.

4 (3) Limitations on the net amount of exposure  
5 that may be retained on a single risk, based on the  
6 amount of net worth.

7 (4) Accounting standards and standards for re-  
8 serve valuation that will promote strong and appro-  
9 priate financial monitoring.

10 (5) Liquidity requirements appropriate to the  
11 nature of the reinsurance written.

12 (6) Requirements for annual reports by inde-  
13 pendent accountants of financial statements report-  
14 ing financial condition and financial activities.

15 (7) Limitations and controls on the use of rein-  
16 surance, and standards for ceding, reporting on, and  
17 credit for such reinsurance.

18 (8) Requirements for certification of loss re-  
19 serves by actuaries and reports of such certification.

20 (9) Disclosure of all subsidiary and affiliate re-  
21 lationships and the identity of all persons which con-  
22 trol the professional reinsurer.

23 (10) Regulation of financial transactions within  
24 holding company systems.

1           (11) Procedures for initial and special examina-  
2           tions and for the annual financial review of financial  
3           statements.

4           (12) Regulations under which a foreign insurer  
5           or reinsurer may establish a United States branch  
6           which may become a certified professional reinsurer.

7           (13) Minimum security deposit requirements for  
8           United States branches of foreign insurers or rein-  
9           surers that apply to become professional reinsurers.

10          (14) Appointment of an agent in the United  
11          States upon whom may be served any lawful process  
12          in any action, suit, or proceeding instituted by or on  
13          behalf of any U.S. person and agreement that, in  
14          the event such process may not be served upon the  
15          appointed agent, process may be served upon the  
16          Commission.

17          (15) Agreement, by a foreign professional rein-  
18          surer, to submit to the jurisdiction and be bound by  
19          the final order or judgment of any court of com-  
20          petent jurisdiction in the United States.

21          (16) Procedures for ongoing monitoring and en-  
22          forcement of compliance with Commission standards.

23          (17) Minimum standards as to the qualifica-  
24          tions of the management of professional reinsurers.

1           (18) Minimum standards governing the fidu-  
2           ciary duties of officers and directors of professional  
3           reinsurers.

4           (19) Submission of an outline of current and  
5           projected operations in the United States dem-  
6           onstrating that the methods of operation are reason-  
7           able, prudent, and do not present an undue risk to  
8           the public.

9           (20) Demonstration of sufficient data process-  
10          ing capability and capacity to meet all data collec-  
11          tion and reporting requirements of the Commission.

12          (21) Submission of biographical information,  
13          which shall be updated annually, demonstrating that  
14          all directors and senior officers possess sufficient ex-  
15          perience and good character to manage business af-  
16          fairs in a competent and trustworthy manner.

17          (22) Disclosure requirements, in addition to  
18          those enumerated above, for information to be pro-  
19          vided to the Commission and the public.

20          (23) Such other standards as the Commission  
21          determines to be necessary to evaluate and maintain  
22          the sound financial condition of federally certified  
23          professional reinsurers.

1 **SEC. 303. CERTIFICATE FOR OTHER PROVIDERS OF REIN-**  
2 **SURANCE.**

3 (a) IN GENERAL.—The Commission is authorized to  
4 issue a reinsurance certificate to insurers and to any rein-  
5 surer that does not seek certification as a professional re-  
6 insurer under section 302.

7 (b) ESTABLISHMENT OF QUALIFICATIONS.—The  
8 Commission shall establish, by regulation, standards and  
9 procedures for certification under this section.

10 (c) QUALIFICATIONS FOR CERTIFICATE.—To qualify  
11 for a reinsurance certificate, an insurer or reinsurer must  
12 meet one of the following 3 standards:

13 (1) The insurer or reinsurer shall have met the  
14 national standards established under section 201  
15 and have a State license to transact the business of  
16 insurance or have a certificate of solvency issued by  
17 the Commission under title II; and either—

18 (A) maintain a net worth which is not less  
19 than a minimum set by the Commission  
20 which—

21 (i) shall be no less than \$5,000,000;

22 (ii) shall establish additional net  
23 worth requirements for appropriate cat-  
24 egories of reinsurers based upon their op-  
25 erations, including such factors as pre-  
26 mium volume, volatility, and loss develop-

1                   ment characteristics of the types of rein-  
2                   surance provided by such reinsurers; and

3                   (iii) shall ensure that reinsurance obli-  
4                   gations will be met; or

5                   (B) in the case of a financially sound ap-  
6                   plicant that does not meet the net worth dollar  
7                   standard of subparagraph (A), obtain a waiver  
8                   of this minimum dollar standard if the Commis-  
9                   sion concludes that the applicant is sufficiently  
10                  financially sound, is able to pay its reinsurance  
11                  obligations, and has sufficient expertise to pro-  
12                  vide the type of reinsurance that it intends to  
13                  offer.

14                 An applicant with a State license must have been  
15                 doing business in its State of domicile for at least  
16                 3 years unless the Commission for good cause shown  
17                 waives such 3-year operating requirement. The Com-  
18                 mission shall adjust for inflation the minimum es-  
19                 tablished in subparagraph (A) every fifth year unless  
20                 the Commission determines for good cause that it  
21                 should be adjusted more frequently.

22                 (2) The insurer or reinsurer shall be authorized  
23                 by the law of its domiciliary jurisdiction to assume  
24                 reinsurance; demonstrate to the Commission that it  
25                 has sufficient assets and management experience so

1 that it can operate safely in the United States rein-  
2 surance market in a way that will protect the public  
3 interest; and maintain a trust fund in a qualified fi-  
4 nancial institution which includes a trusteed surplus  
5 for the protection of United States ceding insurers  
6 and which is—

7 (A) for a single company, an amount not  
8 less than its United States reinsurance liabil-  
9 ities arising from reinsurance contracts entered  
10 into after the date of enactment of this Act plus  
11 \$20,000,000;

12 (B) for an established group of individual  
13 unincorporated underwriters regulated as a  
14 group by its State or country of domicile, an  
15 amount not less than the group's United States  
16 reinsurance liabilities arising from reinsurance  
17 contracts entered into after the date of enact-  
18 ment of this Act plus \$100,000,000; or

19 (C) for a group of incorporated insurers  
20 under common administration, and which has  
21 continuously transacted an insurance or rein-  
22 surance business outside the United States for  
23 at least 10 years, in an amount not less than  
24 the group's United States reinsurance liabilities  
25 arising from reinsurance contracts entered into

1 after the date of enactment of this Act plus  
2 \$100,000,000.

3 The Commission shall require additional amounts to  
4 be held in a trust established under this paragraph  
5 as a condition for initial or continued certification if  
6 the Commission determines that such additional  
7 amounts are required for the protection of United  
8 States ceding insurers.

9 (3) The insurer or reinsurer shall be authorized  
10 by the laws of its domiciliary jurisdiction to assume  
11 reinsurance and demonstrate to the Commission that  
12 it has sufficient assets and management experience  
13 so that it will operate safely in the United States re-  
14 insurance market in a way that will protect the pub-  
15 lic interest and in addition complies with the follow-  
16 ing:

17 (A) Holders of certificates will be required  
18 to fund their obligations to United States  
19 ceding insurers pursuant to subsection (e) for  
20 such ceding insurers to be able to count such  
21 reinsurance as an asset or deduction from li-  
22 abilities on the ceding insurer's financial state-  
23 ments.

24 (B) In the event the Commission deter-  
25 mines that the funding required by subsection

1 (e) is inadequate to protect United States  
2 ceding insurers, the Commission may require,  
3 as a condition for initial or continued certifi-  
4 cation, additional security requirements, includ-  
5 ing the establishment of a United States trust  
6 fund for the exclusive protection of United  
7 States ceding insurers. The Commission may  
8 require such trust fund to be in any amount  
9 that the Commission determines to be appro-  
10 priate to protect United States ceding insurers.

11 (d) REQUIREMENTS FOR A TRUST FUND UNDER  
12 SUBSECTION (c).—A trust fund required by paragraphs  
13 (2) and (3) of subsection (c) shall be in a form approved  
14 by the Commission and shall meet the following require-  
15 ments for all new reinsurance provided after the date the  
16 certificate to provide reinsurance was granted:

17 (1) The trust fund shall be exclusively for the  
18 purpose of securing the payment of valid claims of  
19 United States ceding insurers and their assigns and  
20 successors in interest.

21 (2) The trust fund shall be established in a  
22 qualified financial institution in a form approved by  
23 the Commission. The Commission shall establish ac-  
24 ceptable criteria for assets held in trust, which shall  
25 include cash, securities, bonds, commercial paper,

1 clean, irrevocable, unconditional, and automatically  
2 renewable letters of credit issued by a qualified fi-  
3 nancial institution, or any other appropriate assets,  
4 whether United States or non-United States, the fair  
5 market value of which can be readily ascertained  
6 and which provide the stability necessary for ade-  
7 quate protection of the trust beneficiaries.

8 (3) Assets may be held in trust by a qualified  
9 financial institution the principal place of business of  
10 which is outside the United States if the holder of  
11 the certificate demonstrates that a beneficiary of the  
12 trust can obtain immediate payment from a United  
13 States branch, subsidiary, or representative office of  
14 the institution.

15 (4) The trust instrument shall provide that  
16 claims shall be paid with the concurrence of the  
17 holder of the certificate or upon final order of any  
18 court of competent jurisdiction in the United States.  
19 The holder of the certificate may freely substitute  
20 and withdraw assets in the trust so long as the value  
21 of the assets maintained in the trust equals or ex-  
22 ceeds the amount set forth in paragraph (2) or (3)  
23 of subsection (c).

24 (5) The trustees of the trust shall report annu-  
25 ally to the Commission and to the insurance com-

1       missioner of each ceding insurer's State of domicile,  
2       in writing, setting forth the balance of the trust,  
3       providing an actuary's opinion as to the reasonable-  
4       ness of the trust reserves, listing the trust's invest-  
5       ments at the preceding year end, and certifying the  
6       date of termination of the trust if so planned, or cer-  
7       tifying that the trust shall not expire as to new busi-  
8       ness prior to the next following December 31. The  
9       trust shall remain in effect as long as there are out-  
10      standing obligations under the reinsurance agree-  
11      ments to which the trust pertains.

12           (6) The trust instrument shall provide that, in  
13      the event the holder of the certificate is placed in su-  
14      pervision, rehabilitation, or liquidation, or its equiva-  
15      lent by its State or country of domicile, or if the  
16      Commission determines, pursuant to regulations  
17      adopted by the Commission, that the condition of  
18      the holder is such that further transaction of busi-  
19      ness will be hazardous to United States creditors or  
20      to the public, the Commission may take control of  
21      the trust in the manner described in title VII.

22           (7) The trust shall be subject to annual review  
23      and initial and special examination by the Commis-  
24      sion in the same manner as the Commission may ex-  
25      amine certified reinsurers.

1 (e) REQUIREMENTS FOR THE FORM OF FUNDING  
2 UNDER SUBSECTION (c).—The funds required by sub-  
3 section (c)(3) may be in the form of—

4 (1) cash under the control of the ceding in-  
5 surer;

6 (2) a clean, irrevocable, unconditional, and  
7 automatically renewable letter of credit issued by a  
8 qualified financial institution and held by the ceding  
9 insurer; or

10 (3) other funding acceptable to the Commission.

11 (f) PREVIOUS REINSURANCE OBLIGATIONS.—As a  
12 pre-condition for obtaining a certificate to provide reinsur-  
13 ance on the basis of meeting the requirements of para-  
14 graph (2) or (3) of subsection (c), the applicant shall be  
15 required to demonstrate to the Commission that it has  
16 adequately secured its reinsurance liabilities in existence  
17 at the time of certification. The adequacy of the funding  
18 of such previous reinsurance liabilities shall be subject to  
19 the requirements of sections 402, 403, and 404 and shall  
20 be reviewed by the Commission in determining the finan-  
21 cial condition of the reinsurer in each annual review.

22 (g) ADDITIONAL REQUIREMENTS FOR A FOREIGN  
23 APPLICANT.—Any foreign insurer or reinsurer applying  
24 under this section for a reinsurance certificate shall meet  
25 the following additional requirements:

1           (1) Have been doing business in its country of  
2           domicile for at least 3 years, or be an affiliate of an  
3           insurer or reinsurer which has been doing business  
4           in its country of domicile for at least 3 years, unless  
5           the Commission, for good cause shown, waives this  
6           3-year operating requirement.

7           (2) File an annual financial statement with its  
8           domiciliary regulator and have established satisfac-  
9           tory evidence of good repute and financial integrity.

10          (3) File annually with the Commission a copy  
11          of the financial statement provided to its domiciliary  
12          regulator (if appropriate, translated from its original  
13          language) and a report showing the volume of writ-  
14          ten premiums assumed from United States insurers  
15          in the past year and such other information as the  
16          Commission, in its sole discretion, requires.

17          (4) File with the Commission a list identifying  
18          its officers and directors (or similar principals) along  
19          with biographical information for each, and provide  
20          an annual update of this information.

21          (5) Agree to allow the Commission to examine  
22          its books and records and to waive any protection it  
23          has under any secrecy laws of its domiciliary juris-  
24          diction, except that such examinations will only take  
25          place upon the Commission's showing of good cause

1 for concern about the financial soundness or sol-  
2 vency of the subject entity.

3 (6) Appoint an agent in the United States upon  
4 whom may be served any lawful process in any ac-  
5 tion, suit, or proceeding instituted by or on behalf  
6 of a domestic ceding insurer, and agree that, in the  
7 event such process may not be served upon the ap-  
8 pointed agent, process may be served upon the Com-  
9 mission.

10 (7) Submit to the jurisdiction of any United  
11 States court of competent jurisdiction for the resolu-  
12 tion of any dispute arising out of a reinsurance  
13 agreement with a domestic ceding insurer or to re-  
14 spond to any allegations or charges made against it  
15 by any United States Government official or agency  
16 except that this paragraph does not override any  
17 contractual agreement of the parties to resolve dis-  
18 putes between them pursuant to other procedures.

19 **SEC. 304. SUSPENSION AND REVOCATION OF FEDERAL**  
20 **CERTIFICATE TO PROVIDE REINSURANCE.**

21 (a) IN GENERAL.—The Commission shall suspend or  
22 revoke the certificate of a professional reinsurer issued  
23 under section 302 or a reinsurance certificate issued under  
24 section 303 at any time the Commission determines the  
25 standards for holding such certificate are no longer satis-

1 fied. The Commission shall provide the opportunity for a  
2 hearing on the record before making a determination to  
3 suspend or revoke such certificate.

4 (b) NOTICE OF SUSPENSION OR REVOCATION.—

5 (1) The Commission shall notify the State or  
6 country of domicile of a certified professional rein-  
7 surer or holder of a reinsurance certificate that the  
8 certificate has been suspended or revoked. Such no-  
9 tification shall be made at the earliest possible date.

10 (2) The holder of a certificate that is suspended  
11 or revoked under subsection (a) shall immediately  
12 notify all insurers and reinsurers from which it has  
13 accepted cessions of such suspension or revocation.

14 **SEC. 305. CREDIT FOR REINSURANCE.**

15 (a) IN GENERAL.—Notwithstanding any provision of  
16 State law to the contrary, any insurer certified by the  
17 Commission or regulated for financial condition by a State  
18 may count reinsurance as an asset or a deduction from  
19 its liabilities on its annual financial statement only if the  
20 provider of reinsurance, at the time such statement is  
21 filed—

22 (1) holds a Federal certificate as a professional  
23 reinsurer under section 302;

1           (2) holds a State insurance license or a Federal  
2           certificate of solvency and is certified pursuant to  
3           section 303(c)(1);

4           (3) maintains a United States trust fund and is  
5           certified pursuant to section 303(c)(2); or

6           (4) is certified pursuant to section 303(c)(3)  
7           and funds its obligations to ceding insurers and rein-  
8           surers as required in section 303(e).

9           (b) LIMITATION ON CREDIT.—With regard to a rein-  
10          surer certified pursuant to section 303(c)(3), a ceding in-  
11          surer may count as an asset or deduction from liabilities  
12          only that portion of the reinsurance which meets the  
13          standards for funding under section 303(e). Such ceding  
14          insurer may also not count as such an asset or deduction  
15          any reinsurance secured by letters of credit, trust funds,  
16          or other collateral if such sources of security are not trans-  
17          ferred to it when due.

18          (c) CREDIT PENDING CERTIFICATION.—A United  
19          States insurer may take credit for reinsurance from a rein-  
20          surer that does not hold a professional reinsurer certificate  
21          issued pursuant to section 302 or a reinsurance certificate  
22          issued pursuant to section 303 only if—

23                 (1) the reinsurer submits to the Commission a  
24                 complete application for a certificate within 30 days  
25                 of the coverage being placed;

1           (2) the reinsurer places all premiums in trust in  
2 a qualified financial institution pending consider-  
3 ation of its application, and provides evidence to the  
4 Commission that all premiums from United States  
5 ceding insurers have been placed in such trust;

6           (3) the reinsurer funds any liabilities pursuant  
7 to reinsurance assumed in a manner consistent with  
8 the requirements of section 303(e) and submits to  
9 the Commission proof of such funding;

10          (4) the reinsurance agreement expressly pro-  
11 vides that it may be canceled from inception or at  
12 any subsequent time at the request of the Commis-  
13 sion if the provider's application for a certificate is  
14 denied;

15          (5) the reinsurer is authorized in its State or  
16 country of domicile to do an insurance business and  
17 either has been doing business in its State or coun-  
18 try of domicile for at least 3 years or is an affiliate  
19 of an insurer which has been doing business in its  
20 State or country of domicile for at least 3 years, ex-  
21 cept that this 3 year operating requirement may be  
22 waived by the Commission for good cause; and

23          (6) the ceding insurer has not, within the pre-  
24 vious 3 years, taken a credit for reinsurance ceded  
25 to the reinsurer pursuant to this subsection.

1 (d) PREEMPTION.—No State shall regulate credit for  
2 reinsurance whether purchased by federally certified insur-  
3 ers or insurers regulated for financial condition by a State.  
4 The Commission shall have exclusive jurisdiction to regu-  
5 late such credit.

6 (e) EXCEPTIONS.—Notwithstanding any other provi-  
7 sion of this section, a ceding insurer may count as an asset  
8 or deduction from liabilities—

9 (1) reinsurance of risks located in jurisdictions  
10 within or without the United States where such rein-  
11 surance is required by applicable law of that juris-  
12 diction;

13 (2) reinsurance ceded to a reinsurer which is li-  
14 censed by one or more States and which is ceded  
15 to—

16 (A) a member of the same holding com-  
17 pany system as the ceding insurer; or

18 (B) an underwriting pool of which the  
19 ceding insurer is a member;

20 (3) risks ceded to a pool authorized or per-  
21 mitted by a statute, regulation, or policy of the  
22 United States or under an arrangement approved by  
23 the Federal or a State government;

24 (4) risks of a parent or affiliate ceded to a pure  
25 or group captive insurer or reinsurer where the cap-

1       tive's obligations are funded or collateralized as pro-  
2       vided in subsection (d) or (e) of section 303; or

3           (5) risks ceded to a risk retention group au-  
4       thorized by and operating pursuant to the Liability  
5       Risk Retention Act of 1986 (15 U.S.C. 3901 et seq.)  
6       if the risk retention group's obligations are funded  
7       or collateralized as provided in subsection (d) or (e)  
8       of section 303.

9       (f) EFFECT OF LOSS OF CERTIFICATION.—In the  
10      event that the Commission suspends or revokes a certifi-  
11      cate issued pursuant to this title or such certificate is lost  
12      for any other reason, a ceding insurer may not count rein-  
13      surance as an asset or a deduction from its liabilities on  
14      its annual financial statement for any cessions made after  
15      the date the certification ceases. For those cessions before  
16      the loss of certification under this Act—

17           (1) a ceding insurer may continue to count as  
18      an asset or deduction any funds withheld from such  
19      reinsurer; and

20           (2) a ceding insurer may also continue to count  
21      as an asset or deduction any unfunded reinsurance  
22      for 90 days or such longer period as approved by the  
23      Commission.

1 A ceding insurer affected by the suspension or revocation  
2 of a certificate issued pursuant to this title shall imme-  
3 diately notify the Commission of this fact.

4 (g) EFFECTIVE DATE OF THIS SECTION.—This sec-  
5 tion shall apply to cessions which take place 2 years after  
6 the date of enactment of this Act.

7 **SEC. 306. RELATIONSHIP TO STATE LAW.**

8 (a) PREEMPTION.—

9 (1) A professional reinsurer certified pursuant  
10 to section 302 shall be exempt from the application  
11 of any State law or regulation pertaining to the li-  
12 censing or regulation of reinsurers or reinsurance  
13 transactions.

14 (2) An insurer or reinsurer with a reinsurance  
15 certificate issued pursuant to section 303 shall be  
16 subject to insurance regulation by a State unless  
17 that insurer or reinsurer has a Federal certificate of  
18 solvency, in which case the application of State law  
19 shall be only as that provided for federally certified  
20 insurers under title II.

21 (3) Any insurer or reinsurer described in para-  
22 graph (1) or (2) that maintains its corporate exist-  
23 ence pursuant to State law shall be subject to appli-  
24 cable State tax and corporate governance laws.

25 (b) NONDISCRIMINATION.—

1           (1) With respect to any State law requiring evi-  
2           dence of insurance or of financial responsibility, re-  
3           insurance contracts made by a professional reinsurer  
4           certified pursuant to section 302 or by the holder of  
5           a reinsurance certificate issued pursuant to section  
6           303 shall be accorded the same treatment as is ac-  
7           corded to such contracts issued by insurers subject  
8           to regulation for financial condition by that State.

9           (2) No State shall revoke, suspend, refuse to  
10          issue, or refuse to renew any license, privilege, char-  
11          ter, certificate, franchise, or any other right con-  
12          ferred, guaranteed, or protected by law because an  
13          insurer or reinsurer obtains or maintains a certifi-  
14          cate to provide reinsurance from the Commission.  
15          No tax, fee, or assessment of any kind may be im-  
16          posed on an insurer or reinsurer certified by the  
17          Commission in any manner or on any basis different  
18          from that applied to other insurers by that State.  
19          No corporate charter or franchise issued to an in-  
20          surer or reinsurer certified by the Commission shall  
21          be rendered invalid or subject to revocation, lapse, or  
22          forfeiture merely by reason of the failure of an in-  
23          surer or reinsurer certified by the Commission to ob-  
24          tain a license or certificate of authority issued by a

1 State in addition to the certificate issued by the  
2 Commission.

3 **SEC. 307. CONSTRUCTION.**

4 Nothing in this title shall be construed to conflict  
5 with or override the agreement of the parties to a reinsur-  
6 ance agreement to arbitrate their disputes if such obliga-  
7 tion is created in the reinsurance agreement and would  
8 not impair the financial soundness of the holder of a rein-  
9 surance certificate issued under this title.

10 **TITLE IV—REGULATORY**  
11 **ENFORCEMENT**

12 **SEC. 401. AUTHORITY TO CONDUCT FINANCIAL EXAMINA-**  
13 **TIONS OF INSURERS AND REINSURERS**

14 (a) **FEDERALLY CERTIFIED INSURERS AND REIN-**  
15 **SURERS.**—The Commission shall conduct examinations of  
16 federally certified insurers and reinsurers. In the case of  
17 a certification or surplus lines approval granted on the  
18 basis of a trust fund or funding, the examination shall  
19 be of such trust fund or funding.

20 (b) **INSURERS REGULATED FOR FINANCIAL CONDI-**  
21 **TION BY A STATE.**—The State insurance regulator shall  
22 conduct the examination of insurers subject to State regu-  
23 lation for financial condition.

1 **SEC. 402. PROCEDURES FOR FINANCIAL EXAMINATION OF**  
2 **INSURERS AND REINSURERS**

3 (a) COMMISSION ESTABLISHMENT OF PROCEDURES  
4 FOR FINANCIAL EXAMINATIONS.—The Commission shall  
5 establish, by regulation, procedures for an effective system  
6 of examining the activities, operations, financial condition,  
7 and affairs of insurers and reinsurers. The Commission  
8 shall follow such procedures for federally certified insurers  
9 and reinsurers and the State insurance regulator shall fol-  
10 low such procedures for the examination of insurers under  
11 the regulator’s responsibility.

12 (b) INITIAL APPLICATION AND EXAMINATION.—The  
13 Commission or State insurance regulator shall conduct an  
14 initial examination of every insurer or reinsurer that ap-  
15 plies for a Federal certificate of solvency or State insur-  
16 ance license to determine if the applicant satisfies the na-  
17 tional standards established under section 201.

18 (c) MANDATORY REVIEW OF FINANCIAL STATEMENT  
19 AND QUARTERLY UPDATE.—The Commission or State in-  
20 surance regulator shall conduct a review of the annual fi-  
21 nancial statement of each insurer or reinsurer to deter-  
22 mine if the insurer or reinsurer continues to meet the na-  
23 tional standards established under section 201 or if there  
24 is reason to conduct a special examination under sub-  
25 section (d). On a quarterly basis, each such insurer and  
26 reinsurer shall file an abbreviated update of the informa-

1 tion contained in its annual financial statement. Such  
2 quarterly update shall be in the form established by the  
3 Commission. The Commission shall require such informa-  
4 tion to be included in the quarterly filing as will allow the  
5 Commission or State insurance regulator to detect any sig-  
6 nificant changes in the financial condition of the insurer  
7 or reinsurer.

8 (d) SPECIAL EXAMINATIONS.—In addition to the  
9 mandatory review of the financial statement and quarterly  
10 updates under subsection (c), the Commission or State in-  
11 surance regulatory shall conduct a special examination of  
12 an insurer or reinsurer whenever the Commission or State  
13 insurance regulator, in its sole discretion, determines that  
14 the insurer or reinsurer may be financially impaired, in  
15 a financially hazardous condition, or for any other reason.  
16 In determining the need for such examination, the Com-  
17 mission or State insurance regulator shall consider—

18 (1) whether the insurers' or reinsurers' capital  
19 has fallen by a material amount;

20 (2) whether the results of the annual review or  
21 a review of the quarterly filings under this Act show  
22 that financial problems exist, such as reasonableness  
23 of reserves and changes in rates of growth;

24 (3) whether the asset portfolio is of sufficient  
25 value or liquidity to assure the insurer's or reinsur-

1 er's ability to meet its outstanding obligations as  
2 they mature;

3 (4) whether a material affiliate, subsidiary, or  
4 reinsurer is financially impaired or in a financially  
5 hazardous condition;

6 (5) whether there are material amounts of over-  
7 due reinsurance recoverables;

8 (6) whether management has knowingly failed  
9 to respond to inquiries relative to the condition of  
10 the insurer or has knowingly furnished inadequate,  
11 false, or misleading information;

12 (7) a significant increase in net premiums writ-  
13 ten or in the ratio of net premiums to net worth;  
14 and

15 (8) any other matters that the Commission has  
16 determined to be relevant.

17 (e) SCOPE OF EXAMINATIONS.—

18 (1)(A) The initial and special examinations pro-  
19 vided for under subsection (c) and (d) shall be con-  
20 ducted in accordance with procedures and standards  
21 established by the Commission by regulation and  
22 shall include an on site examination when, in the  
23 Commission's or State insurance regulator's sole dis-  
24 cretion, necessary to assure proper review. These  
25 regulations shall provide for a review of all the fi-

1       nancial records of the insurer or reinsurer that are  
2       relevant to determining the financial condition of the  
3       insurer or reinsurer after the Federal certificate or  
4       State insurance license has been obtained.

5               (B) In order to most efficiently conduct initial  
6       examinations on applications for a Federal certifi-  
7       cate of solvency, the Commission shall provide for an  
8       expedited examination process if applicants show  
9       strong financial condition based on the following  
10      considerations:

11                   (i) The financial history of applicants and,  
12                   if relevant, their holding companies, including  
13                   historical ability to sustain unforeseen losses.

14                   (ii) The current financial ratings of appli-  
15                   cants, and, if relevant, their holding companies.

16                   (iii) The level of capitalization and reserves  
17                   of applicants and, if relevant, their holding  
18                   companies.

19                   (iv) Such other factors as the Commission  
20                   determines to be relevant.

21               (2) The annual review required under sub-  
22       section (c) shall consist of a focused review of basic  
23       financial information to ensure continuing compli-  
24       ance with the national standards established under  
25       section 201 and to ensure that the insurer or rein-

1 insurer remains in good financial condition. The an-  
2 nual review shall include—

3 (A) a review of the insurer's or reinsurer's  
4 audited financial statements, actuarial reports  
5 of reserves, and management discussion and  
6 analysis statement;

7 (B) an analysis of unusual variations in  
8 annual results or unusual financial ratios in  
9 documents described in subparagraph (A); and

10 (C) a review of management's explanation  
11 of questions concerning the documents de-  
12 scribed in subparagraph (A) and of the unusual  
13 variations of ratios described in subparagraph  
14 (B).

15 The annual review shall be completed within 3  
16 months of the filing of the insurer's or reinsurer's  
17 annual report, or, if the Commission or State insur-  
18 ance regulator has requested the management to  
19 provide an explanation under subparagraph (C),  
20 within one month after the additional explanation is  
21 provided. The Commission or State insurance regu-  
22 lator may extend these dates for good cause shown.

23 (f) COOPERATION WITH EXAMINATIONS.—

24 (1) In the course of an examination, each in-  
25 surer, reinsurer, its holding company or affiliate

1 from which information is sought, and its officers  
2 and directors must provide to the Commission or  
3 State insurance regulator timely access to all books,  
4 records, accounts, papers, documents, and any or all  
5 computer or other recordings relating to the prop-  
6 erty, assets, liabilities, business, and operations of  
7 the insurer or reinsurer being examined. The refusal  
8 to submit to such examination or to provide such in-  
9 formation shall be grounds for revocation or  
10 nonrenewal of the Federal certificate or State license  
11 involved. Any Commission proceedings for revocation  
12 or nonrenewal of a certificate shall include the op-  
13 portunity for a hearing on the record. A State insur-  
14 ance regulator shall follow the appropriate proce-  
15 dures of State law for revocation and non-renewal.

16 (2) After an examination is completed, the  
17 Commission or State insurance regulator shall have  
18 the authority to use and, if appropriate, to make  
19 public any examination, report on the examination,  
20 or any other information discovered or developed  
21 during the course of any examination in the further-  
22 ance of any legal or regulatory action which the  
23 Commission or State insurance regulator may, in its  
24 sole discretion, determine to be appropriate. Nothing  
25 in this Act shall limit any protection from disclosure

1 of proprietary information consistent with Federal or  
2 State law.

3 (g) EXAMINATION REPORTS.—

4 (1) No later than 30 days following completion  
5 of an examination under subsection (d) or (e) or the  
6 annual review under subsection (c), the Commission  
7 or State insurance regulator shall transmit a report  
8 on the results to the insurer or reinsurer, together  
9 with a notice which shall afford the insurer or rein-  
10 surer a reasonable opportunity of not more than 30  
11 days to make a written submission or rebuttal with  
12 respect to any matters contained in the report.

13 (2) Within 30 days of the end of the period al-  
14 lowed for the receipt of written submissions or  
15 rebuttals, the Commission or State insurance regu-  
16 lator shall fully consider the report, together with  
17 any written submissions or rebuttals and any rel-  
18 evant portions of the examiner's workpapers, and  
19 adopt the report as filed or with modifications.

20 (3) The insurer or reinsurer shall take any ac-  
21 tion required by the Commission or State insurance  
22 regulator to meet the requirements of this section  
23 and to correct material deficiencies identified in the  
24 examination report.

1 **SEC. 403. ACCOUNTING STANDARDS AND INDEPENDENT**  
2 **ACCOUNTANTS.**

3 (a) ACCOUNTING STANDARDS.—The financial state-  
4 ments of insurers and reinsurers shall be prepared in con-  
5 formity with generally accepted accounting principles. In-  
6 surers and reinsurers that obtain and maintain certificates  
7 of solvency or State insurance license on the basis of trust  
8 fund or funding mechanisms shall prepare the financial  
9 statements as to such trust funds or mechanisms in con-  
10 formity with these principles. The Commission may estab-  
11 lish, by regulation, additional disclosure requirements ap-  
12 plicable to reports required to be filed with it.

13 (b) INDEPENDENT ACCOUNTANTS.—Every insurer  
14 and reinsurer shall retain an independent certified public  
15 accountant or, in the case of a foreign certified insurer  
16 or reinsurer, another independent person who is qualified,  
17 as determined by the Commission under subsection (k),  
18 to audit the financial statements of such insurer or rein-  
19 surer in accordance with generally accepted auditing  
20 standards.

21 (c) CORPORATE FINANCIAL RECORDS AND ACCESS  
22 OF INDEPENDENT ACCOUNTANTS.—Every insurer and re-  
23 insurer shall keep its financial records pursuant to rules  
24 and regulations adopted by the Commission under this  
25 section. The insurer or reinsurer shall provide the inde-  
26 pendent accountant full access to all books, records, and

1 accounts that are relevant to preparing and auditing fi-  
2 nancial statements and reports the insurer or reinsurer  
3 submits to the Commission or the State insurance regu-  
4 lator.

5 (d) OBLIGATIONS OF THE ACCOUNTANT.—If, in the  
6 course of conducting any audit pursuant to this title, the  
7 independent accountant detects or otherwise becomes  
8 aware of information that the financial statements of the  
9 insurer or reinsurer—

10 (1) are materially affected by irregularities;

11 (2) reveal an illegal act (whether or not per-  
12 ceived to have a material effect on the insurer's or  
13 reinsurer's financial statements or condition) has  
14 been committed; or

15 (3) show that there is substantial doubt of the  
16 insurer's or reinsurer's ability to continue to operate  
17 as a going concern over the ensuing fiscal year;

18 the accountant shall comply with subsection (e).

19 (e) REPORT TO CORPORATE OFFICERS.—If the inde-  
20 pendent accountant detects or becomes aware of informa-  
21 tion described in subsection (d), the accountant shall, as  
22 soon as practicable, inform the appropriate level of the in-  
23 surer's or reinsurer's management and assure that the in-  
24 surer's or reinsurer's audit committee or board of direc-  
25 tors in the absence of such a committee, is adequately in-

1 formed with respect to any condition described in sub-  
2 section (d) that has been detected or otherwise come to  
3 the attention of such accountant in the course of the audit,  
4 unless the condition is clearly inconsequential.

5 (f) RESPONSE TO FAILURE TO TAKE REMEDIAL AC-  
6 TION.—If, after 45 days, having first assured itself that  
7 the audit committee or the board (in the absence of an  
8 audit committee) is adequately informed with respect to  
9 the condition described in subsection (d), the independent  
10 accountant concludes that—

11 (1) any such condition has a material effect on  
12 the financial statements of the insurer or reinsurer,

13 (2) senior management has not taken, and the  
14 board of directors has not caused senior manage-  
15 ment to take, timely and appropriate remedial ac-  
16 tions with respect to such condition, and

17 (3) the failure to take remedial action is reason-  
18 ably expected to warrant departure from a standard  
19 auditor's report, when made, or warrant resignation  
20 from the audit engagement,

21 the independent accountant shall as soon as practicable  
22 report its conclusions directly to the board of directors.

23 (g) NOTICE TO COMMISSION; RESPONSE TO FAILURE  
24 TO NOTIFY.—An insurer or reinsurer the board of direc-  
25 tors of which has received a report pursuant to subsection

1 (f) shall inform the Commission or the State insurance  
2 regulator by notice within 5 business days of receipt of  
3 such report and shall furnish the independent accountant  
4 making such report with a copy of the notice furnished  
5 the Commission or the State insurance regulator. If the  
6 accountant making such report shall fail to receive a copy  
7 of such notice within the required 5-business-day period,  
8 the accountant shall—

9 (1) resign from the engagement; or

10 (2) furnish to the Commission or the State in-  
11 surance regulator a copy of its report (or the docu-  
12 mentation of any oral report given) within the 5  
13 business days following such failure to receive notice.

14 (h) REPORT AFTER RESIGNATION.—An independent  
15 accountant electing resignation shall, within the 10 busi-  
16 ness days following a failure by an insurer or reinsurer  
17 to notify the Commission or the State insurance regulator  
18 under subsection (g), furnish to the Commission or the  
19 State insurance regulator a copy of the accountant's re-  
20 port (or the documentation of any oral report given).

21 (i) RELIEF FROM CIVIL LIABILITY.—No independent  
22 accountant shall be liable in a private action for any find-  
23 ing, conclusion, or statement expressed in a report made  
24 pursuant to subsection (g) or (h), including any rules pro-  
25 mulgated by the Commission pursuant thereto.

1 (j) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-  
2 CEEDINGS.—If the Commission finds, after notice and op-  
3 portunity for a hearing, that an independent accountant  
4 has willfully violated subsection (g) or (h), the Commission  
5 may impose a civil penalty against the accountant and any  
6 other person that the Commission finds was a cause of  
7 such violation. The State insurance regulator may take  
8 such action as is authorized by State law.

9 (k) REGULATIONS AND STANDARDS.—

10 (1) The Commission shall establish, by regula-  
11 tion, procedures to be followed by independent ac-  
12 countants in complying with subsections (g) and (h).

13 (2) The Commission shall establish by regula-  
14 tion, the standards and procedures by which a per-  
15 son who is not a certified public accountant in the  
16 United States may become qualified to act as an  
17 independent accountant for a foreign insurer or rein-  
18 surer under subsections (g) and (h). Such standards  
19 shall be substantially similar or equivalent to those  
20 for certified public accountants in the United States.

21 (3) Foreign insurers and reinsurers applying  
22 for or holding a Federal certificate on the basis of  
23 the trust fund or funding mechanisms of paragraphs  
24 (2) and (3) of section 303(c), respectively, shall not  
25 generally be required to reconstruct the financial

1 statements filed with their domestic regulators to  
2 conform to generally accepted accounting principles  
3 in the United States, although the Commission may  
4 generally require explanations of the accounting  
5 practices of foreign domiciliaries.

6 (l) DEFINITIONS.—As used in this section, the term  
7 “illegal act” means any action or omission to act that  
8 might have an adverse material effect on the financial con-  
9 dition of an insurer or reinsurer and that violates any law  
10 or any rule or regulation having the force of law.

11 **SEC. 404. ACTUARIES.**

12 (a) REQUIREMENT TO USE QUALIFIED ACTUAR-  
13 IES.—The Board of Directors of each insurer and rein-  
14 surer shall appoint an actuary who is qualified to issue  
15 an opinion on the reasonableness of the reserves of such  
16 insurer or reinsurer. A qualified actuary is a person who  
17 is a member in good standing of the American Academy  
18 of Actuaries or someone who is otherwise qualified as de-  
19 termined by the Commission. The Board of Directors of  
20 the certified insurer or reinsurer shall notify the Commis-  
21 sion or the State insurance regulator of the name of  
22 the appointed actuary at the time of the appointment and  
23 shall notify the Commission or such regulator within 10  
24 days when an appointed actuary is dismissed, resigns, or  
25 otherwise leaves the position.

1 (b) STANDARDS FOR RESERVE ASSESSMENT.—Every  
2 insurer and reinsurer shall have its actuarial liabilities  
3 analyzed and its reserves, as defined by the Commission,  
4 evaluated pursuant to rules and regulations adopted by  
5 the Commission and shall file with its annual financial  
6 statements a report describing the conclusions of the anal-  
7 ysis. Such evaluation shall be done and such report of con-  
8 clusions shall be written by the appointed actuary pursu-  
9 ant to guidelines, standards, procedures, and forms to be  
10 adopted by the Commission through its rulemaking proc-  
11 ess. For an insurer or reinsurer certified or licensed on  
12 the basis of a trust fund or funding mechanism, the actu-  
13 ary's report shall cover only those liabilities required to  
14 be held within the trust funds or for the funding.

15 (c) ACCESS TO CORPORATE DOCUMENTS.—Every in-  
16 surer or reinsurer shall provide its appointed actuary with  
17 full access to all financial data of the insurer or reinsurer  
18 that is relevant to evaluating reserves. The actuary shall  
19 provide annually to the Board of Directors of the insurer  
20 or reinsurer a written report of the actuarial analysis and  
21 findings on which the evaluation of the reasonableness of  
22 reserves was based. Such written report shall conform to  
23 standards promulgated by the Actuarial Standards Board  
24 and such other requirements as may be adopted through  
25 rules of the Commission.

1 (d) REPORT TO CORPORATE OFFICERS.—If at any  
2 time, in the opinion of the appointed actuary, reserves fall  
3 below the range of reasonable estimates, then the actuary  
4 shall, within 10 days, notify in writing the chief executive  
5 officer and the Chairman or the Board of Directors of this  
6 opinion.

7 (e) REPORT BY THE CORPORATION.—If the chief ex-  
8 ecutive officer and chairman of the Board of Directors of  
9 an insurer or reinsurer receive a notice from the appointed  
10 actuary under subsection (d), such officer and chairman  
11 shall, within 90 days, either correct the deficiency or ob-  
12 tain an assessment from an independent qualified actuary  
13 of the reasonableness of the appointed actuary's opinion.  
14 If the opinion of the independent actuary is that the re-  
15 serves are deficient, the insurer or reinsurer, within 45  
16 days after receipt of such assessments, shall implement  
17 a plan to correct the reserve deficiency. The appointed ac-  
18 tuary and the independent actuary shall be provided with  
19 written notice of the corrective actions taken. If a remedial  
20 plan is not implemented within such 45 days, the chief  
21 executive officer and chairman of the Board of Directors  
22 shall immediately notify the Commission or the State in-  
23 surance regulator in writing of the deficiency and shall  
24 furnish to the Commission or such regulator in writing  
25 true and complete copies of all actuarial reports, opinions,

1 and assessments received by the insurer or reinsurer since  
2 the last filed annual financial statement.

3 (f) REPORT BY THE ACTUARY.—If the chief executive  
4 officer and chairman of the Board of Directors do not pro-  
5 vide evidence to each actuary consulted that the remedial  
6 plan has been implemented within the 135 days provided  
7 in subsection (e), each such actuary shall immediately no-  
8 tify the Commission or the State insurance regulator in  
9 writing of the actuary’s opinion provided to the Board that  
10 the reserves may be deficient.

11 (g) RELIEF FROM CIVIL LIABILITY.—An actuary  
12 who in good faith complies with the reporting require-  
13 ments of subsection (f) shall not be liable in any civil ac-  
14 tion for damages attributable to such reporting.

15 (h) REGULATIONS.—The Commission shall issue reg-  
16 ulations to be followed by property and casualty and life  
17 and health insurers and reinsurers and by appointed actu-  
18 aries in complying with this title.

19 **SEC. 405. REGISTRATION OF INSURERS AND REINSURERS**  
20 **IN HOLDING COMPANIES.**

21 (a) REGISTRATION OF HOLDING COMPANY STA-  
22 TUS.—Each insurer or reinsurer that is incorporated or,  
23 in the case of a United States branch of a foreign insurer  
24 or reinsurer, established pursuant to the laws of the Unit-  
25 ed States or any State thereof, and is part of a holding

1 company system shall file with the Commission, if the in-  
2 surer or reinsurer is federally certified, or the State insur-  
3 ance regulator, if the insurer or reinsurer is regulated for  
4 financial condition by a State, information as to the struc-  
5 ture and members of such system as provided by this sec-  
6 tion. The Commission shall establish, by regulation, the  
7 form and contents of the filings of such information.

8 (b) ALTERNATIVE REGISTRATION FOR FOREIGN IN-  
9 SURERS OR REINSURERS.—Each foreign insurer or rein-  
10 surer that is subject to holding company registration re-  
11 quirements and standards adopted by statute or regula-  
12 tion in the jurisdiction of its domicile which are substan-  
13 tially similar to those established under this section shall  
14 file with the Commission or State insurance regulator a  
15 copy of its domiciliary registration. The Commission or  
16 State insurance regulator shall determine if the foreign  
17 registration requirements and standards of the jurisdiction  
18 of domicile are substantially similar to those established  
19 under subsection (a). If the Commission or State insur-  
20 ance regulator determines that such filing is not substan-  
21 tially similar, the foreign insurer or reinsurer shall file in-  
22 formation as required by subsection (a).

23 (c) TIME OF REGISTRATION.—Any insurer or rein-  
24 surer that is subject to registration under this section shall  
25 register within 15 days after it becomes subject to reg-

1 istration, and shall update this registration annually  
2 thereafter at the time it files its annual statement with  
3 the Commission or the State insurance regulator. The  
4 Commission or the State insurance regulator for good  
5 cause may extend the time for registration.

6 **SEC. 406. ACQUISITION OF CONTROL OF OR MERGER WITH**  
7 **AN INSURER OR REINSURER.**

8 (a) **FEDERALLY CERTIFIED INSURERS AND REIN-**  
9 **SURERS.**—The Commission shall review any acquisition of  
10 control over or merger with a federally certified insurer  
11 or reinsurer. No such acquisition or merger shall be con-  
12 summated without first obtaining the approval of the  
13 Commission. Any such acquisition or merger shall be dis-  
14 approved if it would threaten the financial stability, sound-  
15 ness, or solvency of such insurer or reinsurer. In the event  
16 of a change of control of a foreign insurer or reinsurer  
17 certified on the basis of a trust fund or funding mecha-  
18 nism, the existing certification shall become contingent  
19 upon the review of the impact of the transaction upon the  
20 ability of such insurer or reinsurer to continue to meet  
21 the standards for certification.

22 (b) **INSURERS REGULATED FOR FINANCIAL CONDI-**  
23 **TION BY A STATE.**—The State insurance regulator shall  
24 review any acquisition of control over or merger with an  
25 insurer or reinsurer subject to State regulation for finan-

1 cial condition. No such acquisition or merger shall be con-  
2 summated without first obtaining the approval of the  
3 State insurance regulator. Any such acquisition or merger  
4 shall be disapproved if it would threaten the financial sta-  
5 bility, soundness, and solvency of the insurer or reinsurer.  
6 In the event of a change of control of a foreign insurer  
7 or reinsurer licensed on the basis of a trust fund or fund-  
8 ing mechanism, the existing license shall become contin-  
9 gent upon the review of the impact of the transaction upon  
10 the ability of such insurer or reinsurer to continue to meet  
11 the standards for licensing

12 (c) PROCEDURES FOR REVIEW OF ACQUISITION AND  
13 MERGER.—

14 (1) IN GENERAL.—The Commission shall estab-  
15 lish, by regulation, the procedures and information  
16 that must be provided to the Commission or the  
17 State insurance regulator so that it may make a de-  
18 cision as to the appropriateness of any acquisition or  
19 merger. This information shall be provided to the  
20 Commission or the State insurance regulator under  
21 oath or affirmation.

22 (2) DISAPPROVAL.—In making a determination  
23 to disapprove an acquisition or merger, the Commis-  
24 sion or the State insurance regulator shall con-  
25 sider—

1 (A) the financial condition of the acquiring  
2 person;

3 (B) the trustworthiness of the acquiring  
4 person or any of its officers or directors;

5 (C) a plan for the proper and effective con-  
6 duct of the insurer's or reinsurer's operations;

7 (D) the source of the funds or asset for the  
8 acquisition;

9 (E) the fairness of any exchange of shares,  
10 assets, cash, or other consideration for the  
11 shares or assets to be received; and

12 (F) whether the acquisition is likely to be  
13 hazardous or prejudicial to the insurer's policy-  
14 holders or the insurer's or reinsurer's share-  
15 holders.

16 (d) NOTICE TO AFFECTED INSURER OR REIN-  
17 SURER.—If a person intends to make an offer or enter  
18 into an agreement to acquire control of or merge with an  
19 insurer or reinsurer, such person shall provide to the af-  
20 fected insurer or reinsurer, at the same time it files with  
21 the Commission or the State insurance regulator under  
22 this section, a copy of such filing.

23 (e) FILING REQUIREMENTS.—Any person, other than  
24 the issuer, that —

1           (1)(A) makes a tender offer for or a request or  
2 invitation for tenders or a solicitation of proxies of  
3 as to an insurer or reinsurer; or

4           (B) enters into any agreement to exchange se-  
5 curities or, seeks to acquire, or acquires, in the open  
6 market or otherwise, or solicits proxies for any vot-  
7 ing security of an insurer or reinsurer when, after  
8 the consummation thereof, such person would, di-  
9 rectly or indirectly (or by conversion or by exercise  
10 of any right to acquire) be in control of such insurer  
11 or reinsurer; and

12           (2) intends to enter into an agreement to merge  
13 with or otherwise to acquire control of an insurer or  
14 reinsurer or any person with control thereof,  
15 shall, at the time any such offer, request, or invitation is  
16 made or any such agreement or merger is entered into,  
17 or prior to the acquisition of such securities if no offer  
18 or agreement is involved, file with the Commission or the  
19 State insurance regulator the information required under  
20 this section.

21           (f) APPROVAL OF ACQUISITION OR MERGER.—After  
22 reviewing the information provided under this section, the  
23 Commission or the State insurance regulator shall dis-  
24 approve any acquisition or merger unless it finds, after  
25 providing the opportunity for a hearing on the record, that

1 the acquisition or merger would not threaten the financial  
2 stability, financial soundness, or solvency of any affected  
3 federally certified insurer or reinsurer, or substantially  
4 lessen competition in any line of insurance. The State in-  
5 surance regulator shall follow the procedures of applicable  
6 State law in issuing a disapproval under this section.

7 (g) CONTROL DETERMINATION.—The Commission or  
8 the State insurance regulator may determine upon appli-  
9 cation that any person does not or will not upon the taking  
10 of some proposed action control an insurer or reinsurer.  
11 Such determination shall be made within 30 days or such  
12 further period as the Commission may prescribe by regula-  
13 tion. The good faith filing of the application by any person  
14 shall relieve the applicant of complying with the require-  
15 ments to obtain approval until the Commission or the  
16 State insurance regulator has acted upon the application.  
17 The Commission may prospectively revoke or modify the  
18 determination, after notice and opportunity for a hearing  
19 on the record, whenever a revocation or modification is  
20 necessary to protect the financial condition of a federally  
21 certified insurer or reinsurer. The State insurance regu-  
22 lator may revoke or modify such a determination in ac-  
23 cordance with the procedure of applicable State law.

1 **SEC. 407. SPECIAL PROCEDURES AS TO THE ACQUISITION**  
2 **OF A FEDERALLY CERTIFIED INSURER OR**  
3 **REINSURER.**

4 (a) IN GENERAL.—Federally certified insurers or re-  
5 insurers may be affiliated with insurers or reinsurers that  
6 are not federally certified.

7 (b) EXCLUSIVE JURISDICTION OF THE COMMIS-  
8 SION.—Acquisitions, mergers, and similar transactions  
9 that involve only federally certified insurers or reinsurers  
10 shall be subject to the approval of the acquisition, merger,  
11 or similar transaction solely by the Commission.

12 (c) JURISDICTION OF THE COMMISSION AND STATE  
13 INSURANCE REGULATORS.—The Commission or State in-  
14 surance regulator may prohibit, refuse to approve, or ap-  
15 prove, subject to any conditions the Commission sets, any  
16 acquisition, merger, or similar transaction if such trans-  
17 action involves both a federally certified insurer or rein-  
18 surer and an insurer subject to regulation of financial con-  
19 dition by a State.

20 **SEC. 408. TRANSACTIONS WITHIN A HOLDING COMPANY**  
21 **SYSTEM THAT INCLUDES AN INSURER OR RE-**  
22 **INSURER.**

23 (a) TRANSACTIONS WITHIN A HOLDING COMPANY  
24 SYSTEM.— Transactions within a holding company system  
25 which includes an insurer or reinsurer and with respect

1 to such insurer or reinsurer shall be subject to the follow-  
2 ing standards:

3 (1) The terms shall be fair and reasonable.

4 (2) Charges or fees for services performed shall  
5 be reasonable.

6 (3) Expenses incurred and payment received  
7 shall be allocated to the insurer or reinsurer in con-  
8 formity with customary insurance accounting prac-  
9 tices consistently applied.

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

17 (5) The insurer's or reinsurer's net worth fol-  
18 lowing any dividends or distributions to shareholder  
19 affiliates shall be reasonable in relation to its out-  
20 standing liabilities and adequate to its financial  
21 needs.

22 (b) PRIOR APPROVAL.—The Commission's or the  
23 State insurance regulator's prior approval shall be re-  
24 quired for the following transactions between an insurer  
25 or reinsurer and any affiliate within a holding company

1 system if they involve 5 percent or more of the assets of  
2 the federally certified insurer or reinsurer at the end of  
3 the preceding year:

4 (1) Sales.

5 (2) Purchases.

6 (3) Exchanges.

7 (4) Loans or extensions of credit.

8 (5) Investments.

9 (c) PRIOR NOTIFICATION.—The following trans-  
10 actions between an insurer or reinsurer and any affiliate  
11 within a holding company system may not be entered into  
12 unless such insurer or reinsurer has notified the Commis-  
13 sion or the State insurance regulator at least 30 days prior  
14 thereto, or such shorter period as the Commission or the  
15 State insurance regulator may permit, and if the Commis-  
16 sion or the State insurance regulator has not disapproved  
17 such transaction within this period:

18 (1) Sales, purchases, loans, or extensions of  
19 credit involving more than one-half of 1 percent but  
20 less than 5 percent of the insurer's or reinsurer's as-  
21 sets at last year-end.

22 (2) Reinsurance treaties or agreements in which  
23 the reinsurance premium exceeds 5 percent of the  
24 insured's net worth at the end of the preceding year.

1           (3) Rendering services on a regular or system-  
2           atic basis.

3           (4) Any material transaction specified by regu-  
4           lation of the Commission that may adversely affect  
5           the interests of the insurer's policyholders or share-  
6           holders.

7 This subsection shall not be construed to authorize any  
8 transaction which would otherwise be contrary to law.

9 **SEC. 409. ENFORCEMENT AND PENALTIES.**

10       (a) AUTHORITY OF THE COMMISSION AND STATE IN-  
11       SURANCE REGULATORS.—

12           (1) ENFORCEMENT AND PENALTY AUTHORITY  
13           OF THE COMMISSION.—The Commission shall have  
14           enforcement and penalty authority as to federally  
15           certified insurers and reinsurers for violations of this  
16           Act.

17           (2) ENFORCEMENT AND PENALTY AUTHORITY  
18           OF THE STATE INSURANCE REGULATOR.— The ap-  
19           propriate State insurance regulator shall have en-  
20           forcement and penalty authority as to violations of  
21           this Act and as to the insurers licensed in the State  
22           that do not hold a Federal certificate of solvency.  
23           The State insurance regulator shall continue to have  
24           any other enforcement and penalty powers author-  
25           ized under State law as to such insurers.

1           (3) JUDICIAL ACTIONS.—Judicial actions to en-  
2           force this Act shall be before the appropriate Fed-  
3           eral court unless the action involves the enforcement  
4           by a State insurance regulator, in which case the ac-  
5           tion shall be brought in the appropriate State court.

6           (b) CIVIL FINE.—The Commission may suspend or  
7           revoke, after an opportunity for a hearing on the record,  
8           the certificate of any federally certified insurer or rein-  
9           surer which knowingly fails to comply with this Act. In  
10          addition to, or in lieu of suspension or revocation, any cer-  
11          tified insurer or reinsurer which knowingly violated this  
12          Act or any foreign insurer that transacts the business of  
13          insurance in violation of section 203(e) may be fined by  
14          the Commission in an amount not to exceed \$10,000 for  
15          each violation. The State insurance regulator shall follow  
16          the procedure of applicable State law in suspending or re-  
17          voking an insurance license or seeking to impose a fine  
18          on an insurer subject to State regulation for financial con-  
19          dition for failure to comply with this Act.

20          (c) EARLY ADMINISTRATIVE INTERVENTION BY THE  
21          COMMISSION OR STATE INSURANCE REGULATOR.—When-  
22          ever it appears that any insurer or reinsurer may become  
23          insolvent or financially impaired, or does not meet applica-  
24          ble standards governing net worth or reserves or is other-  
25          wise not in compliance with the requirements of this Act,

1 the Commission or State insurance regulator may issue  
2 an order requiring the insurer or reinsurer to take prompt  
3 corrective action or imposing restrictions on the insurer's  
4 or reinsurer's operations or management. Such orders  
5 may require the insurer or reinsurer to increase its net  
6 worth or reserves, stop writing new business, limit growth  
7 in premiums, limit dividend payments, require the election  
8 of new directors, or require the filing of a plan dem-  
9 onstrating how the insurer or reinsurer will come into  
10 compliance with the requirements of this Act.

11 (d) CEASE AND DESIST ORDERS.—Whenever it ap-  
12 pears that any insurer or reinsurer or any director, officer,  
13 employee, or other person has committed or is about to  
14 commit a violation of the requirements of this Act as to  
15 a federally certified insurer or reinsurer, the Commission  
16 may, after providing the opportunity for a hearing on the  
17 record, issue an order that such insurer or reinsurer not  
18 take such action. The State insurance regulator may take  
19 such action as to an insurer subject to State regulation  
20 of financial condition under the procedures of applicable  
21 State law.

22 (e) PROHIBITIONS AGAINST VOTING OF SECURI-  
23 TIES.—A security which is the subject of any agreement  
24 or arrangement regarding acquisition, or which is acquired  
25 or to be acquired, in contravention of this Act may not

1 be voted at any shareholder's meeting, and may not be  
2 counted for quorum purposes. Any action of shareholders  
3 requiring the affirmative vote of a percentage of shares  
4 may be taken as though such a security was not issued  
5 and outstanding. Any action taken at any such meeting  
6 shall not be invalidated by the voting of such security un-  
7 less the action would materially affect control of the in-  
8 surer or reinsurer or unless a court has so ordered.

9 (f) SEQUESTRATION OF VOTING SECURITIES.—In  
10 any case where a person has acquired or is proposing to  
11 acquire any voting securities in violation of the national  
12 standards established under section 201, a court may, on  
13 such notice as the court determines to be appropriate, and,  
14 upon the application of the insurer or reinsurer or the  
15 Commission or the State insurance regulator, seize or se-  
16 quester any voting securities of the insurer or reinsurer  
17 owned directly or indirectly by such person, and issue such  
18 order with respect thereto as may be appropriate.

19 (g) PENALTIES FOR VIOLATIONS OF REGISTRATION  
20 REQUIREMENTS.—After providing the opportunity for a  
21 hearing on the record, the Commission may impose on any  
22 federally certified insurer or reinsurer that fails, without  
23 just cause, to file any registration statement as required  
24 in this Act a civil fine of up to \$10,000 for each day's  
25 delay. In determining the amount of the fine, the Commis-

1 sion shall take into account the appropriateness of the civil  
2 fine with respect to the gravity of the violation, the history  
3 of previous violations, and such other matters as justice  
4 may require. The State insurance regulator shall follow  
5 the applicable State procedure to impose any such fine on  
6 an insurer subject to State regulation for financial condi-  
7 tion.

8 (h) PENALTIES FOR PROHIBITED TRANSACTIONS.—  
9 After providing the opportunity for a hearing on the  
10 record, the Commission may impose on a director or offi-  
11 cer of a holding company system that involves a federally  
12 certified insurer or reinsurer which knowingly violates this  
13 Act, participates in, or assents to, such violation or who  
14 knowingly permits any officer or other person—

15 (1) to engage in transactions having an adverse  
16 material effect on the financial condition of a feder-  
17 ally certified insurer or reinsurer; or

18 (2) to make investments which have not been  
19 properly reported to the Commission; not been ap-  
20 proved by the Commission, if such approval is re-  
21 quired; or are otherwise not in compliance with this  
22 title,

23 a civil fine of not more than \$5,000 per violation. In deter-  
24 mining the amount of the civil fine, the Commission shall  
25 take into account the appropriateness of the forfeiture

1 with respect to the gravity of the violation, the history of  
2 previous violations, and such other matters as justice may  
3 require. The State insurance regulator shall follow the ap-  
4 plicable State procedure to impose any such fine on an  
5 insurer subject to State regulation for financial condition.

6 **SEC. 410. FEDERAL INSURER AND REINSURER EMPLOYEE**

7 **PROTECTION REMEDY.**

8 (a) PROHIBITION AGAINST DISCRIMINATION  
9 AGAINST EMPLOYEES.—No insurer or reinsurer may dis-  
10 charge or otherwise discriminate against any employee  
11 with respect to compensation, terms, conditions, or privi-  
12 leges of employment because the employee (or any person  
13 acting pursuant to the request of the employee) provided  
14 information to the Commission, to the Attorney General,  
15 or to a State insurance regulator regarding a possible vio-  
16 lation of any law or regulation by the insurer or reinsurer  
17 or any of its officers, directors, or employees.

18 (b) ENFORCEMENT.—Any employee or former em-  
19 ployee who believes that the employee has been discharged  
20 or discriminated against in violation of subsection (a) may  
21 file a civil action in the appropriate United States district  
22 court before the close of the 2-year period beginning on  
23 the date of such discharge or discrimination. The com-  
24 plainant shall also file a copy of the complaint initiating

1 such action with the Commission or the State insurance  
2 regulator.

3 (c) REMEDIES.—If the district court determines that  
4 a violation of subsection (a) has occurred, it may order  
5 the insurer which committed the violation—

6 (1) to reinstate the employee to the employee's  
7 former position, including any promotion withheld,

8 (2) to provide back pay,

9 (3) to pay compensation for any costs or losses  
10 incurred because of a violation of subsection (a), in-  
11 cluding attorneys' fees, or

12 (4) take other appropriate actions, other than  
13 general and punitive damages, to remedy any past  
14 discrimination.

15 (d) LIMITATION.—The protections of this section  
16 shall not apply to any employee who—

17 (1) deliberately causes or participates in the al-  
18 leged violation of law or regulation, or

19 (2) knowingly or recklessly provides substan-  
20 tially false information.

21 (e) FALSE ACCUSATION.—Any insurer or reinsurer  
22 as to which a false accusation is made under this section  
23 may bring an action against any employee who knowingly  
24 or recklessly made such accusation. In such action, the  
25 insurer or reinsurer may recover the costs incurred in de-

1 fending against such accusation. The insurer or reinsurer  
2 may also take appropriate action against the employee in-  
3 volved with respect to the compensation, terms, conditions,  
4 and privileges of employment, including termination, if its  
5 action is successful.

6 **TITLE V—NATIONAL INSURANCE**  
7 **PROTECTION CORPORATION**

8 **SEC. 501. NATIONAL INSURANCE PROTECTION CORPORA-**  
9 **TION.**

10 There is established a body corporate to be known  
11 as the National Insurance Protection Corporation. NIPC  
12 shall be a nonprofit corporation and shall have succession  
13 until dissolved by an Act of Congress. NIPC shall—

14 (1) not be an agency or establishment of the  
15 United States Government; and

16 (2) except as otherwise provided in this Act, be  
17 subject to, and have all the powers conferred upon  
18 a nonprofit corporation by, the District of Columbia  
19 Nonprofit Corporation Act (D.C. Code, sec. 29–1001  
20 et seq.).

21 **SEC. 502. PURPOSE.**

22 The purpose of NIPC is to provide timely payment  
23 and protection against losses due to, and, in appropriate  
24 circumstances as set forth in this Act, provide continu-  
25 ation of coverage in the event of, the financial impairment

1 or insolvency of insurers which hold Federal certificates  
2 of solvency by providing prompt fulfillment of insurance  
3 benefits to the extent of NIPC's obligation under this Act.

4 **SEC. 503. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

5 (a) ROLE OF THE FEDERAL INSURANCE SOLVENCY  
6 COMMISSION.—NIPC shall be subject to the supervision  
7 and oversight of the Commission.

8 (b) NIPC NOT COVERED BY FULL FAITH AND  
9 CREDIT OF U.S. OR IN UNITED STATES BUDGET.—

10 (1) The obligations of NIPC shall not be  
11 backed, directly or indirectly, by the full faith and  
12 credit of the United States. NIPC shall receive no  
13 financial assistance from or have any authority to  
14 borrow from the United States.

15 (2) Funds held by or due to NIPC shall not be  
16 included in the budget of the United States, nor may  
17 the United States borrow or pledge such funds.

18 **SEC. 504. MEMBERSHIP.**

19 (a) IN GENERAL.—Each insurer holding a certificate  
20 of solvency issued by the Commission under title II that  
21 provides insurance subject to coverage under this title  
22 shall be a member of NIPC so long as such certificate  
23 has not been revoked or suspended by the Commission.

24 (b) EFFECT OF SUSPENSION OR REVOCATION.—  
25 NIPC's obligation to pay the covered claims of a federally

1 certified insurer shall apply to claims under policies or  
2 contracts effective prior to the revocation or suspension  
3 of the insurer's certificate of solvency. A member insurer  
4 shall be subject to assessments based on financial impair-  
5 ments or insolvencies on which the Commission takes ac-  
6 tion when it is a member of NIPC.

7 (c) EXCEPTIONS.—

8 (1) Risk retention groups and captive insurers  
9 that have certificates of solvency shall not be mem-  
10 bers of NIPC.

11 (2) A federally certified insurer that obtains ap-  
12 proval to provide surplus lines insurance under sec-  
13 tion 203 shall not participate in NIPC for the pur-  
14 pose of business written under that approval.

15 **SEC. 505. CORPORATE POWERS.**

16 NIPC shall have the power—

17 (1) to sue and be sued, in its corporate name  
18 and through its own counsel;

19 (2) to adopt, alter, and use a corporate seal,  
20 which shall be judicially noticed;

21 (3) to adopt, amend, and repeal, by its Board  
22 of Directors, such bylaws and rules as may be nec-  
23 essary or appropriate to carry out the purposes of  
24 this Act, including bylaws relating to—

25 (A) the conduct of its business; and

1 (B) the indemnity of its directors, officers,  
2 and employees for liabilities and expenses actu-  
3 ally and reasonably incurred by any such person  
4 in connection with the defense or settlement of  
5 an action or suit if such person acted in good  
6 faith and in a manner reasonably believed to be  
7 consistent with the purposes of this title;

8 (4) to adopt, amend, and repeal, by its Board  
9 of Directors such rules as may be necessary or ap-  
10 propriate to carry out the purposes of this title, in-  
11 cluding rules relating to—

12 (A) the definition of terms used in this  
13 title, other than those terms for which a defini-  
14 tion is provided herein;

15 (B) the procedures for payment of losses,  
16 loss adjustment expenses, and other obligations  
17 of NIPC; and

18 (C) the exercise of all other rights and  
19 powers granted to it by this Act;

20 (5) to conduct its business (including the carry-  
21 ing on of operations and the maintenance of offices)  
22 and to exercise all other rights and powers granted  
23 to it by this Act in any State or other jurisdiction  
24 without regard to any qualification, licensing, or

1 other statutory requirement in such State or other  
2 jurisdiction;

3 (6) to lease, purchase, accept gifts or donations  
4 of or otherwise acquire, to own, hold, improve, use,  
5 or otherwise deal in or with, and to sell, convey,  
6 mortgage, pledge, lease, exchange or otherwise dis-  
7 pose of any property, real, personal or mixed, or any  
8 interest therein, wherever situated;

9 (7) to elect or appoint such officers, attorneys,  
10 employees, and agents as may be required, to deter-  
11 mine their qualifications, to define their duties, to  
12 fix their salaries, require bonds for them, and fix the  
13 penalty thereof;

14 (8) to enter into contracts, to execute instru-  
15 ments, to incur liabilities, and to do any and all  
16 other acts and things as may be necessary or inci-  
17 dental to the conduct of its business and the exercise  
18 of all other rights and powers granted to NIPC by  
19 this Act;

20 (9) to provide continued coverage for other than  
21 property and casualty insurance and to pay benefits  
22 and claims owed by member insurers declared by the  
23 Commission to be impaired or insolvent to the extent  
24 and in the manner provided in this Act;

1           (10) to investigate, adjust, and settle claims  
2 covered by this title, and to challenge judicial deci-  
3 sions and settlements affecting such claims;

4           (11) to levy and collect assessments upon its  
5 members, in the manner and to the extent provided  
6 elsewhere in this Act, to cover the administrative ex-  
7 penses of NIPC, and to provide the funds necessary  
8 to discharge the obligations of NIPC imposed by this  
9 Act;

10           (12) to sue members for unpaid assessments  
11 plus interest at a rate to be set forth in the bylaws;

12           (13) to manage and maintain the financial in-  
13 tegrity of the funds established by this Act, includ-  
14 ing the investment of assessments paid by members  
15 and borrowing as necessary to fulfill NIPC's guar-  
16 anty obligations; and

17           (14) to provide advice and recommendations to  
18 Congress, the courts and the Commission on matters  
19 pertaining to insurer financial conditions, insolvency,  
20 or otherwise addressed by this Act.

21 **SEC. 506. BOARD OF DIRECTORS.**

22           (a) **POWERS.**—The Board of Directors shall be the  
23 governing body of NIPC and shall be vested with all pow-  
24 ers necessary for the management and administration of  
25 the affairs of the Corporation and the promotion of its

1 purposes as authorized by this Act. The Board's authority  
2 shall be specified in the bylaws of NIPC.

3 (b) COMPOSITION.—The Board shall be composed of  
4 7 members or such higher number as determined by the  
5 Board and as approved by the Commission. All directors  
6 shall be elected by the membership of NIPC and approved  
7 by the Commission. The bylaws of NIPC shall require that  
8 directors be selected in a manner fairly representing the  
9 various types of insurers and lines of insurance as to  
10 which NIPC has guaranty obligations.

11 (c) TERMS.—The term of each director shall, after  
12 the first election, be for three years, with one-third of the  
13 directors to stand for election each year. Directors may  
14 be elected to serve for any number of terms.

15 (d) VACANCIES.—A vacancy in the Board shall be  
16 filled in the same manner as the original appointment.

17 (e) COMPENSATION.—All matters relating to com-  
18 pensation of directors shall be as provided in the bylaws  
19 of NIPC.

20 (f) INITIAL APPOINTMENTS.—The Commission shall  
21 appoint an initial Board to carry out the establishment  
22 of the bylaws and the first elections of NIPC.

1 **SEC. 507. CHAIRPERSON AND VICE CHAIRPERSON.**

2 (a) ELECTION.—The member insurers of NIPC shall  
3 select the chairperson and vice chairperson from among  
4 those candidates for the Board.

5 (b) INITIAL APPOINTMENTS.—The Commission shall  
6 select the initial chairperson and vice chairperson from  
7 among the initial appointments to the Board under section  
8 506. The persons so selected shall carry out the authori-  
9 ties of office until the first election by the member insur-  
10 ers. They shall act to ensure that such election is sched-  
11 uled at the earliest appropriate time.

12 **SEC. 508. OFFICERS.**

13 The officers of NIPC shall consist of a chairman, a  
14 vice chairman, a president, a secretary, and a treasurer,  
15 and may include one or more vice presidents and such  
16 other officers and assistant officers as may be deemed nec-  
17 essary, each of whom shall be elected or appointed at such  
18 time and in such manner and for such terms not exceeding  
19 three years as may be prescribed by bylaw. In the absence  
20 of any such provision, all officers shall be elected or ap-  
21 pointed annually by the Board of Directors.

22 **SEC. 509. MEETINGS OF BOARD.**

23 The Board of Directors shall meet at the call of its  
24 Chairman, or as otherwise provided by the bylaws of  
25 NIPC.

1 **SEC. 510. BYLAWS AND RULES.**

2 (a) ADOPTION AND AMENDMENT OF BYLAWS.—The  
3 Board of Directors of NIPC shall file with the Commission  
4 a copy of the proposed bylaws or any proposed amendment  
5 to the bylaws, accompanied by a concise general statement  
6 of the basis and purpose of such proposal. The proposed  
7 bylaws and each proposed amendment shall take effect 30  
8 days after the date of the filing of a copy thereof with  
9 the Commission, or upon such later date as NIPC may  
10 designate or such earlier date as the Commission may de-  
11 termine, unless—

12 (1) the Commission, by notice to NIPC setting  
13 forth the reasons therefore, disapproves such pro-  
14 posal as being contrary to the public interest or con-  
15 trary to the purposes of this title; or

16 (2) the Commission finds that such proposal in-  
17 volves a matter of such significant public interest  
18 that public comment should be obtained, in which  
19 case it may, after notifying NIPC in writing of such  
20 finding, require that the procedures set forth in sub-  
21 section (b) be followed with respect to such proposal,  
22 in the same manner as if such proposed bylaw  
23 change were a proposed rule change within the  
24 meaning of such paragraph.

25 (b) ADOPTION AND AMENDMENT OF RULES.—

1           (1) The Board of Directors of NIPC shall file  
2           with the Commission, in accordance with its regula-  
3           tions, a copy of any proposed rule or any proposed  
4           amendment to a rule of NIPC accompanied by a  
5           concise general statement of the basis and purpose  
6           of such proposal. The Commission shall, upon the  
7           filing of any proposal, publish notice thereof, to-  
8           gether with the terms of substance of such proposal  
9           or a description of the subjects and issues involved.  
10          The Commission shall give interested persons an op-  
11          portunity to submit written views, and arguments  
12          with respect to such proposal. No proposed rule or  
13          amendment shall take effect unless approved by the  
14          Commission or otherwise permitted in accordance  
15          with this paragraph.

16           (2) Within 35 days after the date of publication  
17          of notice of the filing of a proposal, or within such  
18          longer period as the Commission may designate of  
19          not more than 90 days after such date if it finds  
20          such longer period to be appropriate and publishes  
21          its reasons for so finding, or as to which NIPC con-  
22          sents, the Commission shall—

23                   (A) by order approve such proposed rule or  
24                   amendment; or

1 (B) institute proceedings to determine  
2 whether such proposed rule or amendment  
3 should be modified or disapproved.

4 (3) Proceedings instituted with respect to a pro-  
5 posed rule or amendment pursuant to paragraph  
6 (2)(B) shall include notice of the grounds for dis-  
7 approval under consideration and opportunity for  
8 hearing, and shall be concluded within 180 days  
9 after the date of publication of notice of the filing  
10 of such proposed rule or amendment. At the conclu-  
11 sion of such proceedings, the Commission shall, by  
12 order, approve or disapprove such proposed rule or  
13 amendment. The Commission may extend the time  
14 for conclusion of such proceedings for not more than  
15 60 days if it finds good cause for such extension and  
16 publishes its reasons for so finding, or for such  
17 longer period as to which NIPC consents.

18 (4) The Commission shall approve a proposed  
19 rule or amendment if it finds that it is in the public  
20 interest and is consistent with the purposes of this  
21 title, and any proposed rule or amendment so ap-  
22 proved shall be given force and effect as if promul-  
23 gated by the Commission. The Commission shall dis-  
24 approve a proposed rule or amendment if it does not  
25 make the finding referred to in the preceding sen-

1       tence. The Commission shall not approve any pro-  
2       posed rule change prior to 30 days after the date of  
3       publication of notice of the filing thereof, unless the  
4       Commission finds good cause for so doing and pub-  
5       lishes its reasons for so finding.

6               (5) Notwithstanding any other provision of this  
7       subsection, a proposed rule or amendment may take  
8       effect—

9                       (A) upon the date of filing with the Com-  
10       mission, if such proposed rule or amendment, is  
11       designated by NIPC as relating solely to mat-  
12       ters which the Commission, consistent with the  
13       public interest and the purposes of this sub-  
14       section, determines by rule do not require the  
15       procedures set forth in this paragraph; or

16                      (B) upon such date as the Commission  
17       shall for good cause determine, except that any  
18       proposed rule or amendment which takes effect  
19       under this subparagraph shall be filed promptly  
20       thereafter and reviewed in accordance with  
21       paragraph (1).

22       At any time within 60 days after the date of filing  
23       of any proposed rule or amendment under subpara-  
24       graph (A) or (B), the Commission may summarily  
25       abrogate such rule or amendment and require that

1 it be refiled and reviewed in accordance with this  
2 paragraph, if the Commission finds that such action  
3 is necessary or appropriate in the public interest, for  
4 the protection of insurers or policyholders, or other-  
5 wise in furtherance of the purposes of this title. Any  
6 action of the Commission pursuant to the preceding  
7 sentence shall not affect the validity or force of a  
8 rule change during the period it was in effect and  
9 shall not be subject to judicial review or be consid-  
10 ered to be final agency action.

11 (c) ACTION REQUIRED BY THE COMMISSION.—The  
12 Commission may, by such rules as it determines to be nec-  
13 essary or appropriate to the public interest or to carry out  
14 the purposes of this title, require NIPC to adopt, amend,  
15 or repeal any NIPC bylaw or rule, whenever adopted.

16 (d) LEGAL EFFECT OF BYLAWS AND RULES.—The  
17 bylaws and rules adopted pursuant to this section shall  
18 be subject to judicial review in the same manner as the  
19 regulations of the Commission.

20 **SEC. 511. CONSULTATION WITH THE FEDERAL INSURANCE**  
21 **SOLVENCY COMMISSION.**

22 The Commission may, as appropriate, consult with  
23 NIPC concerning the development of standards for regu-  
24 lating the financial soundness and solvency of federally  
25 certified insurers, the implementation of those standards,

1 the detection and prevention of insurer insolvencies, the  
2 commencement of rehabilitation and liquidation proceed-  
3 ings, and resolution of those proceedings. The purpose of  
4 this consultation shall be to provide the Commission the  
5 benefit of the expert views of NIPC on matters pertaining  
6 to financial regulation of its member insurers and to as-  
7 sure that the Commission implements this Act in a man-  
8 ner that does not impair the financial integrity of NIPC  
9 guaranty funds.

10 **SEC. 512. NIPC FUND.**

11 (a) ESTABLISHMENT.—There is established a fund to  
12 be known as the NIPC Fund (hereinafter referred to as  
13 the “Fund”). The Fund shall consist of all payments made  
14 by members pursuant to assessments (other than amounts  
15 paid directly to any lender pursuant to any pledge secur-  
16 ing a borrowing by NIPC), interest received on bank ac-  
17 counts or investments, amounts borrowed by NIPC pursu-  
18 ant to section 515 and amounts recovered in litigation.  
19 Moneys in the Fund shall be invested only in obligations  
20 of the United States, in obligations guaranteed as to prin-  
21 cipal and interest by the United States, and such other  
22 items as are provided in the bylaws.

23 (b) USES.—The Fund shall be used to pay the ad-  
24 ministrative expenses of NIPC and to pay covered claims.  
25 The Fund may not be used or loaned for other purposes.

1 **SEC. 513. SCOPE OF GUARANTY.**

2 (a) PROPERTY AND CASUALTY INSURANCE CLAIMS  
3 COVERAGE.—Commercial and personal lines of property  
4 and casualty insurance contracts written by member in-  
5 surers shall be guaranteed under this title and paid  
6 through the property and casualty claims division estab-  
7 lished in section 514, except the following:

8 (1) Mortgage guaranty, financial guaranty, or  
9 other forms of insurance offering protection against  
10 investment risks.

11 (2) Fidelity or surety bonds, or any other bond-  
12 ing obligations.

13 (3) Insurance of warranties or service contracts.

14 (4) Title insurance.

15 (5) Ocean marine insurance.

16 (6) Any insurance written or transacted on a  
17 surplus lines basis.

18 (7) Insurance provided by captive insurers.

19 (8) Insurance provided by risk retention groups  
20 established pursuant to the Liability Risk Retention  
21 Act of 1986 (15 U.S.C. 3901 et seq.).

22 (9) Reinsurance, whether provided by a profes-  
23 sional reinsurer having a Federal certificate under  
24 section 302, a provider of reinsurance having a cer-  
25 tificate under section 303, or any other provider.

1           (10) Any policies that were written or issued on  
2 any risks that are located outside of the United  
3 States and its territories.

4           (11) Credit insurance, vendor's single interest  
5 insurance, collateral protection insurance, or any  
6 similar insurance protecting the interests of a credi-  
7 tor arising out of a creditor-debtor transaction.

8           (12) Any policy of commercial insurance issued  
9 by a highly capitalized insurer to a large insurance  
10 buyer as provided by this Act, except for third party  
11 claims against such large business buyer which is in  
12 reorganization or liquidation proceedings pursuant  
13 to title 11, United States Code.

14           (13) Any policy issued by an insurer during a  
15 period in which the insurer's certificate of solvency  
16 was revoked or suspended.

17           (b) LIFE AND HEALTH INSURANCE AND ANNUITY  
18 CLAIMS COVERAGE.—Life and health insurance contracts  
19 and annuity contracts written by member insurers shall  
20 be covered by NIPC and paid through the life and health  
21 claims division established in section 514, except the fol-  
22 lowing:

23           (1) Any portion of a policy or contract not  
24 guaranteed by the insurer, or under which the risk  
25 is borne by the policy or contract holder.

1           (2) Any portion of a policy or contract to the  
2 extent that the rate of interest on which it is  
3 based—

4           (A) averaged over the period of 4 years  
5 prior to the date on which NIPC becomes obli-  
6 gated with respect to such policy or contract,  
7 exceeds a rate of interest determined by sub-  
8 tracting two percentage points from Moody's  
9 Corporate Bond Yield Average for that same  
10 four year period or for such lesser period if the  
11 policy or contract was issued less than 4 years  
12 before NIPC became obligated; and

13           (B) on and after the date on which NIPC  
14 becomes obligated with respect to such policy or  
15 contract, exceeds the rate of interest deter-  
16 mined by subtracting three percentage points  
17 from Moody's Corporate Bond Yield Averages  
18 most recently available.

19           (3) Any plan or program of an employer, asso-  
20 ciation, or similar entity to provide life, health, or  
21 annuity benefits to its employees or members to the  
22 extent that such plan or programs is self-funded or  
23 uninsured, including but not limited to benefits pay-  
24 able by an employer, association, or similar entity  
25 under—

1 (A) a Multiple Employer Welfare Arrange-  
2 ment as defined in section 514 of the Employ-  
3 ment Retirement Income Security Act of 1974,  
4 as amended;

5 (B) a minimum premium group insurance  
6 plan;

7 (C) a stop-loss insurance plan; or

8 (D) an administrative services only con-  
9 tract.

10 (4) Any portion of a policy or contract to the  
11 extent that it provides dividends or experience rating  
12 credits, or provides that any fees or allowances be  
13 paid to any person, including the policy or contract  
14 holder, in connection with the service to or adminis-  
15 tration of such policy or contract.

16 (5) Any unallocated annuity contract issued to  
17 an ongoing employee benefit plan protected under  
18 the Pension Benefit Guaranty Corporation.

19 (6) Any portion of any unallocated annuity con-  
20 tract which is not issued to or in connection with a  
21 specific employee, union, or association of natural  
22 persons benefit plan or a government lottery.

23 (7) Any policy issued by an insurer during a pe-  
24 riod in which the insurer's certificate of solvency was  
25 revoked or suspended.

1 **SEC. 514. ASSESSMENTS.**

2 (a) IN GENERAL.—All member insurers of NIPC  
3 shall be subject to assessments as provided in this section.

4 (b) ASSESSMENTS TO CREATE THE FUND.—

5 (1) Initial assessments to create the fund shall  
6 be made on an insurer at the time of certification,  
7 on a pro rata basis both for the portion of the year  
8 covered by the certificate and annually each year  
9 thereafter until the funds meet the level established  
10 by NIPC in its bylaws.

11 (2) NIPC shall assess an insurer, during the  
12 first 4 years after it becomes a member of NIPC, an  
13 annual assessment sufficient to assure that all NIPC  
14 members proportionately share the burden of accu-  
15 mulating sufficient funds during the first 10 years  
16 for NIPC's administrative expenses under subsection  
17 (c) during such 10 years.

18 (c) ASSESSMENTS FOR ADMINISTRATIVE EX-  
19 PENSES.—

20 (1) After the organization of NIPC, the Board  
21 of Directors shall estimate the amount reasonably  
22 necessary to establish the operations of NIPC to  
23 provide for its ongoing staff and other administra-  
24 tive expenses for the current year. The amount to be  
25 assessed may vary for each division under subsection  
26 (d) but shall be on the same basis for each member

1 of the division on which the assessment is made. As-  
2 assessments shall be levied in the same proportion that  
3 the net direct written premiums written by each  
4 member insurer in the preceding calendar year on  
5 insurance covered by a NIPC guaranty bears to the  
6 total such premiums of all division members. Fur-  
7 ther, the Board of Directors may amend its bylaws  
8 to modify this assessment procedure to reflect the  
9 risk of insolvency of the members.

10 (2) The amounts assessed in accordance with  
11 this subsection shall be due no later than 30 days  
12 after the notice of the assessment is distributed to  
13 members.

14 (d) ASSESSMENTS FOR COVERED CLAIMS.—

15 (1) NIPC shall establish separate claims divi-  
16 sions for obligations related to covered claims of—

17 (A) property and casualty insurers, except  
18 for those included in subparagraph (C);

19 (B) life and health insurers, except for  
20 those included in subparagraph (C); and

21 (C) commercial insurance purchased from  
22 highly capitalized insurers by large insurance  
23 buyers.

1           (2) NIPC shall establish separate claims ac-  
2 counts within the claims divisions designated in  
3 paragraphs (1)(A) and (1)(B) as follows:

4           (A) The claims division designated in para-  
5 graph (1)(A) shall be separated into a personal  
6 insurance account and a commercial insurance  
7 account.

8           (B) The claims division designated in para-  
9 graph (1)(B) shall be separated into a life in-  
10 surance account, a health insurance account,  
11 and an annuity account.

12           (3) Each claims division or account may borrow  
13 funds from other claims divisions or accounts, with  
14 any such borrowing first between accounts, and then  
15 between divisions if the account in the same division  
16 has insufficient funds to loan. If any funds are bor-  
17 rowed between divisions or accounts, such funds, in-  
18 cluding interest at a rate to be determined by the  
19 Board of Directors, must be repaid from assess-  
20 ments before funds can begin to accumulate in the  
21 claims accounts that benefited from the borrowing.  
22 This paragraph shall not be interpreted to prohibit  
23 the borrowing claims account from paying covered  
24 benefits or claims while such loans are outstanding.

1           (4) Except as provided in subsection (d) with  
2       respect to assessments related to commercial insur-  
3       ance purchased from highly capitalized insurers,  
4       each member insurer shall pay to NIPC on or before  
5       the one hundred and twentieth day following Decem-  
6       ber 31 a regular annual assessment calculated to  
7       cover the predicted future obligations of the fund.  
8       Such assessments shall be calculated as a percentage  
9       of the net direct written premiums from the covered  
10      lines of business of such member for the applicable  
11      accounts during the preceding calendar year.

12           (5) The bylaws shall impose upon member in-  
13      surers such additional special assessments as may be  
14      necessary to make up any shortfall in an account  
15      caused by the inadequacy of regular annual assess-  
16      ments. Any assessments so made shall be in con-  
17      formity with contractual obligations made by NIPC  
18      in connection with any borrowing incurred by NIPC.  
19      Any such assessment upon the members or any one  
20      or more classes thereof shall be based upon the net  
21      direct written premiums for the covered lines of  
22      business in the claims divisions and claims accounts  
23      specified in this section.

24           (e) STANDARDS FOR ASSESSMENTS.—

1           (1) no assessment shall be made upon a mem-  
2           ber otherwise than pursuant to this section,

3           (2) the total of all assessments made under  
4           subsections (c) and (d) shall not exceed 1 percent of  
5           net direct written premiums during any 12-month  
6           period.

7           (f) DATE ASSESSMENTS DUE.—All assessments shall  
8           be paid not more than 30 days after notice thereof is sent  
9           by NIPC to the member unless the notice specifies that  
10          the assessment or a portion thereof is not payable until  
11          a later date.

12          (g) EFFECT OF ASSESSMENTS.—Assessments made  
13          upon a member insurer under this title shall constitute  
14          ordinary and necessary expenses in carrying on the busi-  
15          ness of such member.

16          (h) INFORMATION TO SET ASSESSMENTS.—Each  
17          member insurer shall file such information as NIPC shall  
18          determine to be necessary or appropriate for the purpose  
19          of making the assessments authorized by this section.

20          (i) UNDERPAYMENTS AND LATE PAYMENTS.—If a  
21          member insurer fails to pay when due all or any part of  
22          an assessment made upon such member, the unpaid por-  
23          tion thereof shall bear interest at such rate as may be pro-  
24          vided by the bylaws, and, in addition to such interest,  
25          NIPC may impose such penalty charge as may be provided

1 in the bylaws. Any such penalty shall not exceed 25 per-  
2 cent of any unpaid portion of the assessment. NIPC may  
3 waive such penalty charge in whole or in part in cir-  
4 cumstances where it considers such waiver appropriate.

5 (j) CLAIMS PAYMENTS AND RECOVERIES.—

6 (1) Covered claims, including the direct ex-  
7 penses of handling such covered claims, which NIPC  
8 pays or becomes obligated to pay by reason of its  
9 guaranty obligations shall be paid from one or more  
10 claims divisions or accounts under procedures estab-  
11 lished by the Board of Directors.

12 (2) Amounts recovered from any source as re-  
13 imbursement, subrogation, or other recovery of  
14 amounts previously paid out or incurred pursuant to  
15 NIPC's obligations shall be credited to the appro-  
16 priate claims division and account which had been  
17 charged with the claim.

18 (k) SPECIAL PROVISIONS.—Notwithstanding the pro-  
19 visions of this section, all assessments under subsection  
20 (d) for covered claims related to commercial insurance  
21 purchased from highly capitalized insurers by large insur-  
22 ance buyers shall be calculated and maintained separately  
23 from the other claims accounts and shall be calculated to  
24 reflect the risk of both such insurer and its insureds that  
25 buy as large insurance buyers becoming insolvent.

1 (l) RETURN OF EXCESS ASSESSMENTS.—If the  
2 Fund, through investment returns, exceeds the level estab-  
3 lished in the bylaws for 3 successive years, the Board shall  
4 distribute the excess to the members on the same basis  
5 as that on which the assessments were made.

6 **SEC. 515. BORROWING AUTHORITY.**

7 NIPC shall have the authority, in addition to that  
8 described in section 514, to borrow as necessary and upon  
9 prior approval of the Board of Directors. Any such bor-  
10 rowing shall be made upon such terms and conditions as  
11 the Board determines, except that any funds so borrowed  
12 shall be repaid out of the assessments as collected and  
13 the funds resulting from such collection shall not be ap-  
14 plied to any purpose other than the payment of guaran-  
15 teed claims until the borrowed funds have been repaid. To  
16 secure the payment of principal and interest on any such  
17 borrowings the Corporation may pledge future assess-  
18 ments.

19 **SEC. 516. FUNCTIONS OF THE FEDERAL INSURANCE SOL-**  
20 **VENCY COMMISSION.**

21 (a) ADMINISTRATIVE PROCEDURE.—Determinations  
22 of the Commission, for purposes of making rules pursuant  
23 to section 510, shall be made after appropriate notice and  
24 opportunity for a hearing, and for submission of views of  
25 interested persons, in accordance with the rulemaking pro-

1 cedures specified in section 553 of title 5, United States  
2 Code.

3 (b) ENFORCEMENT OF ACTIONS.—In the event of the  
4 refusal of NIPC to commit its funds or otherwise to act  
5 as required by this title, the Commission may apply to  
6 the district court of the United States in which the prin-  
7 cipal office of NIPC is located for an order requiring  
8 NIPC to discharge its obligations under this title, and for  
9 such other relief as the court may determine to be appro-  
10 priate to carry out the purposes of this title.

11 (c) EXAMINATIONS AND REPORTS.—

12 (1) The Commission may make such examina-  
13 tions and inspections of NIPC and require NIPC to  
14 furnish it with such reports and records or copies  
15 thereof as the Commission may consider necessary  
16 or appropriate in the public interest or to effectuate  
17 the purposes of this title.

18 (2) As soon as practicable after the close of  
19 each fiscal year, NIPC shall submit to the Commis-  
20 sion a written report relative to the conduct of its  
21 business, and the exercise of the other rights and  
22 powers granted by this title, during such fiscal year.  
23 Such report shall include financial statements set-  
24 ting forth the financial position of NIPC at the end  
25 of such fiscal year and the results of its operations

1 (including the source and application of its funds)  
2 for such fiscal year. The financial statements so in-  
3 cluded shall be examined by an independent account-  
4 ant in the same manner as for the financial reports  
5 of federally certified insurers under this Act, and  
6 shall be accompanied by the report thereon by such  
7 accountant. The Commission shall transmit such re-  
8 port to the President and the Congress with such  
9 comment thereon as the Commission determines to  
10 be appropriate.

11 **SEC. 517. NOTICE TO COMMISSION OF CHANGES IN CONDI-**  
12 **TIONS IN INSURANCE MARKETS.**

13 Whenever NIPC shall conclude from all the informa-  
14 tion available to it that there have been developments in  
15 the insurance markets, industry practices, investment  
16 markets, the economy, regulatory supervision, or any  
17 other factors that might have a negative impact on the  
18 financial condition or solvency of federally certified insur-  
19 ers and reinsurers, it shall give written notice to the Com-  
20 mission of this conclusion along with any recommenda-  
21 tions it may have to address the situation.

22 **SEC. 518. LIABILITY OF THE MEMBER INSURERS.**

23 (a) LIABILITY AS TO NIPC OBLIGATIONS.—The li-  
24 ability of member insurers with respect to claims covered  
25 by NIPC shall be limited to the assessments authorized

1 in this title and the members shall have no other liability  
2 under this Act as a member of NIPC for, or in connection  
3 with, any act or omission of any other member insurer,  
4 and shall have no liability for any indebtedness incurred  
5 by NIPC or for any act or omission of any officer, agent,  
6 or employee of NIPC.

7 (b) LIABILITY UNDER STATE GUARANTY FUNDS  
8 AFTER OBTAINING A FEDERAL CERTIFICATE OF SOL-  
9 VENCY.—

10 (1) A federally certified insurer shall remain  
11 liable, notwithstanding its Federal certificate, for  
12 any assessment for which it would have been liable  
13 under any State guaranty fund law on account of  
14 policies issued by an insurer against which a court  
15 order of liquidation with a finding of insolvency has  
16 been issued prior to the date when the federally cer-  
17 tified insurer became a member of NIPC.

18 (2) A federally certified insurer shall have lim-  
19 ited liability for assessments pursuant to State or-  
20 ders of liquidation issued after it obtained a Federal  
21 certificate. Such liability shall continue for each of  
22 the 4 years following its obtaining a Federal certifi-  
23 cate. Such assessments in such cases shall be re-  
24 duced by 25 percent each year until they terminate  
25 entirely in the fifth year. Assessments shall be based

1 on the last 3 years of the insurer's operations before  
2 it obtained its Federal certificate.

3 (3) A federally certified insurer shall have no li-  
4 ability for any assessments by State guaranty funds  
5 on account of policies issued by an insurer against  
6 which a court order of liquidation with a finding of  
7 insolvency has been issued on or after the date such  
8 insurer becomes federally certified.

9 (c) LIABILITY TO NIPC AFTER SURRENDER OF  
10 FEDERAL CERTIFICATE OF SOLVENCY.—A federally cer-  
11 tified insurer shall be subject to assessments based on the  
12 time for which it was certified, except that, notwithstand-  
13 ing anything to the contrary in sections 205(b) and  
14 504(a), such insurer that surrenders its certification,  
15 whether voluntarily or involuntarily, shall continue to be  
16 liable on account of policies issued by other federally cer-  
17 tified insurers against which a declaration of insolvency  
18 was entered on or before the date of the insurer's depar-  
19 ture from NIPC. Upon decertification, the insurer shall  
20 have continuing liability for a period of 4 years for the  
21 amounts that would have been assessed had it remained  
22 federally certified. Assessments shall be reduced by 25  
23 percent each year until they terminate entirely in the fifth  
24 year. Assessments shall otherwise be calculated in accord-  
25 ance with section 514.

1 **SEC. 519. LIABILITY OF NIPC AND ITS DIRECTORS, OFFI-**  
2 **CERS, AND EMPLOYEES.**

3 (a) IN GENERAL.—NIPC shall not be deemed to be  
4 an insurer within the meaning of any State law, rule, regu-  
5 lation, or order regulating or taxing insurers or other enti-  
6 ties engaged in the business of insurance, including provi-  
7 sions imposing premium taxes, regulating insurer solvency  
8 or financial condition, establishing guaranty funds and  
9 levying assessments, or regulating claims settlement prac-  
10 tices. The Corporation additionally shall be exempt from  
11 all taxes, assessments or other levies imposed by the Unit-  
12 ed States or any State, municipal, county, or local govern-  
13 ment.

14 (b) LIABILITY OF NIPC, ITS DIRECTORS, OFFICERS,  
15 AND EMPLOYEES.—Neither NIPC nor any of its directors,  
16 officers, or employees shall have any liability to any person  
17 for any action taken or omitted in good faith under or  
18 in connection with any matter subject to this Act.

19 **SEC. 520. ADVERTISING.**

20 NIPC shall, by bylaw, prescribe the manner in which  
21 a member insurer may display any sign (or include in any  
22 advertisement or statement a provision) relating to the  
23 protection of customers and any other protections afforded  
24 by this Act. No member insurer may display any such sign  
25 or include in any advertisement any such statement except  
26 in accordance with such bylaws. NIPC may also, by bylaw,

1 prescribe such minimal requirements as it considers nec-  
2 essary and appropriate to require a member of NIPC to  
3 provide public notice of its membership in NIPC.

4 **SEC. 521. IMPROVEMENT OF INSOLVENCY PREVENTION**  
5 **AND DETECTION.**

6 NIPC shall assist the Commission in the development  
7 of improved standards for financial requirements, report-  
8 ing and examination, or other procedures, methods, or  
9 techniques for avoiding insurance insolvencies and for pro-  
10 moting early detection and protective action in the case  
11 of insurers that are insolvent or approaching insolvency.

12 **SEC. 522. GUARANTEE OBLIGATION OF NIPC.**

13 (a) **COVERAGE.**—NIPC shall as guarantor be obli-  
14 gated to pay covered benefits for claims upon a declaration  
15 by the Commission that a member insurer is financially  
16 impaired or insolvent. It shall pay all claims for which cov-  
17 erage exists under this Act. The Commission shall adjust  
18 for inflation the amount of benefits set by this section.  
19 This adjustment shall be made every fifth year unless for  
20 good cause the Commission determines that it should be  
21 adjusted more frequently.

22 (b) **MATTERS SUBJECT TO PAYMENT FROM THE**  
23 **PROPERTY AND CASUALTY INSURANCE CLAIMS DIVI-**  
24 **SION.**—The guaranty obligation as to covered claims for

1 property and casualty insurance shall be satisfied by pay-  
2 ing to the claimant an amount as follows:

3 (1) The full amount of a covered claim for ben-  
4 efits under a workers' compensation insurance cov-  
5 erage.

6 (2) Any amount in excess of \$100, but limited  
7 to \$10,000 per policy for a covered claim for the re-  
8 turn of unearned premium.

9 (3) An amount not exceeding \$300,000 per  
10 claim for all other covered claims which shall also  
11 not exceed that part of the first \$300,000 of the loss  
12 or liability giving rise to the covered claim which the  
13 insurer would have been obligated to pay under its  
14 policy or policies but for the order of liquidation.

15 (c) MATTERS SUBJECT TO PAYMENT UNDER THE  
16 LIFE AND HEALTH INSURANCE AND ANNUITY CLAIMS  
17 DIVISION.—The guaranty obligation as to covered claims  
18 for life and health insurance and annuity coverage shall  
19 be satisfied by paying to the claimant an amount not ex-  
20 ceeding the lesser of—

21 (1) the contractual obligations for which the in-  
22 surer is liable or would have been liable if it were  
23 not an impaired or insolvent insurer; or

24 (2) with respect to any one life, regardless of  
25 the number of policies or contracts—

1 (A) \$300,000 in life insurance death bene-  
2 fits, but not more than \$100,000 in net cash  
3 surrender and net cash withdrawal values for  
4 life insurance;

5 (B) \$100,000 in health insurance benefits,  
6 including any net cash surrender and net cash  
7 withdrawal values;

8 (C) \$100,000 in the present value of annu-  
9 ity benefits, including net cash surrender and  
10 net cash withdrawal values;

11 (3) with respect to each individual participating  
12 in a governmental retirement plan established under  
13 section 401, 403(b), or 457 of the Internal Revenue  
14 Code of 1986 covered by an unallocated annuity con-  
15 tract or the beneficiaries of each such individual if  
16 deceased, in the aggregate, \$100,000 in present  
17 value annuity benefits, including net case surrender  
18 and net cash withdrawal values; or

19 (4) with respect to any one contract holder cov-  
20 ered by any unallocated annuity contract not in-  
21 cluded in paragraph (2)(C), \$5,000,000 in benefits,  
22 irrespective of the number of such contracts held by  
23 that contract holder, except that in no event shall  
24 NIPC be liable to expend more than \$300,000 in the

1 aggregate with respect to any one individual under  
2 paragraphs (2) and (3).

3 (d) MANAGEMENT OF CLAIMS.—In order to perform  
4 the obligations imposed by this section, NIPC shall—

5 (1) investigate claims brought against NIPC  
6 and adjust, compromise, settle and pay covered  
7 claims to the extent of NIPC's obligation and deny  
8 all other claims and may review settlements, releases  
9 and judgments to which the insolvent insurer or its  
10 insureds were parties to determine the extent to  
11 which such settlements, releases, and judgments may  
12 be properly contested;

13 (2) notify such persons as the Commission di-  
14 rects under this Act;

15 (3) handle claims through its employees or  
16 through one or more insurers or other persons des-  
17 ignated as servicing facilities;

18 (4) reimburse each servicing facility for obliga-  
19 tions of NIPC paid by the facility and for expenses  
20 incurred by the facility while handling claims on be-  
21 half of NIPC and shall pay the other expenses of  
22 NIPC authorized by this Act; and

23 (5) be authorized to report information on sus-  
24 pected fraud or civil violations to the Department of  
25 Justice and to the Commission.

1 (e) LIMITATIONS ON PAYMENTS.—In no event shall  
2 NIPC be obligated to pay a claimant more than the in-  
3 surer would have been obligated to pay, but for the order  
4 of rehabilitation or liquidation, under the policy from  
5 which the claim arose. Notwithstanding any other provi-  
6 sion of this Act, NIPC shall not be obligated to pay any  
7 part of any claim filed with the receiver in rehabilitation  
8 or liquidation after the final date for the filing of claims  
9 against the receiver.

10 **SEC. 523. EFFECT OF PAID CLAIMS.**

11 (a) ASSIGNMENT.—Any person whose claim is paid  
12 by NIPC under this Act shall be deemed to have assigned  
13 its rights under the policy to NIPC to the extent of its  
14 payment from NIPC. Every insured or claimant seeking  
15 the protection of this Act shall cooperate with NIPC to  
16 the same extent as such person would have been required  
17 to cooperate with the insolvent insurer. NIPC shall have  
18 no cause of action against the insured of the insolvent in-  
19 surer for any sums it has paid out except such causes of  
20 action as the insolvent insurer would have had if such  
21 sums had been paid by the insolvent insurer and except  
22 as provided in subsection (b). In the case of an insolvent  
23 insurer operating on a plan with assessment liability, pay-  
24 ments of claims of NIPC shall not operate to reduce the

1 liability of the insureds to the receiver for unpaid assess-  
2 ments.

3 (b) RECOVERY.—NIPC shall have the right to re-  
4 cover from the affiliate of an insolvent insurer the amount  
5 of any liability obligations paid on behalf of such affiliate.

6 **SEC. 524. NONDUPLICATION OF PAYMENT OF CLAIMS.**

7 Any person having a claim against an insurer under  
8 any provision in an insurance policy, other than a policy  
9 of an insolvent insurer, which is also a covered claim, shall  
10 be required to exhaust first its rights under such policy.  
11 Any amount payable on a covered claim under this Act  
12 shall be reduced by the amount of any recovery under such  
13 insurance policy.

14 **SEC. 525. REPORTS ON PAYMENT OF CLAIMS.**

15 (a) ANNUAL AND OTHER REPORTS ON CLAIMS.—  
16 NIPC shall file with the Commission an annual statement,  
17 and such other statements as the Commission directs, of  
18 the covered claims paid by NIPC and estimates of antici-  
19 pated claims on NIPC.

20 (b) EXAMINATION OF NIPC RECORDS.—The Com-  
21 mission shall permit access by NIPC to such of the insol-  
22 vent insurer's records which are necessary to carry out  
23 NIPC's functions under this Act with regard to covered  
24 claims. In addition, the Commission shall provide NIPC

1 with copies of such records upon request and at NIPC's  
2 expense.

3 **SEC. 526. STAY OF PROCEEDINGS.**

4 All proceedings in which the insolvent member in-  
5 surer is a party or is obligated to defend a party in any  
6 court shall be stayed for 6 months and such additional  
7 time thereafter as may be determined by the court from  
8 the date the insolvency is determined to permit proper de-  
9 fense by NIPC of all pending causes of action. As to any  
10 covered claim arising from a judgment under any decision  
11 verdict or finding based on the default of the insolvent  
12 insurer or its failure to defend an insured, NIPC, either  
13 on its own behalf or on behalf of such insured, may apply  
14 to have such judgment, order, decision, verdict or finding  
15 set aside by the same court or administrator that made  
16 such judgment, order, decision, verdict, or finding and  
17 shall be permitted to defend such claim on the merits.

18 **SEC. 527. JUDICIAL REVIEW.**

19 (a) JURISDICTION.—The appropriate United States  
20 district court shall have exclusive jurisdiction over litiga-  
21 tion involving NIPC, including—

22 (1) disputes between NIPC and its member in-  
23 surers that arise under this Act;

24 (2) controversies between NIPC and claimants  
25 seeking NIPC guaranty fund coverage; and

1 (3) suits brought by NIPC under this Act and  
2 against persons affiliated with the insolvent insurer.  
3 Suits brought in State court involving NIPC shall be  
4 deemed to have arisen under Federal law and therefore  
5 subject to jurisdiction in the appropriate United States  
6 district court.

7 (b) EXHAUSTION OF REMEDIES.—A claimant must  
8 exhaust the administrative remedies before NIPC and the  
9 Commission as to a claim before it may seek judicial re-  
10 view of the decision on the claim.

11 **TITLE VI—NATIONAL ASSOCIA-**  
12 **TION OF REGISTERED**  
13 **AGENTS AND BROKERS**

14 **SEC. 601. NATIONAL ASSOCIATION OF REGISTERED**  
15 **AGENTS AND BROKERS.**

16 There is established a body corporate to be known  
17 as the “National Association of Registered Agents and  
18 Brokers”. NARAB shall be a nonprofit corporation and  
19 shall have succession until dissolved by an Act of  
20 Congress. NARAB shall—

21 (1) not be an agency or establishment of the  
22 United States Government; and

23 (2) except as otherwise provided in this Act, be  
24 subject to, and have all the powers conferred upon  
25 a nonprofit corporation by, the District of Columbia

1 Nonprofit Corporation Act (D.C. Code, sec. 29–1001  
2 and fol.).

3 **SEC. 602. PURPOSE.**

4 The purpose of NARAB is to provide a mechanism  
5 by which the multi-State services of State-licensed insur-  
6 ance producers may be more efficiently provided to policy-  
7 holders, while preserving the right of States to license,  
8 supervise, and discipline insurance producers.

9 **SEC. 603. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

10 NARAB shall be subject to the supervision and over-  
11 sight of the Commission. Funds held by or due to NARAB  
12 shall not be included in the budget of the United States  
13 nor may the United States borrow or pledge such funds.

14 **SEC. 604. MEMBERSHIP.**

15 (a) IN GENERAL.—All State-licensed insurance  
16 agents, brokers, surplus lines brokers, insurance consult-  
17 ants, and limited insurance representatives (hereinafter  
18 referred to as “insurance producers”) are eligible for  
19 membership in NARAB.

20 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-  
21 TERIA.—NARAB shall have the authority to establish  
22 membership criteria that—

23 (1) bear a reasonable relationship to the pur-  
24 poses for which NARAB was established; and

1           (2) do not unfairly limit the access of smaller  
2 agencies to NARAB membership.

3           (c) CLASSES OF MEMBERSHIP.—NARAB shall have  
4 the authority to establish separate classes of membership,  
5 with separate criteria, where it reasonably determines that  
6 performance of different duties requires different levels of  
7 education, training, or experience. NARAB shall have the  
8 authority to establish separate categories of membership  
9 for individuals and for other persons.

10          (d) MEMBERSHIP CRITERIA.—NARAB shall have the  
11 authority to establish membership criteria to establish the  
12 integrity, personal qualifications, education, training, and  
13 experience of members, and any criteria reasonably inci-  
14 dental thereto.

15          (e) ANNUAL RENEWAL.—Membership in NARAB  
16 shall be renewed on an annual basis and may be subject  
17 to reasonable continuing education requirements.

18          (f) SUSPENSION AND REVOCATION.—NARAB shall  
19 have the authority to inspect and examine its members  
20 to determine compliance with NARAB criteria and to sus-  
21 pend or revoke membership upon a showing that—

22               (1) applicable membership criteria are no longer  
23 being met, or

24               (2) a member has been subject to disciplinary  
25 proceedings under the jurisdiction of a State insur-

1       ance regulator and NARAB concludes that retention  
2       of membership would not be in the public interest.

3       **SEC. 605. CORPORATE POWERS.**

4       NARAB shall have the power—

5               (1) to sue and be sued, in its corporate name  
6       and through its own counsel in any State, Federal  
7       or other court;

8               (2) to adopt, alter, and use a corporate seal,  
9       which shall be judicially noticed;

10              (3) to adopt, amend, and repeal, by its Board  
11       of Directors, such bylaws and rules as may be nec-  
12       essary or appropriate to carry out the purposes of  
13       this title, including bylaws relating to—

14                      (A) the conduct of its business; and

15                      (B) the indemnity of its directors, officers,  
16       and employees for liabilities and expenses actu-  
17       ally and reasonably incurred by any such person  
18       in connection with the defense or settlement of  
19       an action or suit if such person acted in good  
20       faith and in a manner reasonably believed to be  
21       consistent with the purposes of this title;

22              (4) to adopt, amend, and repeal, by its Board  
23       of Directors such rules as may be necessary or ap-  
24       propriate to carry out the purposes of this title, in-  
25       cluding rules relating to—

1 (A) the definition of terms used in this  
2 title, other than those terms for which a defini-  
3 tion is provided herein;

4 (B) the procedures for payment of  
5 NARAB assessments; and

6 (C) the exercise of all other rights and  
7 powers granted to it by this title;

8 (5) to conduct its business (including the carry-  
9 ing on of operations and the maintenance of offices)  
10 and to exercise all other rights and powers granted  
11 to it by this title in any State or other jurisdiction  
12 without regard to any qualification, licensing, or  
13 other statutory requirement in such State or other  
14 jurisdiction;

15 (6) to lease, purchase, accept gifts or donations  
16 of or otherwise acquire, to own, hold, improve, use,  
17 or otherwise deal in or with, and to sell, convey,  
18 mortgage, pledge, lease, exchange or otherwise dis-  
19 pose of any property, real, personal or mixed, or any  
20 interest therein, wherever situated;

21 (7) to elect or appoint such officers, attorneys,  
22 employees, and agents as may be required, to deter-  
23 mine their qualifications, to define their duties, to  
24 fix their salaries, require bonds for them, and fix the  
25 penalty thereof;

1           (8) to enter into contracts, to execute instru-  
2           ments, to incur liabilities, and to do any and all  
3           other acts and things as may be necessary or inci-  
4           dental to the conduct of its business and the exercise  
5           of all other rights and powers granted to NARAB by  
6           this title;

7           (9) to suspend or revoke NARAB membership  
8           in the manner provided elsewhere in this title;

9           (10) to levy and collect assessments upon its  
10          members, in the manner and, to the extent provided  
11          elsewhere in this Act, to cover the administrative ex-  
12          penses of NARAB in a manner that does not un-  
13          fairly discriminate against smaller insurance produc-  
14          ers;

15          (11) to provide advice and recommendations to  
16          Congress, the courts and the Commission on matters  
17          pertaining to the regulation and practices of insur-  
18          ance producers.

19 **SEC. 606. BOARD OF DIRECTORS.**

20          (a) **POWERS.**—The Board of Directors shall be the  
21          governing body of NARAB and shall be vested with all  
22          powers necessary for the management and administration  
23          of the affairs of the Corporation and the promotion of its  
24          purposes as authorized by this title. The Board’s authority  
25          shall be specified in the bylaws of NARAB.

1 (b) COMPOSITION.—The Board shall be composed of  
2 7 members or such higher number as determined by the  
3 Board and as approved by the Commission. All directors  
4 shall be elected by the membership of NARAB. The by-  
5 laws of NARAB shall require that directors be selected  
6 in a manner fairly representing the various types of insur-  
7 ance producers who are eligible to become NARAB mem-  
8 bers.

9 (c) TERMS.—The term of each director shall, after  
10 the first election, be for 3 years, with one-third of the di-  
11 rectors to stand for election each year. Directors may be  
12 elected to serve for any number of terms.

13 (d) VACANCIES.—A vacancy in the Board shall be  
14 filled in the same manner as the original appointment.

15 (e) COMPENSATION.—All matters relating to com-  
16 pensation of directors shall be as provided in the bylaws  
17 of NARAB.

18 (f) INITIAL APPOINTMENTS.—The Commission shall  
19 appoint an initial Board to carry out the establishment  
20 of the bylaws and the first elections of NARAB.

21 **SEC. 607. CHAIRPERSON AND VICE CHAIRPERSON.**

22 (a) ELECTION.—The members of NARAB shall se-  
23 lect the chairperson and vice chairperson from among  
24 those candidates for the Board.

1 (b) INITIAL APPOINTMENTS.—The Commission shall  
2 select the initial chairperson and vice chairperson from  
3 among the initial appointments to the Board under section  
4 606. The persons so selected shall carry out the authori-  
5 ties of office until the first election by the member insur-  
6 ers. They shall act to ensure that such election is sched-  
7 uled at the earliest appropriate time.

8 **SEC. 608. OFFICERS.**

9 The officers of NARAB shall consist of a chairman,  
10 a vice chairman, a president, a secretary, and a treasurer,  
11 and may include one or more vice presidents and such  
12 other officers and assistant officers as may be deemed nec-  
13 essary, each of whom shall be elected or appointed at such  
14 time and in such manner and for such terms not exceeding  
15 3 years as may be prescribed by bylaw. In the absence  
16 of any such provision, all officers shall be elected or  
17 appointed annually by the Board of Directors.

18 **SEC. 609. MEETINGS OF BOARD.**

19 The Board of Directors shall meet at the call of its  
20 Chairman, or as otherwise provided by the bylaws of  
21 NARAB.

22 **SEC. 610. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

23 (a) ADOPTION AND AMENDMENT OF BYLAWS.—The  
24 Board of Directors of NARAB shall file with the Commis-  
25 sion a copy of the proposed bylaws or any proposed

1 amendment to the bylaws, accompanied by a concise gen-  
2 eral statement of the basis and purpose of such proposal.  
3 The proposed bylaws and each proposed amendment shall  
4 take effect 30 days after the date of the filing of a copy  
5 thereof with the Commission, or upon such later date as  
6 NARAB may designate or such earlier date as the  
7 Commission may determine, unless—

8           (1) the Commission, by notice to NARAB set-  
9           ting forth the reasons therefore, disapproves such  
10           proposal as being contrary to the public interest or  
11           contrary to the purposes of this title; or

12           (2) the Commission finds that such proposal in-  
13           volves a matter of such significant public interest  
14           that public comment should be obtained, in which  
15           case it may, after notifying NARAB in writing of  
16           such finding, require that the procedures set forth in  
17           subsection (b) be followed with respect to such pro-  
18           posal, in the same manner as if such proposed bylaw  
19           change were a proposed rule change within the  
20           meaning of such paragraph.

21           (b) ADOPTION AND AMENDMENT OF RULES.—

22           (1) The Board of Directors of NARAB shall file  
23           with the Commission, in accordance with its regula-  
24           tions, a copy of any proposed rule or any proposed  
25           amendment to a rule of NARAB accompanied by a

1 concise general statement of the basis and purpose  
2 of such proposal. The Commission shall, upon the  
3 filing of any proposal, publish notice thereof, to-  
4 gether with the terms of substance of such proposal  
5 or a description of the subjects and issues involved.  
6 The Commission shall give interested persons an op-  
7 portunity to submit written views, and arguments  
8 with respect to such proposal. No proposed rule or  
9 amendment shall take effect unless approved by the  
10 Commission or otherwise permitted in accordance  
11 with this paragraph.

12 (2) Within 35 days after the date of publication  
13 of notice of the filing of a proposal, or within such  
14 longer period as the Commission may designate of  
15 not more than 90 days after such date if it finds  
16 such longer period to be appropriate and publishes  
17 its reasons for so finding, or as to which NARAB  
18 consents, the Commission shall—

19 (A) by order approve such proposed rule or  
20 amendment; or

21 (B) institute proceedings to determine  
22 whether such proposed rule or amendment  
23 should be modified or disapproved.

24 (3) Proceedings instituted with respect to a pro-  
25 posed rule or amendment pursuant to paragraph (2)

1 shall include notice of the grounds for disapproval  
2 under consideration and opportunity for hearing and  
3 shall be concluded within 180 days after the date of  
4 publication of notice of the filing of such proposed  
5 rule or amendment. At the conclusion of such pro-  
6 ceedings, the Commission shall, by order, approve or  
7 disapprove such proposed rule or amendment. The  
8 Commission may extend the time for conclusion of  
9 such proceedings for not more than 60 days if it  
10 finds good cause for such extension and publishes its  
11 reasons for so finding, or for such longer period as  
12 to which NARAB consents.

13 (4) The Commission shall approve a proposed  
14 rule or amendment if it finds that it is in the public  
15 interest and is consistent with the purposes of this  
16 title, and any proposed rule or amendment so ap-  
17 proved shall be given force and effect as if promul-  
18 gated by the Commission. The Commission shall dis-  
19 approve a proposed rule or amendment if it does not  
20 make the finding referred to in the preceding sen-  
21 tence. The Commission shall not approve any pro-  
22 posed rule change prior to 30 days after the date of  
23 publication of notice of the filing thereof, unless the  
24 Commission finds good cause for so doing and pub-  
25 lishes its reasons for so findings.

1           (5) Notwithstanding any other provision of this  
2 subsection, a proposed rule or amendment may take  
3 effect—

4           (A) upon the date of filing with the Com-  
5 mission, if such proposed rule or amendment is  
6 designated by NARAB as relating solely to  
7 matters which the Commission, consistent with  
8 the public interest and the purposes of this sub-  
9 section, determines by rule do not require the  
10 procedures set forth in this paragraph; or

11           (B) upon such date as the Commission  
12 shall for good cause determine, except that any  
13 proposed rule or amendment, which takes effect  
14 under this subparagraph, shall be filed prompt-  
15 ly thereafter and reviewed in accordance with  
16 paragraph (1).

17           At any time within 60 days after the date of filing  
18 of any proposed rule or amendment under subpara-  
19 graph (A) or (B), the Commission may summarily  
20 abrogate such rule or amendment and require that  
21 it be refiled and reviewed in accordance with this  
22 paragraph, if the Commission finds that such action  
23 is necessary or appropriate in the public interest, for  
24 the protection of insurance producers or policy-  
25 holders, or otherwise in furtherance of the purposes

1 of this title. Any action of the Commission pursuant  
2 to the preceding sentence shall not affect the validity  
3 or force of a rule change during the period it was  
4 in effect and shall not be subject to judicial review  
5 or be considered to be final agency action.

6 (c) ACTION REQUIRED BY THE COMMISSION.—The  
7 Commission may, by such rules as it determines to be nec-  
8 essary or appropriate to the public interest or to carry out  
9 the purposes of this title, require NARAB to adopt,  
10 amend, or repeal any NARAB bylaw or rule, whenever  
11 adopted.

12 (d) LEGAL EFFECT OF BYLAWS AND RULES.—The  
13 bylaws and rules adopted pursuant to this section shall  
14 be subject to judicial review in the same manner as the  
15 regulations of the Commission.

16 (e) DISCIPLINARY ACTION BY NARAB.—In any pro-  
17 ceeding to determine whether membership shall be denied,  
18 suspended, revoked, and not renewed (hereinafter referred  
19 to as “disciplinary action”), NARAB shall bring specific  
20 charges, notify such member of, and give the member an  
21 opportunity to defend against such charges and keep a  
22 record. A determination to take disciplinary action shall  
23 be supported by a statement setting forth—

24 (1) any act or practice in which such member  
25 has been found to have engaged;

1           (2) the specific provision of this title, the rules  
2           or regulations thereunder, or the rules of NARAB  
3           which any such act or practice is deemed to violate;  
4           and

5           (3) the sanction imposed and the reason there-  
6           for.

7           (f) COMMISSION REVIEW OF DISCIPLINARY AC-  
8           TION.—If NARAB orders any disciplinary action, it shall  
9           promptly notify the Commission. Such disciplinary action  
10          shall be subject to review by the Commission on its own  
11          motion, or upon application by any person aggrieved  
12          thereby filed within 30 days after the date such notice was  
13          filed with the Commission and received by such aggrieved  
14          person or within such longer period as the Commission  
15          may determine. Application to the Commission for review,  
16          or the institution of review by the Commission on its own  
17          motion, shall not operate as a stay of disciplinary action  
18          unless the Commission otherwise orders. In any proceed-  
19          ing to review such action, after notice and the opportunity  
20          for hearing, the Commission shall—

21                 (1) determine whether the action should be  
22                 taken;

23                 (2) affirm, modify, or rescind the disciplinary  
24                 sanction; or

25                 (3) remand to NARAB for further proceedings.

1 The Commission shall also have the authority to dismiss  
2 a proceeding to review disciplinary action if the Commis-  
3 sion finds that the specific grounds on which the action  
4 is based exist in fact; that the action is in accordance with  
5 applicable rules and regulations; and that such rules and  
6 regulations are, and were, applied in a manner consistent  
7 with the purposes of this title.

8 **SEC. 611. CONSULTATION WITH THE FEDERAL INSURANCE**  
9 **SOLVENCY COMMISSION.**

10 The Commission shall, as appropriate, consult with  
11 NARAB concerning the regulation and activities of insur-  
12 ance producers. The purpose of this consultation shall be  
13 to provide the Commission the benefit of the expert views  
14 of the NARAB on these matters.

15 **SEC. 612. BORROWING AUTHORITY.**

16 NARAB shall have the authority to borrow as nec-  
17 essary and upon prior approval of the Board of Directors.  
18 Any such borrowing shall be made upon such terms and  
19 conditions as the board determines, except that any funds  
20 so borrowed shall be repaid out of the assessments as col-  
21 lected. To secure the payment of principal and interest  
22 on any such borrowings the Corporation may pledge future  
23 assessments.

1 **SEC. 613. ASSESSMENTS.**

2 All insurance producers that are members of NARAB  
3 shall be subject to assessments for the costs of considering  
4 their applications, on acceptance as members, and annu-  
5 ally each year thereafter. Such assessments shall be set  
6 by NARAB by rule and shall cover the costs of operation  
7 of NARAB.

8 **SEC. 614. FUNCTIONS OF THE FEDERAL INSURANCE SOL-**  
9 **VENCY COMMISSION.**

10 (a) ADMINISTRATIVE PROCEDURE.—Determinations  
11 of the Commission, for purposes of making rules pursuant  
12 to section 610, shall be made after appropriate notice and  
13 opportunity for a hearing and for submission of views of  
14 interested persons, in accordance with the rulemaking pro-  
15 cedures specified in section 553 of title 5, United States  
16 Code.

17 (b) EXAMINATIONS AND REPORTS.—

18 (1) The Commission may make such examina-  
19 tions and inspections of NARAB and require  
20 NARAB to furnish it with such reports and records  
21 or copies thereof as the Commission may consider  
22 necessary or appropriate in the public interest or to  
23 effectuate the purposes of this title.

24 (2) As soon as practicable after the close of  
25 each fiscal year, NARAB shall submit to the Com-  
26 mission a written report relative to the conduct of

1 its business, and the exercise of the other rights and  
2 powers granted by this title, during such fiscal year.  
3 Such report shall include financial statements set-  
4 ting forth the financial position of NARAB at the  
5 end of such fiscal year and the results of its oper-  
6 ations (including the source and application of its  
7 funds) for such fiscal year. The financial statements  
8 so included shall be examined by an independent ac-  
9 countant in the same manner as for the financial re-  
10 ports of federally certified insurers under this Act,  
11 and shall be accompanied by the report thereon by  
12 such accountant. The Commission shall transmit  
13 such report to the President and the Congress with  
14 such comment thereon as the Commission deter-  
15 mines to be appropriate.

16 **SEC. 615. LIABILITY OF NARAB AND ITS DIRECTORS, OFFI-**  
17 **CERS, AND EMPLOYEES.**

18 (a) IN GENERAL.—NARAB shall not be deemed to  
19 be an insurer or insurance producer within the meaning  
20 of any State law, rule, regulation, or order regulating or  
21 taxing insurers, insurance producers, or other entities en-  
22 gaged in the business of insurance, including provisions  
23 imposing premium taxes, regulating insurer solvency or fi-  
24 nancial condition, establishing guaranty funds and levying  
25 assessments, or requiring claims settlement practices. The

1 Corporation additionally shall be exempt from all taxes,  
2 assessments, or other levies imposed by any State, municipi-  
3 pal, county, or local government.

4 (b) LIABILITY OF NARAB, ITS DIRECTORS, OFFI-  
5 CERS, AND EMPLOYEES.—Neither NARAB nor any of its  
6 directors, officers, or employees shall have any liability to  
7 any person for any action taken or omitted in good faith  
8 under or in connection with any matter subject to this  
9 title.

10 **SEC. 616. RELATIONSHIP TO STATE LAW.**

11 (a) IN GENERAL.—Except as set forth in subsection  
12 (b), all State laws, regulations, provisions, or actions pur-  
13 porting to regulate insurance producers shall remain in  
14 full force and effect.

15 (b) PREEMPTION OF STATE LAWS.—State laws, reg-  
16 ulations, provisions or actions purporting to regulate in-  
17 surance producers shall be preempted in the following  
18 instances:

19 (1) No State shall impede the activities of, take  
20 any action against, or apply any provision of law or  
21 regulation to, any insurance producers because that  
22 insurance producer or any affiliates plan to become,  
23 has applied to become, or is, a member of NARAB.

24 (2) No State shall impose any requirement  
25 upon a member of NARAB that has the effect of

1 limiting that member's activities because of its resi-  
2 dence or place of operations including, but not lim-  
3 ited to, any requirement that a licensed insurance  
4 producer be a resident of a particular State or any  
5 requirement that it comply with the conditions of a  
6 counter-signature law.

7 (3) No State shall impose any requirement  
8 upon a member of NARAB that is different than the  
9 criteria for NARAB membership or renewal thereof.

10 (4) No State shall implement the procedures of  
11 its system of licensing or renewing the licenses of in-  
12 surance producers in a manner different than  
13 NARAB authority, as set forth in section 617.

14 (c) PREEMPTION AUTHORITY.—The State laws, reg-  
15 ulations, provisions, and actions enumerated in subsection  
16 (b) shall be preempted on the date of the enactment of  
17 this Act. Where it is unclear whether State laws or regula-  
18 tions fall into the categories enumerated in subsection (b),  
19 the Commission shall have the authority, by regulation,  
20 to define those State laws and regulations that have been  
21 preempted by this Act. The Commission shall also have  
22 the authority to issue, after the opportunity for a hearing  
23 on the record, an order that stays the effect of any State  
24 law or regulation which is preempted until the Commission

1 can complete the issuance of a regulation defining such  
2 preemption.

3 **SEC. 617. COORDINATION WITH OTHER REGULATORS.**

4 (a) COORDINATION WITH STATE INSURANCE REGU-  
5 LATORS.—NARAB shall have the authority, subject to  
6 Commission review, to—

7 (1) issue uniform insurance producer applica-  
8 tions and renewal applications that may be used to  
9 apply for the issuance or removal of State licenses,  
10 while preserving the ability of each State to impose  
11 such conditions on the issuance or renewal of a  
12 license as are consistent with section 616,

13 (2) establish a central clearinghouse through  
14 which NARAB members may apply for the issuance  
15 or renewal of licenses in multiple States, and

16 (3) establish a national database for the collec-  
17 tion of regulatory information concerning the activi-  
18 ties of insurance producers.

19 (b) COORDINATION WITH THE NATIONAL ASSOCIA-  
20 TION OF SECURITIES DEALERS.—NARAB shall coordi-  
21 nate with the National Association of Securities Dealers  
22 in order to ease any administrative burdens that fall on  
23 persons that are members of both associations, consistent  
24 with the purposes of this title and the Federal securities  
25 laws.

1 **SEC. 618. JUDICIAL REVIEW.**

2 (a) JURISDICTION.—The appropriate United States  
3 district court shall have exclusive jurisdiction over litiga-  
4 tion involving NARAB, including disputes between  
5 NARAB and its members that arise under this title. Suits  
6 brought in State court involving NARAB shall be deemed  
7 to have arisen under Federal law and therefore be subject  
8 to jurisdiction in the appropriate United States district  
9 court.

10 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-  
11 son must exhaust the administrative remedies before  
12 NARAB before it may seek judicial review of the NARAB  
13 decision.

14 **TITLE VII—REHABILITATION**  
15 **AND LIQUIDATION**

16 **SEC. 701. JURISDICTION.**

17 (a) RECEIVERSHIP.—(1) The Commission shall act  
18 as receiver of any federally certified insurer or reinsurer  
19 for purposes of rehabilitation or liquidation and shall be  
20 appointed as receiver in proceedings instituted in accord-  
21 ance with this title.

22 (2) The appropriate State insurance regulator shall  
23 act as receiver of any insurer or reinsurer which does not  
24 have a Federal certificate. Such regulator may request the  
25 Commission to act as receiver in its place.

1           (b) ADMINISTRATIVE INTERVENTION.—The Commis-  
2 sion and the appropriate State insurance regulator shall  
3 administratively seize an insurer or reinsurer under their  
4 jurisdiction if the financial condition of such insurer or  
5 reinsurer is substantially and imminently threatened and  
6 the seizure is in accordance with this title.

7           (c) COURT.—The United States district courts shall  
8 have exclusive jurisdiction of proceedings to appoint a re-  
9 ceiver of an insurer or reinsurer and of disputes regarding  
10 administrative intervention and, following appointment of  
11 a receiver, to supervise a rehabilitation or liquidation in  
12 conformity with this title.

13 **SEC. 702. PETITION FOR APPOINTMENT.**

14           (a) FILING OF PETITION.—A proceeding to appoint  
15 the receiver shall be commenced by the filing of a petition,  
16 by the Commission or by the appropriate State insurance  
17 regulator, seeking such appointment in the appropriate  
18 United States district court.

19           (b) RECOMMENDATION OF THE NATIONAL INSUR-  
20 ANCE PROTECTION CORPORATION.—In determining  
21 whether to file a petition for receivership as to a federally  
22 certified insurer, the Commission may consult with NIPC  
23 concerning the advisability of filing such petition, concern-  
24 ing whether the petition should be for rehabilitation or

1 liquidation, and concerning such other matters as the  
2 Commission determines appropriate.

3 **SEC. 703. ORDER APPOINTING COMMISSION RECEIVER.**

4 (a) IN GENERAL.—An order appointing a receiver as  
5 provided by section 701 shall—

6 (1) specify whether the receiver is to act to re-  
7 habilitate or to liquidate the insurer or reinsurer;  
8 and

9 (2) require financial status reports which in-  
10 clude a listing of all funds received or disbursed by  
11 the receiver during the period covered by the report  
12 to be filed within 6 months of the court order of  
13 receivership and quarterly thereafter.

14 (b) STATE REGULATED INSURERS AND REINSUR-  
15 ERS.—If the insurer or reinsurer holds a State insurance  
16 license, a copy of the reports shall be served upon the in-  
17 surance regulators of the State of the insurer or reinsur-  
18 er's domicile and of each State in which it is or was li-  
19 censed or transacted any insurance business.

20 **SEC. 704. EFFECT OF ORDER.**

21 (a) TRANSFERS.—The order appointing the receiver  
22 shall have the effect of immediately transferring to the re-  
23 ceiver the possession and control and the unconditional  
24 right to possession and control of all of the business, as-  
25 sets, and affairs of the insurer or reinsurer.

1 (b) CONTRACTS.—The entry of an order appointing  
2 a receiver shall not constitute an anticipatory breach of  
3 any contract of the insurer or reinsurer or provide ground  
4 for revocation or cancellation of any such contract other  
5 than by the receiver.

6 (c) LEGAL REMEDIES.—The receiver is vested with  
7 all rights of action—

8 (1) held by the insurer or reinsurer in receiver-  
9 ship; and

10 (2) raised on behalf of policyholders and credi-  
11 tors.

12 **SEC. 705. APPLICABILITY OF RECEIVERSHIP TO FOREIGN**  
13 **INSURERS AND REINSURERS.**

14 The Commission shall be appointed as receiver under  
15 this Act for a foreign insurer or reinsurer to the extent  
16 of its assets, operations, and business in the United  
17 States. To the extent that such assets are insufficient to  
18 cover claims against a foreign insurer or reinsurer, the re-  
19 ceiver may bring an action in the United States district  
20 court with jurisdiction over the receivership to recover  
21 amounts due and owing.

22 **SEC. 706. INJUNCTIONS AND ORDERS.**

23 The Commission may at any time apply for such re-  
24 straining orders, preliminary and permanent injunctions,  
25 and other orders as may be deemed necessary to prevent—

1           (1) the transaction of further business by or on  
2           behalf of the insurer or reinsurer;

3           (2) the transfer of property of or on behalf of  
4           the insurer or reinsurer;

5           (3) interference with the receiver or with a pro-  
6           ceeding under this Act;

7           (4) waste of the assets of the insurer or rein-  
8           surer;

9           (5) dissipation and transfer of bank accounts of  
10          the insurer or reinsurer;

11          (6) the institution or further prosecution of any  
12          actions or proceedings against the insurer or rein-  
13          surer, the receiver, or any reinsurer of the insurer  
14          or reinsurer except when such reinsurer has a valid  
15          contractual obligation to pay reinsurance proceeds to  
16          a party other than the insurer or reinsurer;

17          (7) the obtaining of preferences, judgments, at-  
18          tachments, garnishments, or liens against the in-  
19          surer or reinsurer or its assets;

20          (8) the levying of execution against the insurer  
21          or reinsurer or its assets;

22          (9) the making of any sale or deed for  
23          nonpayment of taxes or assessments that would less-  
24          en the value of the assets of the insurer or reinsurer;

1           (10) the withholding from the receiver of books,  
2           accounts, documents, or other records relating to the  
3           business of the insurer or reinsurer; or

4           (11) any other threatened or contemplated ac-  
5           tion that might lessen the value of the insurer's or  
6           reinsurer's assets or prejudice the rights of policy-  
7           holders, creditors, or shareholders, or the adminis-  
8           tration of any proceeding under this Act.

9   The Court shall not require the receiver to submit a bond  
10 or other security as a condition of issuing an order under  
11 this section.

12 **SEC. 707. ACTIONS BY AND AGAINST THE RECEIVER.**

13       (a) **AUTOMATIC STAY.**—The entry of the order of the  
14 district court appointing the receiver for an insurer or re-  
15 insurer shall operate as a stay of—

16           (1) every action or proceeding in any State or  
17           Federal court, and

18           (2) every administrative proceeding,  
19 in which the insurer or reinsurer is a party, or is obligated  
20 to defend a party, for 90 days to enable the receiver, guar-  
21 anty associations, and insureds to obtain representation  
22 and prepare for further proceedings. The district court,  
23 upon application of the receiver, guaranty associations,  
24 and insureds, shall grant injunctions and orders directed  
25 to any and all courts, persons, and parties as necessary

1 to confirm or secure such stays of proceedings, or to ex-  
2 tend any such stay upon a showing by the applicant that  
3 additional time is necessary for it to participate com-  
4 petently in the further conduct of the action or proceeding.  
5 Any decision, verdict, or finding based on the default of  
6 the insurer or reinsurer or on the failure of the receiver  
7 or any guaranty association to defend an insured shall,  
8 upon application by the receiver or guaranty association,  
9 be set aside by the court or administrator that entered  
10 such decision, verdict, or finding.

11 (b) PENDING LITIGATION.—The receiver shall take  
12 such action respecting all pending litigation in which the  
13 insurer or reinsurer is a party as it deems necessary in  
14 the interests of justice for the protection of creditors,  
15 policyholders, and the public.

16 (c) PRESERVATION OF ACTIONS.—No statute of limi-  
17 tations or defense of laches shall run with respect to any  
18 cause of action by or against an insurer or reinsurer be-  
19 tween the filing of a petition for appointment of the re-  
20 ceiver and the order granting or denying that petition. Any  
21 action against the insurer or reinsurer that might have  
22 been commenced when the petition was filed may be com-  
23 menced within 90 days after the order appointing the re-  
24 ceiver has been entered or the petition is denied. The re-  
25 ceiver may within one year, or such longer time as applica-

1 ble law may permit, institute an action on behalf of an  
2 insurer or reinsurer upon any cause of action against  
3 which the period of limitation fixed by applicable law has  
4 not expired at the time of the filing of the petition.

5 **SEC. 708. JURISDICTION OVER ACTIONS BY AND AGAINST**  
6 **RECEIVER; TRANSFER.**

7 The appropriate district court of the United States  
8 shall have exclusive jurisdiction over cases brought by the  
9 receiver pursuant to this title. All cases pending or there-  
10 after initiated against the estate of the insurer or rein-  
11 surer or against the receiver shall be filed with or trans-  
12 ferred to the district court with jurisdiction over the  
13 receivership proceedings.

14 **SEC. 709. EXPENSES OF ESTABLISHING RECEIVERSHIP.**

15 (a) PAYMENT.—All expenses of the receiver or of any  
16 person acting under its authority and direction—

17 (1) in the taking possession of the insurer or  
18 reinsurer in receivership,

19 (2) of conducting the proceedings placing the  
20 insurer or reinsurer in receivership,

21 (3) of obtaining the appointment of the re-  
22 ceiver, and

23 (4) in the administration of the receivership  
24 and in the conduct of all proceedings related to the  
25 receivership,

1 shall be paid out of the funds or assets of the covered  
2 entity as a Class 1 expense as described in section 743.

3 (b) EXPENSES.—In the event that the estate of the  
4 entity does not contain sufficient cash or liquid assets to  
5 defray the costs incurred, the receiver may pay the costs  
6 so incurred from its general funds. Any amounts so ad-  
7 vanced for expenses of establishing the receivership and  
8 for its administration shall be repaid to the receiver as  
9 administrative expenses when sufficient assets are  
10 liquidated.

11 **SEC. 710. PROCEEDINGS AGAINST CULPABLE PERSONS.**

12 If it appears to the receiver in a rehabilitation or liq-  
13 uidation proceeding that there has been criminal or  
14 tortious conduct, or breach of any contractual or fiduciary  
15 obligation detrimental to the insurer or reinsurer by any  
16 officer, manager, agent, broker, employee or other person,  
17 the receiver may pursue all appropriate legal remedies on  
18 behalf of the insurer or reinsurer in receivership.

19 **SEC. 711. SPECIAL DEPOSITS.**

20 Any deposit of an insurer or reinsurer for which the  
21 Commission is receiver and that is held by a State insur-  
22 ance regulator shall be transferred to the Commission  
23 upon entry of the receivership order.

1 **SEC. 712. AUDITS.**

2 Any insurer or reinsurer in receivership that has  
3 more than \$500,000 in assets shall be audited annually  
4 by an independent outside certified public accountant ap-  
5 proved by the court. The cost of the audit shall be paid  
6 from the assets of the insurer or reinsurer in receivership.

7 **SEC. 713. STANDING OF GUARANTY ASSOCIATIONS.**

8 NIPC and any guaranty association shall have stand-  
9 ing to appear in any court proceeding concerning the reha-  
10 bilitation or liquidation of an insurer or reinsurer if such  
11 association has paid guaranty obligations for which it has  
12 not been reimbursed or is or may become liable for as  
13 guarantor of obligations of the insurer or reinsurer in  
14 rehabilitation or liquidation.

15 **SEC. 714. PROHIBITED AND VOIDABLE TRANSFERS PRIOR**  
16 **TO PETITION FOR RECEIVERSHIP.**

17 (a) PROHIBITED TRANSFERS.—No insurer or rein-  
18 surer shall make any transfer of its property with the ef-  
19 fect of giving to or enabling any creditor or policyholder  
20 to obtain a greater percentage of the creditor's debt than  
21 any other creditor of the same class.

22 (b) VOIDABLE TRANSFERS.—Any transfer of prop-  
23 erty which gives or enables any creditor or policyholder  
24 to obtain a greater percentage of the creditor's debt than  
25 any other creditor or policyholder in the same class may

1 be avoided by the receiver if the insurer or reinsurer was  
2 insolvent at the time of the transfer and either—

3 (1) the transfer was made within 4 months be-  
4 fore the filing of a petition for receivership; or

5 (2) the creditor receiving such transfer was—

6 (A) an officer of the insurer or reinsurer;

7 (B) any person other than an officer who  
8 was in fact in a position of influence over the  
9 insurer or reinsurer comparable to that of an  
10 officer;

11 (C) any shareholder holding directly or in-  
12 directly more than 5 percent of any class of any  
13 equity security issued by the insurer or rein-  
14 surer; or

15 (D) any other person with whom the in-  
16 surer or reinsurer did not deal at arm's length.

17 The 4-month period referred to in paragraph (1) shall not  
18 expire until 4 months after the date of the recording or  
19 the registering of the transfer if by law such recording  
20 or registering is required.

21 (c) LIABILITY FOR TRANSFERS.—Every director, of-  
22 ficer, employee, stockholder, member, or any other person,  
23 acting on behalf of an insurer or reinsurer in receivership,  
24 who, within 2 years prior to the filing of the petition for  
25 receivership, shall knowingly participate in the making of

1 any transfer prohibited by subsection (a) and every person  
2 receiving any property of, or cash surrender from, such  
3 insurer or reinsurer or the benefit thereof, as a result of  
4 a transaction voidable under subsection (b) shall be jointly  
5 and severally liable therefor and shall be bound to account  
6 to the receiver.

7 (d) AVOIDANCE OF TRANSFERS.—The receiver may  
8 avoid any transfer of the property of such insurer or rein-  
9 surer which any creditor, stockholder, or member might  
10 have avoided and may recover the property so transferred  
11 or its value from the person to whom it was transferred  
12 unless the transferee was a bona fide holder for value prior  
13 to the date of the entry of the order of receivership. Such  
14 property may be recovered or its value collected from  
15 whomever may have received it except a bona fide holder  
16 for value.

17 (e) REINSURANCE TRANSACTIONS.—Any transaction  
18 which consists of the termination or reduction in coverage  
19 or limits of a reinsurance contract that meets all of the  
20 following conditions shall be voidable:

21 (1) The transaction was agreed upon or made  
22 effective or executed prior to the expiration of 180  
23 days from the date of which the reinsurance origi-  
24 nally became effective.

1           (2) The transaction released the assuming rein-  
2           surer, in whole or in part, from its obligation to pay  
3           its originally specified share of those losses which  
4           had occurred prior to the time of the transaction but  
5           which had not been paid by the ceding insurer or  
6           reinsurer.

7           (3) Any part of the transaction was effected  
8           within 1 year prior to the filing of the petition for  
9           receivership.

10          (4) The ceding insurer or reinsurer did not re-  
11          ceive fair consideration for the transaction based on  
12          information available to such insurer or reinsurer at  
13          the time of the transaction.

14 The receiver or the court may avoid such transaction at  
15 any time within 180 days after such application for receiv-  
16 ership by tender to the assuming reinsurer of any money  
17 or other consideration which passed to the ceding insurer  
18 or reinsurer in connection with such transaction. If such  
19 transaction has been avoided, the receiver or the court  
20 may enforce the reinsurance contract as it existed prior  
21 to such transaction, both as to losses prior to such trans-  
22 action and as to losses occurring after such transaction  
23 and prior to the appointment of the receiver. If the court  
24 finds that such transaction was made in bad faith by the  
25 assuming reinsurer, or with intent to obtain a preference

1 among creditors, or with knowledge that any sums or  
2 other property paid in such transaction would not be ap-  
3 plied to the use and benefit of the ceding insurer or rein-  
4 surer or its policyholders, then the return tender shall not  
5 be a condition to the avoidance of the transaction.

6 (f) PRESUMPTION.—For purposes of this section, the  
7 insurer or reinsurer is presumed to be insolvent on and  
8 during the 4-month period immediately preceding the date  
9 of the filing of the petition for receivership.

10 (g) TRANSFERS COVERED.—For purposes of this sec-  
11 tion, a transfer shall include a preference, lien, convey-  
12 ance, assignment, or encumbrance.

13 (h) EXCEPTIONS.—The receiver may not avoid a  
14 transfer under this section—

15 (1) to the extent that such a transfer was—

16 (A) intended by the insurer or reinsurer in  
17 receivership and the creditor to or for the bene-  
18 fit of which such transfer was made to be a  
19 contemporaneous exchange for new value given  
20 to such insurer or reinsurer; and

21 (B) in fact, a substantially contempora-  
22 neous exchange; or

23 (2) to the extent that such transfer was—

1 (A) in payment of a debt incurred by such  
2 insurer or reinsurer in the ordinary course of  
3 business or financial affairs with the transferee;

4 (B) made in the ordinary course of busi-  
5 ness or financial affairs with the transferee;  
6 and

7 (C) made according to ordinary business  
8 terms.

9 **SEC. 715. VOIDABLE PREFERENCES TO CULPABLE OFFI-**  
10 **CERS.**

11 (a) VOIDABLE EXECUTIVE BENEFITS.—Any reim-  
12 bursement of a fine related to the insurer or reinsurer in  
13 receivership, or any payment of a fee or bonus or any pre-  
14 payment of compensation or defense costs by such insurer  
15 or reinsurer which are paid to or for the benefit of a cul-  
16 pable executive officer of such insurer or reinsurer and  
17 which are not in the ordinary course of business, shall be  
18 voidable if paid within 4 months prior to the filing of a  
19 complaint under this article.

20 (b) APPLICABILITY.—For purposes of subsection (a),  
21 payment shall be in the ordinary course of business if it  
22 is—

23 (1) part of the executive's annual salary paid  
24 not more than a month in advance or is compensa-  
25 tion for valid travel and entertainment expenses;

1           (2) made pursuant to a retirement plan which  
2 is qualified (or is intended to be qualified) under  
3 section 401 of the Internal Revenue Code of 1986  
4 or other nondiscriminatory benefit plan;

5           (3) made pursuant to a bona fide deferred com-  
6 pensation or arrangement;

7           (4) made pursuant to a bona fide bonus plan  
8 based on superior performance; or

9           (5) made by reason of the death or disability of  
10 the officer.

11       (c) CULPABILITY.—An executive officer shall be cul-  
12 pable if the receiver finds that such officer—

13           (1) is substantially responsible for the condition  
14 which caused such insurer or reinsurer to be placed  
15 in receivership;

16           (2) has committed a fraudulent act or omission,  
17 or breach of trust or insider abuse with respect to  
18 the insurer or reinsurer resulting in a material ad-  
19 verse financial impact to such; or

20           (3) has materially violated applicable Federal or  
21 State insurance laws or regulations and that such  
22 violation has had an adverse material impact on the  
23 financial condition of such insurer or reinsurer.

1 **SEC. 716. FRAUDULENT TRANSFER AFTER PETITION FOR**  
2 **RECEIVERSHIP.**

3 (a) IN GENERAL.—Any transfer of real property of  
4 an insurer or reinsurer made after the filing of a petition  
5 for receivership to a person acting in good faith shall be  
6 valid against the receiver if made for a present fair equiva-  
7 lent value, or, if not made for a present fair equivalent  
8 value, then to the extent of the present consideration actu-  
9 ally paid therefor, for which amount the transferee shall  
10 have a lien on the property so transferred. The commence-  
11 ment of a receivership proceeding shall be constructive no-  
12 tice upon the recording of a copy of the petition for or  
13 order of receivership with the recorder of deeds in the  
14 county where any real property in question is located. The  
15 exercise by a court of the United States or any State or  
16 jurisdiction to authorize or effect a judicial sale of real  
17 property of the insurer or reinsurer in receivership within  
18 any county in any State shall not be impaired by the pend-  
19 ency of such a proceeding unless the copy is recorded in  
20 the county before the consummation of the judicial sale.

21 (b) OTHER ACTIONS.—After a petition for receiver-  
22 ship has been filed and before either the receiver takes  
23 possession of the property of the insurer or reinsurer or  
24 an order of receivership is granted—

25 (1) a transfer of any of the property of such in-  
26 surer or reinsurer, other than real property, made to

1 a person acting in good faith shall be valid against  
2 the receiver if made for a present fair equivalent  
3 value, or, if not made for a present fair equivalent  
4 value, then to the extent of the present consideration  
5 actually paid therefor, for which amount the trans-  
6 feree shall have a lien on the property so trans-  
7 ferred;

8 (2) a person indebted to or holding property of  
9 such insurer or reinsurer may, if acting in good  
10 faith, pay the indebtedness or deliver the property,  
11 or any part thereof, to such insurer or reinsurer or  
12 upon its order, with the same effect as if the petition  
13 were not pending; and

14 (3) a person having actual knowledge of the  
15 pending receivership shall be deemed not to act in  
16 good faith.

17 A person asserting the validity of a transfer under this  
18 subsection shall have the burden of proof.

19 (c) LIABILITY.—Every person receiving any property  
20 from an insurer or reinsurer in receivership or any benefit  
21 thereof which is a fraudulent transfer under subsection (a)  
22 shall be personally liable therefor and shall be bound to  
23 account to the receiver.

1 (d) CONSTRUCTION.—Nothing in this title shall im-  
2 pair the negotiability of currency or negotiable instru-  
3 ments.

4 **SEC. 717. CLAIMS OF HOLDERS OF VOIDABLE TRANSFERS.**

5 (a) IN GENERAL.—No claims of a creditor which has  
6 received or acquired a voidable preference, lien, convey-  
7 ance, transfer, assignment, or encumbrance shall be al-  
8 lowed unless the creditor surrenders the preference, lien,  
9 conveyance, transfer, assignment, or encumbrance. If the  
10 avoidance is effected by a proceeding in which a final judg-  
11 ment has been entered, the claim shall not be allowed un-  
12 less the money is paid or the property is delivered to the  
13 receiver within 30 days from the date of the entering of  
14 the final judgment, except that the court having jurisdic-  
15 tion over the receivership may allow further time if there  
16 is an appeal or other continuation of the proceeding.

17 (b) FILING.—A claim allowable under subsection (a)  
18 by reason of the avoidance, whether voluntary or involun-  
19 tary, of a preference, lien, conveyance, transfer, assign-  
20 ment, or encumbrance, may be filed as an excused late  
21 filing under section 736 if filed within 30 days from the  
22 date of the avoidance or within the further time allowed  
23 by the court under subsection (a).

1 **SEC. 718. COOPERATION OF AN INSURER'S OR REINSUR-**  
2 **ER'S OFFICERS, OWNERS, AND EMPLOYEES.**

3 (a) COOPERATION.—Any officer, manager, director,  
4 trustee, owner, employee, or agent of any insurer or rein-  
5 surer in receivership, or any other person with authority  
6 over or in charge of any segment of such insurer or rein-  
7 surer's affairs, shall cooperate with the receiver in any  
8 proceeding under this Act or any investigation preliminary  
9 to such proceeding.

10 (b) CONSTRUCTION.—This section shall not be con-  
11 strued to abridge otherwise existing legal rights, including  
12 the right to resist a petition for rehabilitation or liquida-  
13 tion.

14 (c) PENALTIES.—

15 (1) Any person who fails to cooperate with the  
16 Commission in violation of subsection (a) is subject  
17 to the imposition of a civil penalty not to exceed  
18 \$10,000, and shall be subject to the suspension or  
19 revocation of any insurance certificate issued by the  
20 Commission. Such fine, suspension, or revocation  
21 may be imposed only after the person has had an  
22 opportunity for a hearing on the record. The Com-  
23 mission may recommend to any State insurance reg-  
24 ulator the suspension or revocation of any insurance  
25 license issued by such State as a further penalty for  
26 violation of this section.

1           (2) If the receiver is a State insurance regu-  
2           lator, such regulator may, in addition to any author-  
3           ity under State law to impose penalties, petition the  
4           Commission for the imposition of a penalty under  
5           this section for failure to cooperate with such regu-  
6           lator.

7           (d) DEFINITIONS.—For purposes of this section—

8           (1) the term “person” includes any person or  
9           entity who exercises control, directly or indirectly  
10          over activities of the insurer or reinsurer through  
11          any holding company or other affiliate of the insurer  
12          or reinsurer; and

13          (2) the term “to cooperate” includes—

14                (A) replying promptly in writing to any in-  
15                quiry from the receiver requesting such a reply;  
16                and

17                (B) making available to the receiver any  
18                books, accounts, documents, or other records or  
19                information or property of or pertaining to the  
20                insurer or reinsurer and in its possession, cus-  
21                tody, or control.

22   **SEC. 719. ADMINISTRATIVE SEIZURE.**

23          (a) IN GENERAL.—The receiver may issue an admin-  
24          istrative order to seize an insurer or reinsurer when the  
25          receiver has reason to believe that—

1           (1) there exists any ground that would justify  
2           a court order for receivership against the insurer or  
3           reinsurer; and

4           (2) the interests of policyholders, creditors, or  
5           the public will be endangered by delay.

6           (b) EFFECT OF ORDER.—Upon issuance of the ad-  
7           ministrative seizure order by the receiver, it shall take pos-  
8           session and control of all the property, books, accounts,  
9           documents, and other records of the insurer or reinsurer,  
10          and the premises it occupies. The receiver may, through  
11          such order, enjoin the insurer or reinsurer, its officers, di-  
12          rectors, managers, agents, and employees from disposition  
13          of any property of the insurer or reinsurer and from the  
14          further transaction of any business except upon written  
15          consent of the receiver.

16          (c) DURATION OF ORDER.—The receiver shall specify  
17          in its order the duration of the seizure, which shall be such  
18          time as is necessary for the receiver to ascertain the actual  
19          condition of the insurer or reinsurer, except that absent  
20          approval by the district court, the order shall not extend  
21          beyond 60 days. On its own initiative or upon request of  
22          the insurer or reinsurer, the receiver may hold such hear-  
23          ings as it deems necessary, after notice as it deems appro-  
24          priate, and may extend, shorten, or modify the terms of  
25          the order.

1 (d) EFFECT ON CONTRACTS.—Entry of an order  
2 under this section shall not constitute an anticipatory  
3 breach of any contract of the insurer or reinsurer.

4 (e) PETITION TO TERMINATE ORDER.—An insurer  
5 or reinsurer subject to an order under this section may  
6 petition the appropriate district court, at any time after  
7 the issuance of the order, for a hearing and review of the  
8 order. The district court shall hold such hearing to deter-  
9 mine the reasonableness of the issuance and terms of the  
10 order not more than 15 days after the filing of such peti-  
11 tion. A hearing under this subsection shall be held pri-  
12 vately, unless the court, after hearing argument from the  
13 parties, orders otherwise.

14 (f) CONFIDENTIALITY OF ORDER.—The seizure and  
15 judicial review thereof shall be confidential except as is  
16 necessary for the receiver to obtain compliance with the  
17 order. All records and documents of the insurer or rein-  
18 surer and the receiver and all court records and docu-  
19 ments, so far as they pertain to or are a part of the sei-  
20 zure, or the judicial review thereof, shall remain confiden-  
21 tial. The confidentiality of the seizure and judicial pro-  
22 ceedings shall continue until the court, after hearing argu-  
23 ments from the parties, shall order otherwise.

24 (g) DETERMINATION ON RECEIVERSHIP.—Prior to  
25 termination of the order, the receiver shall determine

1 whether to proceed with a complaint for receivership or  
2 release the insurer or reinsurer.

3 (h) ADMINISTRATIVE EXPENSES.—No order shall be  
4 entered by the receiver or the district court releasing the  
5 insurer or reinsurer unless the receiver's expenses of the  
6 seizure have been paid by the insurer or reinsurer or a  
7 reasonable plan for repayment has been agreed upon.

8 **SEC. 720. GROUNDS FOR REHABILITATION.**

9 (a) IN GENERAL.—The Commission or the appro-  
10 priate State insurance regulator may apply by petition to  
11 the appropriate United States district court for an order  
12 authorizing the rehabilitation of an insurer or reinsurer  
13 on any one or more of the following grounds:

14 (1) The insurer or reinsurer is in such condition  
15 that the further transaction of business would be  
16 hazardous financially to its policyholders, creditors,  
17 or the public.

18 (2) There is reasonable cause to believe that  
19 there has been embezzlement from the insurer or re-  
20 insurer, wrongful sequestration or diversion of its  
21 assets, or forgery, fraud affecting it or other illegal  
22 conduct in, by, or with respect to it that if estab-  
23 lished would endanger assets in an amount threaten-  
24 ing the solvency of the insurer or reinsurer.

1           (3) The insurer or reinsurer has failed to re-  
2           move any person who in fact has executive authority,  
3           whether an officer, manager, agent, employee, or  
4           other person, if the person has been found after no-  
5           tice and hearing by the Commission or the appro-  
6           priate State insurance regulator to be dishonest or  
7           untrustworthy in a way affecting the insurer's or re-  
8           insurer's business.

9           (4) Control of the insurer or reinsurer, whether  
10          by stock ownership or otherwise, and whether direct  
11          or indirect, is in a person found after the oppor-  
12          tunity for a hearing on the record to be  
13          untrustworthy.

14          (5) Any person who in fact has executive au-  
15          thority in the insurer or reinsurer, whether an offi-  
16          cer, manager, agent, director or trustee, employee,  
17          or other person, has refused to be examined under  
18          oath by the Commission or the appropriate State in-  
19          surance regulator concerning its affairs, and after  
20          reasonable notice of the fact, the insurer or rein-  
21          surer has failed promptly and effectively to termi-  
22          nate the employment and status of the person and  
23          all such person's influence on management.

24          (6) After demand by the Commission or the ap-  
25          propriate State insurance regulator under this Act,

1 the insurer or reinsurer has failed to promptly make  
2 available for examination any of its own property,  
3 books, accounts, documents, or other records, those  
4 of any affiliate, or those of any person having execu-  
5 tive authority in the insurer or reinsurer so far as  
6 they pertain to it.

7 (7) Without first obtaining the written consent  
8 of the Commission or the appropriate State insur-  
9 ance regulator, the insurer or reinsurer has trans-  
10 ferred, or attempted to transfer, in a manner in vio-  
11 lation of any solvency regulation or order of the  
12 Commission or such regulator, substantially its en-  
13 tire property or business, or has entered into any  
14 transaction the effect of which is to merge, consoli-  
15 date, or reinsure substantially its entire property or  
16 business in or with the property or business of any  
17 other person.

18 (8) Within the previous 4 years the insurer or  
19 reinsurer has willfully violated its charter or articles  
20 of commission, its bylaws, any Federal or State in-  
21 surance law, or any valid order of the Commission  
22 or appropriate State insurance regulator.

23 (9) The insurer or reinsurer has failed to pay  
24 within 60 days after the due date any obligation to  
25 any State or any political subdivision thereof or any

1 judgment entered in any State if the court in which  
2 such judgment was entered had jurisdiction over  
3 such subject matter, except that such nonpayment  
4 shall not be a ground until 60 days after any good  
5 faith effort by the entity to contest the obligation  
6 has been terminated, whether it is before the Com-  
7 mission, the appropriate State insurance regulator  
8 or in the courts, or the insurer or reinsurer has sys-  
9 tematically attempted to compromise or renegotiate  
10 previously agreed settlements with its creditors on  
11 the ground that is financially unable to pay its obli-  
12 gations in full.

13 (10) The insurer or reinsurer has failed to file  
14 its annual report or other financial report required  
15 by statute within the time allowed by law and, after  
16 written demand by the Commission or appropriate  
17 State insurance regulator, has failed to give an ade-  
18 quate explanation immediately.

19 (11) The board of directors or the holders of a  
20 majority of the shares of the insurer or reinsurer  
21 which are entitled to vote, or a majority of those in-  
22 dividuals entitled to the control of it, request or con-  
23 sent to rehabilitation under this title.

24 (12) The insurer or reinsurer has concealed, re-  
25 moved, altered, destroyed, or failed to establish and

1 maintain books, records, documents, accounts,  
2 vouchers, or other pertinent materials adequate for  
3 the determination of its financial condition by exam-  
4 ination or has failed to properly administer claims  
5 and to maintain claim records which are adequate  
6 for the determination of its outstanding claims liabil-  
7 ity.

8 (13) The insurer or reinsurer has neglected or  
9 refused to comply with an order of the Commission  
10 or the appropriate State insurance regulator to  
11 make good within the time prescribed by law any de-  
12 ficiency, whenever its capital and minimum required  
13 surplus, if a stock company, or its required surplus,  
14 if a company other than stock, has become impaired.

15 (14) The insurer or reinsurer is found to be in  
16 such condition that it could not meet the require-  
17 ments for organization and authorization as required  
18 by applicable law, except as to the amount of the  
19 original surplus required of a stock company and ex-  
20 cept as to the amount of the surplus required of a  
21 mutual company in excess of the minimum surplus  
22 required to be maintained.

23 (15) The insurer or reinsurer has not organized  
24 and obtained a certificate authorizing it to com-

1       mence the transaction of its business within the pe-  
2       riod of time prescribed by applicable statute.

3           (16) The insurer's or reinsurer's certificate of  
4       authority has been revoked or none was ever issued.

5       (b) DETERMINATION TO SEEK REHABILITATION.—  
6       The Commission shall file a petition for rehabilitation  
7       rather than liquidation only if it determines, in its sole  
8       discretion, that there is a realistic probability that the in-  
9       surer or reinsurer involved can be rehabilitated.

10   **SEC. 721. REHABILITATION ORDERS.**

11       An order to rehabilitate an insurer or reinsurer shall  
12       direct the receiver forthwith to take possession of the as-  
13       sets of the entity and to administer them under the gen-  
14       eral supervision of the United States district court which  
15       ordered the rehabilitation. The filing or recording of the  
16       order with the clerk of the court or recorder of deeds of  
17       the county in which the principal business of the insurer  
18       or reinsurer is conducted, or the county in which its prin-  
19       cipal office or place of business is located, shall impart  
20       the same notice as a deed, bill of sale, or other evidence  
21       of title duly filed or recorded with the recorder of deeds  
22       would have imparted.

1 **SEC. 722. POWERS AND DUTIES OF THE RECEIVER IN REHA-**  
2 **BILITATION.**

3 (a) **POWERS.**—The receiver may take such action as  
4 it deems necessary or appropriate to reform and rehabili-  
5 tate the insurer or reinsurer for which it has been ap-  
6 pointed receiver in rehabilitation. The receiver shall have  
7 all the powers of the directors, officers, and managers,  
8 whose authority shall be suspended except as they are re-  
9 delegated by the receiver. The receiver shall have full  
10 power to direct and manage, hire, and discharge employ-  
11 ees subject to any contract rights they may have and to  
12 deal with the property and business of the insurer or rein-  
13 surer and to carry on its business.

14 (b) **PLAN.**—If the receiver determines that reorga-  
15 nization, consolidation, conversion, reinsurance, merger,  
16 or other transformation of the insurer or reinsurer is ap-  
17 propriate, the receiver shall prepare a plan to effect such  
18 changes. Upon application of the receiver for approval of  
19 the plan, and after such notice and hearings as the court  
20 may prescribe, the United States district court which pre-  
21 sided over the rehabilitation may either approve or dis-  
22 approve the plan proposed or may modify it and approve  
23 it as modified. Any plan approved under this subsection  
24 shall be, in the judgment of the court, fair and equitable  
25 to all parties concerned. If the plan is approved, the re-  
26 ceiver shall carry out the plan.

1 (c) ADVISORY COMMITTEE.—The receiver may, with  
2 the approval of the court, appoint an advisory committee  
3 of policyholders, claimants, or other creditors, including,  
4 as appropriate, NIPC and any guaranty associations  
5 which have standing under section 713, if the receiver de-  
6 termines such a committee to be necessary. If an advisory  
7 committee is appointed for a federally certified insurer, it  
8 shall include NIPC. Such committee shall serve at the  
9 pleasure of the receiver and shall serve without compensa-  
10 tion other than reimbursement for reasonable travel and  
11 per diem living expenses incurred in attending meetings  
12 for such committee.

13 **SEC. 723. TERMINATION OF REHABILITATION.**

14 (a) TERMINATION OF REHABILITATION.—The re-  
15 ceiver or the directors of an insurer or reinsurer in reha-  
16 bilitation may at any time petition the court for an order  
17 terminating the rehabilitation on the ground that the in-  
18 surer or reinsurer is rehabilitated and may safely  
19 recommence the transaction of an insurance or reinsur-  
20 ance business. If any such petition by the directors is de-  
21 nied, another such petition may not be made by the direc-  
22 tors for at least 6 months. The court may order payment  
23 from the estate of the insurer or reinsurer of such costs  
24 and other expenses of such petition and rehabilitation as  
25 justice may require. If the court finds that—

1           (1) rehabilitation has been accomplished,  
2           (2) grounds for rehabilitation no longer exist,  
3       and  
4           (3) the insurer or reinsurer may safely  
5       recommence the transaction of an insurance or rein-  
6       surance business,  
7       the court shall order that the insurer or reinsurer be re-  
8       stored to possession of its property and the control of its  
9       business. The court may also make such finding and issue  
10      such order at any time upon its own motion.

11       (b) TERMINATION OF REHABILITATION TO INITIATE  
12      LIQUIDATION.—

13           (1) If the payment of policy obligations of an  
14       insurer is suspended in substantial part for a period  
15       of 6 months at any time after the appointment of  
16       the receiver for rehabilitation of the insurer and the  
17       receiver has not filed an application for approval of  
18       a plan under section 720(b), the receiver shall peti-  
19       tion the court for an order of liquidation on grounds  
20       of insolvency.

21           (2) Whenever the receiver believes further at-  
22       tempts to rehabilitate an insurer or reinsurer would  
23       not be in the best interests of its creditors, policy-  
24       holders, or the public, or would be futile, the receiver  
25       may petition the court for an order of liquidation.

1 The court shall permit the directors of the insurer  
2 or reinsurer to take such actions as are reasonably  
3 necessary to defend against the petition and may  
4 order payment from the estate of such costs and  
5 other expenses of defense as justice may require.

6 **SEC. 724. GROUNDS FOR LIQUIDATION.**

7 The Commission or State insurance regulator may  
8 petition the appropriate United States district court for  
9 an order directing the liquidation of an insurer or rein-  
10 surer at any time, including during or at the termination  
11 of the rehabilitation under section 723, on the basis that—

12 (1) one or more of the conditions for rehabilita-  
13 tion set forth in section 720 exists; and

14 (2) the Commission or State insurance regu-  
15 lator determines that an effort at rehabilitation  
16 would not be in the best interests of its policy-  
17 holders, creditors, and the public or that an effort  
18 at rehabilitation would be futile.

19 **SEC. 725. LIQUIDATION ORDERS.**

20 (a) IN GENERAL.—If a receiver is ordered to liq-  
21 uidate an insurer or reinsurer, it shall have possession and  
22 control over all of the assets, property, contracts, and  
23 rights of action of such insurer or reinsurer and all of its  
24 books and records, wherever located. The filing or record-  
25 ing of the order with the clerk of the court and the re-

1 corder of deeds of the county in which the insurer or rein-  
2 surer's principal office or place or business is located, or,  
3 in the case of real estate, with the recorder of deeds of  
4 the county where the property is located, shall impart the  
5 same notice as a deed, bill of sale, or other evidence of  
6 title duly filed or recorded with that recorder of deeds  
7 would have imparted.

8 (b) FIXING OF RIGHTS AND LIABILITIES.—Upon is-  
9 suance of the order, the rights and liabilities of the insurer  
10 or reinsurer in liquidation and of its creditors, policy-  
11 holders, shareholders, members, and all other persons in-  
12 terested in its estate shall become fixed as of the date of  
13 entry of the order of liquidation, except as provided in sec-  
14 tions 726 and 738 or as otherwise provided by the court  
15 for good cause shown.

16 (c) FOREIGN INSURER OR REINSURER.—An order to  
17 liquidate the business of a foreign insurer or reinsurer  
18 shall be in the same terms and have the same legal effect  
19 as an order to liquidate an insurer or reinsurer licensed  
20 in the United States, except that the assets, operations,  
21 and business in the United States shall be the only assets,  
22 operations, and business included in the order.

23 (d) INSOLVENCY.—At the time of petitioning for an  
24 order of liquidation, or at any time thereafter, the receiver  
25 may petition the court for a judicial declaration of insol-

1 vency. After providing such notice and hearing as it deems  
2 proper, the court may make the declaration.

3 (e) PLAN.—

4 (1) Within 5 days of the appointment of the re-  
5 ceiver or, if the appointment is appealed, within 5  
6 days after the initiation of an appeal of an order of  
7 liquidation, which order has not been stayed, the re-  
8 ceiver shall present for the court's approval a plan  
9 for the continued performance of the insurer's policy  
10 claims obligations, including the duty to defend  
11 insureds under liability insurance policies, during the  
12 pendency of an appeal. Such plan shall provide for  
13 the continued performance and payment of policy  
14 claims obligations in the normal course of events,  
15 notwithstanding the grounds alleged in support of  
16 the order of liquidation, including the ground of in-  
17 solvency. In the event the insurer's financial condi-  
18 tion will not, in the judgment of the receiver, sup-  
19 port the full performance of all policy claims obliga-  
20 tions during the pendency of the appeal, the plan  
21 may, on the basis of hardship, prefer the claims of  
22 certain policyholders and claimants over creditors  
23 and interested parties as well as other policyholders  
24 and claimants, as the receiver finds to be fair and  
25 equitable considering the relative circumstances of

1 such policyholders and claimants. The court shall ex-  
2 amine the plan submitted by the receiver and if it  
3 finds the plan to be in the best interests of the par-  
4 ties, the court shall approve the plan. No action  
5 shall lie against the receiver based on preference in  
6 a plan approved by the court.

7 (2) The plan shall not supersede or affect the  
8 obligations of NIPC or of any insurance guaranty  
9 association.

10 (3) The plan shall provide for equitable adjust-  
11 ments to be made by the receiver to any distribu-  
12 tions of assets of the insurer or reinsurer to NIPC  
13 to any guaranty associations if the receiver pays  
14 claims from assets of its estate which would other-  
15 wise be the obligations of NIPC or any particular  
16 guaranty association so that NIPC and all guaranty  
17 associations equally benefit on a pro rata basis from  
18 the assets of such estate. In the event an order of  
19 liquidation is set aside upon appeal, the insurer or  
20 reinsurer shall not be released from liquidation pro-  
21 ceedings unless and until all funds advanced by the  
22 receiver, NIPC, and any guaranty association, in-  
23 cluding reasonable administrative expenses relating  
24 to obligations of the company, shall be repaid in full,  
25 together with interest at the rate provided in section

1 3717 of title 31, United States Code, or until a re-  
2 payment plan has been agreed to by the receiver and  
3 any affected guaranty associations.

4 **SEC. 726. CONTINUANCE OF COVERAGE.**

5 (a) IN GENERAL.—Any policy, including bonds and  
6 other noncancellable business, in effect at the time of issu-  
7 ance of an order of liquidation shall continue in force only  
8 for the earlier of—

9 (1) a period of 30 days from the date of entry  
10 of the liquidation order;

11 (2) the date of expiration of the policy coverage;

12 (3) the date when the insured has replaced the  
13 insurance coverage with equivalent insurance in an-  
14 other insurer or otherwise terminated the policy;

15 (4) the effective date the receiver has effected  
16 a transfer of the policy obligation; or

17 (5) the date proposed by the receiver and ap-  
18 proved by the court to cancel coverage.

19 (b) TERMINATION.—An order of liquidation under  
20 section 725 shall terminate coverages at the time specified  
21 in subsection (a) for purposes of any statute.

22 (c) APPLICABILITY TO POLICIES OF LIFE AND  
23 HEALTH INSURANCE.—

24 (1) Policies of life or health insurance or annu-  
25 ities shall continue in force for such period and

1 under such terms as are provided for by NIPC or  
2 appropriate guaranty association.

3 (2) Policies of life or health insurance or annu-  
4 ities or any period of coverage of such policies not  
5 covered by NIPC or any guaranty association shall  
6 terminate under subsections (a) and (b).

7 **SEC. 727. DISSOLUTION OF AN INSURER OR REINSURER.**

8 The receiver may petition for an order dissolving the  
9 corporate existence of an insurer or reinsurer, or its Unit-  
10 ed States branch in the case of a foreign insurer or rein-  
11 surer, at the time the receiver applies for a liquidation  
12 order. The court shall order dissolution of the insurer or  
13 reinsurer upon petition by the receiver upon or after the  
14 granting of a liquidation order.

15 **SEC. 728. POWERS OF THE LIQUIDATOR.**

16 (a) IN GENERAL.—The receiver shall have the follow-  
17 ing powers in liquidation:

18 (1) To collect all assets, debts, and moneys due  
19 and claims belonging to the insurer or reinsurer in  
20 liquidation, wherever located, and for this purpose—

21 (A) to institute timely action in other juris-  
22 dictions in order to forestall garnishment and  
23 attachment proceedings against such debts;

24 (B) to do such other acts as are necessary  
25 or expedient to collect, conserve, or protect its

1 assets or property, including the power to sell,  
2 compound, compromise, or assign debts for pur-  
3 poses of collection upon such terms and condi-  
4 tions as the receiver deems best; and

5 (C) to pursue any creditor's remedies  
6 available to enforce the receiver's claims.

7 (2) To acquire, encumber, lease, improve, sell,  
8 transfer, abandon, or otherwise dispose of or deal  
9 with, any property of the insurer or reinsurer at its  
10 market value or upon such terms and conditions as  
11 are fair and reasonable.

12 (3) To execute, acknowledge, and deliver any  
13 deed, assignment, release, and other instrument nec-  
14 essary or proper to effectuate any sale of property  
15 or other transaction in connection with the liquida-  
16 tion.

17 (4) To conduct public and private sales of the  
18 property of the insurer or reinsurer and to agree to  
19 a merger with another insurer or reinsurer.

20 (5) To use assets of the estate under a liquida-  
21 tion order to transfer policy obligations to a solvent  
22 insurer or reinsurer if the transfer can be arranged  
23 without prejudice to applicable priorities.

24 (6) To audit the books and records of the hold-  
25 ing company (when applicable), affiliates, and all

1 agents of the insurer or reinsurer insofar as those  
2 records relate to its business activities.

3 (7) To hold hearings, to subpoena witnesses to  
4 compel their attendance, to administer oaths, to ex-  
5 amine any person under oath, and, in connection  
6 therewith, to require the production of any books,  
7 papers, records, or other documents which the re-  
8 ceiver deems relevant to the liquidation.

9 (8) To remove any record and property of the  
10 insurer or reinsurer to such place as may be conven-  
11 ient for the purposes of efficient and orderly execu-  
12 tion of the liquidation.

13 (9) To prosecute any action or right of action  
14 which may exist on behalf of the creditors, policy-  
15 holders, or shareholders of the insurer or reinsurer  
16 against any of its officers or any other person.

17 (10) To borrow money on the security of the in-  
18 surer's or reinsurer's assets or without security and  
19 to execute and deliver all documents necessary to  
20 that transaction for the purpose of facilitating the  
21 liquidation. Any such funds borrowed may be repaid  
22 as an administrative expense.

23 (11) To enter into such contracts as are nec-  
24 essary to carry out the order to liquidate and to af-

1 firm or disavow any contract to which the insurer or  
2 reinsurer is a party.

3 (12) To continue to prosecute and to institute  
4 in the name of the insurer or reinsurer or in its own  
5 name any suit and other legal proceeding and to  
6 abandon the prosecution of claims it deems not to be  
7 in the best interests of the insurer or reinsurer, its  
8 policyholders, or creditors. If the insurer or rein-  
9 surer is dissolved, the receiver shall have the power  
10 to apply to any court for leave to substitute itself for  
11 the insurer or reinsurer as party to any action or  
12 proceeding.

13 (13) To deposit in one or more banks such  
14 sums as are required for meeting current adminis-  
15 trative expenses and dividend distributions.

16 (14) To invest all sums not currently needed.

17 (15) To file any necessary documents for re-  
18 cording in the office of any recorder of deeds or  
19 record office wherever property of the insurer or re-  
20 insurer is located.

21 (16) To assert all defenses available as against  
22 third persons, including statutes of limitation, stat-  
23 utes of frauds, and the defense of usury. A waiver  
24 of any defense by the insurer or reinsurer after a pe-

1       tition in liquidation has been filed shall not bind the  
2       receiver.

3           (17) To exercise and enforce all the rights, rem-  
4       edies, and powers of any creditor, shareholder, pol-  
5       icyholder, or member, including any power to avoid  
6       any transfer or lien that may be given by the law  
7       and that is not included in sections 714, 715, and  
8       716.

9           (18) To intervene in any proceeding wherever  
10       instituted that may affect the insurer or reinsurer or  
11       its assets.

12           (19) To exercise all powers now held or here-  
13       after conferred upon a receiver by the laws of the  
14       United States.

15           (20) To defray from the funds or assets of the  
16       insurer or reinsurer all expenses of taking possession  
17       of, conserving, conducting, liquidating, disposing of,  
18       or otherwise dealing with, the business and property  
19       of the insurer or reinsurer. In the event that the  
20       property of the insurer or reinsurer does not contain  
21       sufficient cash or liquid assets to defray the costs in-  
22       curred, the receiver may pay the costs so incurred  
23       from its general funds. Any amounts so advanced  
24       for expenses of administration shall be repaid to the

1 receiver as administrative expenses when sufficient  
2 assets are liquidated.

3 (21) To appoint, with the approval of the court,  
4 an advisory committee of policyholders, claimants, or  
5 other creditors, including, as appropriate, NIPC and  
6 any guaranty associations which have standing  
7 under section 713, if the receiver determines such a  
8 committee to be necessary. If an advisory committee  
9 is appointed for a federally certified insurer, it shall  
10 include NIPC. Such committee shall serve without  
11 compensation other than reimbursement for reason-  
12 able travel and per diem living expenses incurred in  
13 attending committee meetings.

14 (b) CONTINUED DEFENSE ON PENDING CASES.—  
15 The obligation of the insurer or reinsurer to defend or con-  
16 tinue the defense of any claim or suit required under a  
17 liability policy shall terminate on the entry of an order  
18 of receivership, except during the appeal of an order of  
19 liquidation, except that NIPC and the appropriate guar-  
20 anty association shall defend or continue the defense of  
21 insurers against claims or suits under covered liability  
22 policies, in accordance with the terms of said policies.

1 **SEC. 729. NOTICE TO CREDITORS AND OTHERS.**

2 (a) IN GENERAL.—Unless the court otherwise di-  
3 rects, the receiver shall give or cause to be given notice  
4 of a liquidation order as soon as possible—

5 (1) to the insurance regulator of each State in  
6 which the insurer or reinsurer is domiciled, licensed,  
7 or transacting the business of insurance;

8 (2) to NIPC or any guaranty association which  
9 is or may become obligated as a result of the liq-  
10 uidation;

11 (3) to all agents or brokers of the insurer or re-  
12 insurer;

13 (4) to all persons known or reasonably expected  
14 to have claims against the insurer or reinsurer, in-  
15 cluding all current policyholders, at their last known  
16 address as indicated by the records of the insurer or  
17 reinsurer; and

18 (5) by publication in a newspaper of general  
19 circulation in the county in which the insurer or re-  
20 insurer has its principal place of business and in  
21 such other locations as the receiver determines to be  
22 appropriate.

23 (b) NOTICE TO CLAIMANTS.—Except as otherwise es-  
24 tablished by the receiver with approval of the court, notice  
25 to potential claimants under subsection (a) shall require  
26 claimants to file with the receiver their claims together

1 with proper proofs thereof on or before a date the receiver  
2 shall specify in the notice. All claimants shall have a duty  
3 to keep the receiver informed of any changes of address.

4 (c) GUARANTY ASSOCIATION.—

5 (1) Notice under subsection (a) to agents of an  
6 insurer and to potential claimants who are policy-  
7 holders shall include, where applicable, notice that  
8 coverage by NIPC or guaranty associations may be  
9 available for all or part of policy benefits in accord-  
10 ance with this Act or applicable guaranty laws.

11 (2) The receiver shall promptly provide to  
12 NIPC and guaranty associations such information  
13 concerning the identities and addresses of such pol-  
14 icyholders and their policy coverages as may be with-  
15 in the receiver's possession or control, and otherwise  
16 cooperate with NIPC and guaranty associations to  
17 assist them in providing to such policyholders timely  
18 notice of NIPC's or the guaranty association's cov-  
19 erage of policy benefits, including, as applicable, cov-  
20 erage of claims and continuation or termination of  
21 coverages.

22 (d) DISTRIBUTION OF ASSETS.—If notice is given in  
23 accordance with this section, the distribution of assets of  
24 the insurer or reinsurer under section 745 shall be conclu-

1 sive with respect to all claimants, whether or not they re-  
2 ceived notice.

3 **SEC. 730. DUTIES OF AGENTS.**

4 Every person who receives notice that an insurer  
5 which the person represents as an agent is the subject of  
6 a liquidation order shall, within 30 days of such notice,  
7 provide to the receiver the information in the agent's  
8 records related to any policy or reinsurance agreement is-  
9 sued by the insurer or reinsurer through the agent. The  
10 provision of information pursuant to this section shall not  
11 infringe in any way on any preexisting property rights that  
12 an agent has in such information, such as the ownership  
13 of insurance expiration lists. The information provided  
14 pursuant to this section may not be used by any person  
15 other than the agent to solicit renewal of any policy issued  
16 by the insurer (or its successor), other insurance or any  
17 other products, or a change in the agent of record.

18 **SEC. 731. SETOFFS.**

19 (a) IN GENERAL.—Mutual debts or mutual credits,  
20 whether arising out of one or more reinsurance or other  
21 contracts between the insurer or reinsurer in receivership  
22 and another person shall be set off and the balance only  
23 shall be allowed or paid.

24 (b) LIMITATIONS ON SETOFF.—No setoff shall be al-  
25 lowed in favor of a person if—

1           (1) the circumstances creating the obligation of  
2 the insurer or reinsurer in receivership occurred  
3 after the effective date of the cancellation or termi-  
4 nation of policies in effect at the time of the entry  
5 of the receivership order;

6           (2) the obligation of the insurer or reinsurer to  
7 the person was purchased by or transferred to the  
8 person with the intent of its being used as a setoff;

9           (3) the obligation of the insurer or reinsurer is  
10 owed to an affiliate of the person or to any other en-  
11 tity or association other than the person;

12           (4) the obligation of the person is owed to an  
13 affiliate of the insurer or reinsurer, or to any other  
14 person;

15           (5) the obligation of the person is to pay an as-  
16 sessment levied against the members or subscribers  
17 of the insurer or reinsurer, or is to pay a balance  
18 upon a subscription to the capital stock of the in-  
19 surer or reinsurer, or is in any other way in the na-  
20 ture of a capital contribution; or

21           (6) the obligations between the person and the  
22 insurer or reinsurer arise out of transactions where  
23 either the person or the insurer or reinsurer has as-  
24 sumed risks and obligations from the other party

1 and then has ceded back to that party substantially  
2 the same risks and obligations.

3 (c) DEBTS DUE AND PAYABLE.—The receiver shall  
4 provide persons claiming a setoff with accounting state-  
5 ments identifying debts which are due and payable. Where  
6 a person owes amounts which are due and payable, against  
7 which the person asserts setoff of mutual credits which  
8 may become due and payable from the insurer or reinsurer  
9 in receivership in the future, the person shall promptly pay  
10 to the receiver the amounts due and payable. Notwith-  
11 standing section 745, the receiver shall promptly and fully  
12 refund, to the extent of the person's prior payments, any  
13 mutual credits that become due and payable to the person  
14 by the insurer or reinsurer in receivership.

15 **SEC. 732. OBLIGATION OF A REINSURER.**

16 In the event of a receivership, the reinsurance  
17 recoverables due under any reinsurance contract shall be  
18 payable by the assuming reinsurer directly to the receiver.  
19 Subject to the right of setoff and verification of coverage  
20 under the relevant contract, the assuming reinsurer shall  
21 pay its share of the loss at the time that the amount of  
22 the claim is ultimately determined in the liquidation pro-  
23 ceeding. The receiver shall, within a reasonable time after  
24 the initiation of the receivership, provide the assuming re-  
25 insurer with claim information in accordance with the re-

1 insurance contracts. During the pendency of any such  
2 claim, the assuming reinsurer may investigate the claim  
3 and, at its own expense, interpose in the proceeding where  
4 the claim is to be adjudicated any defenses which it may  
5 deem available to the ceding insurer or reinsurer, or its  
6 receiver. Expenses of investigation and defense incurred  
7 by the assuming reinsurer shall be chargeable against the  
8 ceding insurer or reinsurer as part of the administrative  
9 expense of liquidation, in proportion to the benefit accru-  
10 ing to the ceding insurer or reinsurer solely as a result  
11 of the defense undertaken by the assuming reinsurer. The  
12 reinsurance proceeds shall be payable as provided in the  
13 agreement, except when such assuming reinsurer has a  
14 valid contractual obligation to pay reinsurance proceeds  
15 to a party other than the ceding insurer or reinsurer.

16 **SEC. 733. REINSURER'S LIABILITY.**

17       The amount recoverable by the receiver from a rein-  
18 surer shall not be reduced as a result of delinquency pro-  
19 ceedings regardless of any provision in the reinsurance  
20 contract or other agreement. Payment made directly to an  
21 insured or other creditor shall not diminish the reinsurer's  
22 obligation to such ceding insurer's or reinsurer's estate ex-  
23 cept when such reinsurer has a valid contractual obligation  
24 to pay reinsurance proceeds to a party other than the in-  
25 surer or reinsurer.

1 **SEC. 734. RECOVERY OF PREMIUMS OWED.**

2 (a) RESPONSIBILITIES AND RIGHTS OF AGENTS AND  
3 SIMILAR PERSONS.—An agent, broker, premium finance  
4 company, or any other person, other than the insured, re-  
5 sponsible for the collection or payment of a premium shall  
6 be obligated to pay any collected, earned premium held  
7 by such person at any time of the order of liquidation and  
8 shall fulfill contractual obligations, as they have been cus-  
9 tomarily required to be performed during the course of  
10 the relationship with the insurer, to collect and pay earned  
11 premiums to the insurer. Such person shall not be obli-  
12 gated to—

13 (1) collect or pay unearned premiums, or

14 (2) pay to the receiver commissions due the in-  
15 surer on earned premiums.

16 (b) RESPONSIBILITIES AND RIGHTS OF INSURED.—

17 (1) An insured shall be obligated to pay any  
18 earned premium due, but shall not be obligated to  
19 pay any unearned premium. An insured shall be en-  
20 titled to any collected, unearned premium that an  
21 agent, broker, premium finance company, or any  
22 other person has collected from that insured and  
23 that at the time of the order of liquidation has not  
24 been paid to the insurer. The insured may direct  
25 such person to return the unearned premium or to

1 use such unearned premium to secure replacement  
2 coverage.

3 (2) An insured shall be obligated to continue  
4 paying premiums or annuity considerations due on  
5 life or health insurance policies or annuities that are  
6 continued under section 726(c).

7 (c) DEFINITIONS.—For purposes of this section, the  
8 following definitions apply:

9 (1) The term “earned premium” means that  
10 portion of an insurance premium covering the  
11 unexpired term of the policy prior to the cancellation  
12 or renewal of coverage.

13 (2) The term “unearned premium” means that  
14 portion of an insurance premium covering the term  
15 of the policy subsequent to the cancellation or  
16 nonrenewal of coverage.

17 (3) The term “uncollected premium” means  
18 that portion of an insurance premium for an insur-  
19 ance policy that an agent, broker, premium finance  
20 company, or similar person has a legal obligation to  
21 collect from an insured but has not yet received.

22 **SEC. 735. RECEIVER’S PROPOSAL TO DISTRIBUTE ASSETS.**

23 (a) APPLICATION.—Within 120 days of a final deter-  
24 mination of insolvency and the issuance by a district court  
25 of a liquidation order, the receiver shall make application

1 to the court for approval of a proposal to disburse funds  
2 as appropriate out of marshalled assets of an insurer in  
3 liquidation from time to time as such assets become avail-  
4 able to NIPC and to guaranty associations having obliga-  
5 tions because of such liquidation. If the receiver deter-  
6 mines that there are insufficient assets to disburse, the  
7 application required by this subsection shall be considered  
8 satisfied by a filing by the receiver stating the reason for  
9 this determination.

10 (b) CONTENT OF PROPOSAL.—A proposal under sub-  
11 section (a) shall at least include provisions for—

12 (1) reserving amounts for the payment of ex-  
13 penses of administration and the payment of claims  
14 of secured creditors to the extent of the value of the  
15 security held, and claims falling within the priorities  
16 established by section 743 for Classes 1 and 2;

17 (2) disbursement of the funds marshalled to  
18 date and subsequent disbursement of funds as they  
19 become available; and

20 (3) equitable allocation of disbursements to the  
21 guaranty associations for reimbursement of costs ad-  
22 vanced or guarantee obligations paid.

23 (c) DISBURSEMENTS.—The receiver's proposal under  
24 subsection (a) may provide for disbursements to NIPC  
25 and to the guaranty associations for amounts estimated

1 to be the amounts of covered claim payments to be made  
2 in the future by NIPC and by the guaranty associations  
3 for which claims could be asserted against the insurer. The  
4 receiver shall account to the court from time to time as  
5 to the application of such advances, the claims' obligations  
6 paid, and the investment yield on the advances, which  
7 shall be applied as if part of the advances.

8 (d) NOTICE.—Notice of an application under sub-  
9 section (a) shall be given to the State insurance regulator  
10 of each of the States in which the insurer in liquidation  
11 is domiciled, licensed, or doing business, and to NIPC and  
12 to any appropriate guaranty associations. Any such notice  
13 shall be deemed to have been given when deposited in the  
14 United States mails, first class postage prepaid, at least  
15 30 days before submission of an application under sub-  
16 section (a) to the court. Action on the application may  
17 be taken by the court if the notice has been given and  
18 if the receiver's proposal complies with paragraphs (1) and  
19 (2) of subsection (b).

20 **SEC. 736. FILING OF CLAIMS.**

21 (a) FORM FOR FILING.—Proof of all claims shall be  
22 filed with the receiver in the form required by section 737  
23 on or before the last day for filing specified in the notice  
24 required under section 729.

1 (b) EXCUSED LATE FILED CLAIMS.—The receiver  
2 may permit a claimant making a late filing to share in  
3 distributions, whether past or future, as if it were not late  
4 to the extent that any such payment will not prejudice  
5 the orderly administration of the receivership, under any  
6 of the following circumstances:

7 (1) A transfer to a creditor was avoided under  
8 sections 714, 715, and 716, or was voluntarily sur-  
9 rendered under section 717, and the filing satisfies  
10 the conditions of such section.

11 (2) The valuation under section 742 of security  
12 held by a secured creditor shows a deficiency, which  
13 is filed within 30 days after the valuation.

14 (3) The receiver shall permit late filed claims to  
15 share in distributions, whether past or future, as if  
16 they were not late, if such claims are claims of  
17 NIPC or a guaranty association for reimbursement  
18 of claims paid or expenses incurred, or both, subse-  
19 quent to the last day for filing where such payments  
20 were made and expenses incurred as provided by  
21 law.

22 (c) OTHER LATE FILED CLAIMS.—The receiver may  
23 consider any claim filed which is not covered by subsection  
24 (b), and permit the claimant to receive distributions which  
25 are subsequently declared on any claims of the same or

1 lower priority if the payment does not prejudice the or-  
2 derly administration of the receivership. The late-filing  
3 claimant shall receive, at each such distribution, the same  
4 percentage of the amount allowed on its claim as is then  
5 being paid to claimants of any lower priority. Such claim-  
6 ant shall not share in any distributions made or declared  
7 prior to the filing of said claim.

8 **SEC. 737. PROOF OF CLAIM.**

9 (a) IN GENERAL.—Proof of claim shall consist of a  
10 statement signed by the claimant that includes all of the  
11 following that are applicable:

12 (1) The basis of the claim including the consid-  
13 eration given for it.

14 (2) The identity and amount of the security on  
15 the claim.

16 (3) The payments made on the debt, if any.

17 (4) The sum claimed is justly owing and there  
18 is no setoff, counterclaim, or defense to the claim.

19 (5) Any right of priority of payment or other  
20 specific right asserted by the claimants.

21 (6) A copy of the written instrument which is  
22 the foundation of the claim. If such instrument has  
23 been lost or destroyed, a statement of such fact and  
24 of the circumstances of such loss or destruction shall  
25 be filed under oath with the claim.

1           (7) The name and address of the claimant and  
2           the attorney who represents the claimant, if any.

3 The proof of claim requirement of this subsection shall  
4 be satisfied if a policyholder who does not know or have  
5 reason to know of the existence of actual or potential  
6 claims by the policyholder states the intention to reserve  
7 the right to assert all future claims that are covered by  
8 the policy.

9           (b) CONSIDERATION.—Except as provided in the last  
10 sentence of subsection (a), no claim need be considered  
11 if it does not contain all the information required by sub-  
12 section (a) which may be applicable. The receiver may re-  
13 quire that a prescribed form be used and may require that  
14 other information and documents be included.

15           (c) ADDITIONAL INFORMATION.—At any time the re-  
16 ceiver may request the claimant to present information or  
17 evidence supplementary to the information required under  
18 subsection (a) and may take statements under oath, re-  
19 quire production of affidavits or depositions, or otherwise  
20 obtain additional information or evidence.

21           (d) EFFECT OF JUDGMENT.—A judgment entered  
22 against an insured of an insurer or reinsurer after the  
23 date of the entry of a receivership shall not be considered  
24 by the receiver as conclusive evidence of liability or of the  
25 value of any claim against the insurer or reinsurer. If any

1 such judgment exceeds the receiver's valuation of the  
2 claim, the amount of excess shall be classified as a Class  
3 5 priority in accordance with section 743.

4 (e) EFFECT OF DEFAULT OR COLLUSIVE JUDG-  
5 MENT.—A judgment entered against an insured of an in-  
6 surer or reinsurer or against the insurer or reinsurer itself  
7 that is taken by default or collusion prior to or subsequent  
8 to the date of the entry of the receivership order shall not  
9 be considered by the receiver as evidence of liability or of  
10 the value of the claim.

11 (f) CLAIMS.—All claims of NIPC and a guaranty as-  
12 sociation shall be in such form and contain such substan-  
13 tiation as determined by the receiver.

14 **SEC. 738. CONTINGENT AND IMMATURE CLAIMS.**

15 (a) CONTINGENT CLAIMS.—A claim may be allowed  
16 even if contingent if it is filed in accordance with section  
17 736. It may be allowed and may participate in all distribu-  
18 tions declared after it is filed to the extent that it does  
19 not prejudice the orderly administration of the receiver-  
20 ship.

21 (b) CONTINGENT THIRD PARTY CLAIMS.—The claim  
22 of a third party which is contingent only on its first ob-  
23 taining a judgment against the insured shall be considered  
24 as if there were no such contingency. A contingent claim  
25 may be allowed—

1           (1) if it may be reasonably inferred from the  
2 proof presented upon such claim that the person  
3 would be able to obtain a judgment upon such cause  
4 of action against such insured;

5           (2) if such person shall furnish suitable proof,  
6 unless the court for good cause shown shall other-  
7 wise direct, that no further valid claims against the  
8 insurer or reinsurer arising out of this cause of ac-  
9 tion other than those already presented can be  
10 made; and

11           (3) if the total liability of the insurer or rein-  
12 surer to all claimants arising out of the same act of  
13 its insured shall be no greater than its total liability  
14 would be were it not in receivership.

15           (c) IMMATURE CLAIMS.—Claims that are due except  
16 for the passage of time shall be treated as other claims  
17 are treated, except that such claims may be discounted  
18 at the legal rate of interest.

19 **SEC. 739. VALUATION OF CLAIMS.**

20           (a) THIRD PARTY CLAIMS.—Whenever any third  
21 party asserts a cause of action against an insured of an  
22 insurer or reinsurer in receivership, the third party may  
23 file a claim with the receiver.

24           (b) INSURED'S CONTINGENT CLAIMS.—Any insured  
25 under a liability insurance policy shall have the right to

1 file a contingent claim pursuant to the following proce-  
2 dures:

3           (1) The court, at the time of the entry of the  
4 order of receivership, shall fix the final date for the  
5 filing of information or evidence by which an  
6 insured's contingent claim may be fixed in an  
7 amount certain, but in no event shall such date be  
8 more than 3 years after the last day fixed for the  
9 filing of proofs of claim. Such date may be extended  
10 by the court upon the petition of the receiver should  
11 it be determined that such extension will not delay  
12 the distribution of the insurer's or reinsurer's assets.

13           (2) No contingent claim of an insured shall be  
14 allowed unless such claim is fixed in an amount cer-  
15 tain and the insured claimant presents evidence of  
16 payment of such claim to the receiver on or before  
17 the last day fixed by the court.

18           (3) An insured may include as part of his con-  
19 tingent claim reasonable attorney's fees for services  
20 rendered subsequent to the date that the insurer's or  
21 reinsurer's obligation, if any, to defend or continue  
22 the defense of the claim terminated if such attor-  
23 ney's fees have actually be paid to the insured and  
24 evidence of payment has been presented to the re-  
25 ceiver.

1 (c) SEVERAL CLAIMS.—If several claims founded  
2 upon one policy are filed, whether by third parties or as  
3 claims by the insured under this section, and the aggre-  
4 gate allowed amount of the claims to which the same limit  
5 of liability in the policy is applicable exceeds that limit,  
6 each claim as allowed shall be reduced in the same propor-  
7 tion so that the total equals the policy limit.

8 (d) PRESENTMENT OF CLAIM.—No claim may be  
9 presented under this section if it has been paid or is obli-  
10 gated to be paid by NIPC and any guaranty association.

11 **SEC. 740. DISPUTED CLAIMS.**

12 (a) DENIAL OF CLAIM.—When a claim is denied in  
13 whole or in part by the receiver, written notice of the de-  
14 termination shall be given to the claimant or its attorney  
15 by first class mail at the address shown in the proof of  
16 claim. Within 60 days from the mailing of the notice, the  
17 claimant may file its objections with the receiver. If no  
18 such filing is made, the claimant may not further object  
19 to the determination.

20 (b) ACTION ON CLAIM.—Whenever objections are  
21 filed with the receiver and the receiver does not alter its  
22 denial of the claim as a result of the objections, the re-  
23 ceiver shall ask the court for a hearing as soon as prac-  
24 ticable and give notice of the hearing by first class mail  
25 to the claimant or its attorney and to any other person

1 directly affected, not less than 10 days before the date  
2 of the hearing. The matter may be heard by the court or  
3 by a court-appointed master who shall submit findings of  
4 fact and a recommended decision.

5 **SEC. 741. CLAIMS OF SURETY.**

6 Whenever a creditor whose claim against an insurer  
7 or reinsurer in receivership is secured, in whole or in part,  
8 by the undertaking of another person and the creditor fails  
9 to file and prove that claim, the other person may do so  
10 in the creditor's name and shall be subrogated to the  
11 rights of the creditor, whether the claim has been filed  
12 by the creditor or by the other person in the creditor's  
13 name, to the extent that it discharges the undertaking.  
14 In the absence of an agreement with the creditor to the  
15 contrary, the other person shall not be entitled to any dis-  
16 tribution until the amount paid to the creditor on the un-  
17 dertaking plus the distributions paid on the claim from  
18 the insurer's or reinsurer's estate to the creditor equals  
19 the amount of the entire claim of the creditor. Any excess  
20 received by the creditor shall be held by it in trust for  
21 such other person. The term "other person" as used in  
22 this section is not intended to apply to the receiver, NIPC,  
23 or to a guaranty association.

1 **SEC. 742. SECURED CREDITORS' CLAIMS.**

2 (a) IN GENERAL.—A creditor with a secured claim  
3 may collect its debt—

4 (1) by converting the security into money ac-  
5 cording to the terms of the agreement pursuant to  
6 which the security was delivered to the creditors; or

7 (2) by agreement, arbitration, or compromise  
8 between the creditor and the receiver.

9 (b) INSUFFICIENT SECURITY.—If the security held  
10 by a creditor is valued pursuant to subsection (a) and such  
11 value is insufficient to extinguish the debt to the creditor,  
12 then such insufficiency shall be classified and paid as an  
13 unsecured claim. If the claimant surrenders its security  
14 to the receiver, the entire claim shall be classified as an  
15 unsecured claim.

16 **SEC. 743. PRIORITY OF DISTRIBUTION.**

17 The priority of distribution of claims from the estate  
18 of an insurer or reinsurer in receivership shall be in ac-  
19 cordance with the order in which each class of claims is  
20 herein set forth. Every claim in each class shall be paid  
21 in full or adequate funds shall be retained for such pay-  
22 ment before the members of the next class receive any pay-  
23 ment. No subclasses shall be established within any class.  
24 The order of distribution of claims shall be as follows:

25 (1) Class 1—The costs and expenses of admin-  
26 istration during receivership, including—

1 (A) the actual and necessary costs of pre-  
2 serving or recovering the assets of the insurer  
3 or reinsurer;

4 (B) compensation for all authorized serv-  
5 ices rendered in the receivership, including rea-  
6 sonable compensation to the receiver as ap-  
7 proved by the court to cover the portion of the  
8 total expenses of the receiver which are reason-  
9 ably related to the conduct of the receivership  
10 of the insurer or reinsurer without provision for  
11 any profit to the receiver;

12 (C) any necessary filing fees;

13 (D) the fees and mileage payable to wit-  
14 nesses;

15 (E) reasonable attorney's fees and other  
16 professional services rendered in the receiver-  
17 ship; and

18 (F) the reasonable expenses of the Na-  
19 tional Insurance Protection Corporation or a  
20 guaranty association in handling claims on be-  
21 half of the insurer or reinsurer.

22 (2) Class 2—Reasonable compensation to em-  
23 ployees for services performed to the extent that  
24 they do not exceed 2 months of monetary compensa-  
25 tion and represent payment for services performed

1 within one year before the filing of the petition for  
2 receivership. Principal officers and directors shall  
3 not be entitled to the benefit of this priority except  
4 as otherwise approved by the receiver and the court.

5 (3) Class 3—All claims under insurance policies  
6 and insurance contracts issued by the insurer, in-  
7 cluding claims of NIPC and any guaranty associa-  
8 tion for claims paid on behalf of the insurer and un-  
9 earned premiums and other premium refunds.  
10 Claims under this category include all claims under  
11 life insurance and annuity policies, whether for  
12 death proceeds, annuity proceeds, or investment  
13 values.

14 (4) Class 4—Claims for any amount due an as-  
15 suming reinsurer or ceding insurer for sums due  
16 under reinsurance contracts entered into with the in-  
17 surer or reinsurer in receivership.

18 (5) Class 5—Claims for punitive or exemplary  
19 damages and any claim for any amount due an in-  
20 surer, insurance pool, or underwriting association as  
21 subrogated recoveries, contribution, indemnification,  
22 or otherwise. All other claims of general creditors  
23 not falling within any other priority under this sec-  
24 tion, including claims for taxes and debts due the

1 Federal Government or any State or local govern-  
2 ment.

3 (6) Class 6—Claims filed late and all other  
4 claims other than claims under Classes 7 and 8.

5 (7) Class 7—Surplus or contribution notes, or  
6 similar obligations.

7 (8) Class 8—Proprietary claims of sharehold-  
8 ers, members, or other owners in their capacity as  
9 such.

10 **SEC. 744. RECEIVER'S RECOMMENDATIONS TO THE COURT.**

11 (a) IN GENERAL.—The receiver shall review all  
12 claims duly filed in receivership and shall make such fur-  
13 ther investigation as it shall deem necessary. If the insurer  
14 has issued annuities or life insurance policies, the receiver  
15 shall report the persons to whom, according to the records  
16 of the insurer, amounts are owed as cash value or other  
17 investment value. The receiver may compound, com-  
18 promise, or in any other manner negotiate the amount for  
19 which claims will be recommended to the court. Unre-  
20 solved disputes shall be determined under section 740. As  
21 soon as practicable, it shall periodically present to the  
22 court a report of the claims against the insurer or rein-  
23 surer with its recommendations. The report shall include  
24 the name and address of each claimant and the amount  
25 of the claim finally recommended, if any.

1 (b) ALLOWANCE OF CLAIM.—The court may approve,  
2 disapprove, or modify the claims as recommended by the  
3 receiver. No claim under a policy of insurance shall be al-  
4 lowed for an amount in excess of the applicable policy lim-  
5 its.

6 **SEC. 745. DISTRIBUTION OF ASSETS.**

7 Under the direction of the court, the receiver shall  
8 pay distributions in a manner that will assure the proper  
9 recognition of priorities and a reasonable balance between  
10 the expeditious completion of the receivership and the pro-  
11 tection of unliquidated and undetermined claims, including  
12 third party claims. Distribution of assets in kind may be  
13 made at valuations set by agreement between the receiver  
14 and the creditor and approved by the court.

15 **SEC. 746. UNCLAIMED AND WITHHELD FUNDS.**

16 All unclaimed funds subject to distribution remaining  
17 in the receiver's possession at the time it applies to the  
18 court for discharge, including the amount distributable to  
19 any creditor, shareholder, member, or other person who  
20 is unknown or cannot be found, shall be paid into the  
21 court and disposed of as under chapter 129 of title 28,  
22 United States Code.

23 **SEC. 747. TERMINATION OF PROCEEDINGS.**

24 (a) IN GENERAL.—When all assets justifying the ex-  
25 pense of collection and distribution have been collected and

1 distributed, the receiver shall apply to the court for dis-  
2 charge. The court may grant the discharge and make any  
3 other order, including an order to dispose of any remain-  
4 ing funds that are uneconomic to distribute, by paying  
5 said funds into the court and disposing of same pursuant  
6 to chapter 129 of title 28, United States Code.

7 (b) REOPENING.—After a receivership proceeding has  
8 been terminated and the receiver discharged, the receiver  
9 or other interested party may at any time petition the dis-  
10 trict court to reopen the proceedings for good cause, in-  
11 cluding the discovery of additional assets. If the court is  
12 satisfied that there is justification for reopening, it shall  
13 so order.

14 **SEC. 748. DISPOSITION OF RECORDS DURING AND AFTER**  
15 **TERMINATION OF RECEIVERSHIP.**

16 Whenever it shall appear to the receiver that the  
17 records of any insurer or reinsurer subject to receivership  
18 are no longer useful, it may recommend to the court and  
19 the court shall direct which records should be retained for  
20 future reference and which should be destroyed. The re-  
21 ceiver shall provide for those records which the court or-  
22 ders to be retained. The court shall order that sufficient  
23 funds for this and other administrative purposes be re-  
24 served by the receiver. Any funds remaining after payment  
25 of all such administrative expenses shall be paid into the

1 court and disposed of pursuant to chapter 129 of title 28,  
2 United States Code.

3 **SEC. 749. TRANSITION PERIOD.**

4 (a) IN GENERAL.—This title shall take effect on the  
5 date of enactment of this Act.

6 (b) COMMISSION AUTHORITY TO ACT AS RECEIVER  
7 FOR STATE-REGULATED INSURERS AND REINSURERS.—  
8 The Commission shall have the authority to contract with  
9 any State insurance regulator to assume the responsibility  
10 of administering receiverships in existence prior to the ef-  
11 fective date in subsection (a). In such case, the applicable  
12 State law shall apply to the receivership.

13 **TITLE VIII-DEFINITIONS**

14 **SEC. 801. DEFINITIONS.**

15 For purposes of this Act:

16 (1) The term “accident and health insurance”  
17 means insurance against death or personal injury by  
18 accident and insurance against sickness, ailment or  
19 bodily injury, but does not include insurance provid-  
20 ing benefits pursuant to any workers’ compensation  
21 law.

22 (2) The term “admitted insurer” means an in-  
23 surer licensed to do an insurance business pursuant  
24 to a certificate of authority issued by any State, ex-  
25 cept that with respect to certificates of authority is-

1       sued by one or more States, an insurer shall be ad-  
2       mitted insurer only with respect to risks located in  
3       a State which has issued a certificate of authority to  
4       the insurer.

5               (3) The term “affiliate” means an entity which  
6       controls, is under the control of, or under common  
7       control with, another entity.

8               (4) The term “authorized” means that the en-  
9       tity has received the approval of the relevant govern-  
10      mental authority to engage in the activity described.

11              (5) The term “aviation insurance” means insur-  
12      ance on aircraft owned or operated by manufactur-  
13      ers of aircraft, or on aircraft operated in commercial  
14      flight, or cargo of that aircraft, or against liability,  
15      other than workers compensation and employers li-  
16      ability, arising out of the ownership, maintenance or  
17      use of that aircraft.

18              (6) The term “captive insurer” means any pure  
19      captive insurer or group captive insurer. For pur-  
20      poses of this paragraph, the term “pure captive in-  
21      surer” means any company that insures risks of its  
22      parent or affiliates. The term “group captive in-  
23      surer” means any company that insures risks of its  
24      owners or affiliates.

1           (7) The term “ceding insurer” means an in-  
2           surer which agrees to reinsure all or part of a risk  
3           it has contractually undertaken.

4           (8) The term “certificate of authority” means  
5           evidence issued by any State that an insurer is li-  
6           censed to transact an insurance business within that  
7           State.

8           (9) The term “certified reinsurer” means a re-  
9           insurer certified pursuant to section 302 or 303.

10          (10) The term “claimant” means any insured,  
11          or their successor in interest, making a claim on an  
12          insurance policy or any person instituting a claim  
13          covered by such policy.

14          (11) The term “commercial insurance” means  
15          any line of property and casualty insurance except  
16          private passenger automobile and homeowner’s in-  
17          surance.

18          (12) The term “Commission” means the Fed-  
19          eral Insurance Solvency Commission.

20          (13) The term “contractual obligation” means  
21          any obligation under a policy or contract or certifi-  
22          cate under a group policy or contract, or portion  
23          thereof for which coverage is provided.

24          (14) The term “control” means the possession,  
25          direct or indirect, of the power to direct or cause the

1 direction of the management and policies of a per-  
2 son, whether through the ownership of voting securi-  
3 ties, by contract other than a commercial contract  
4 for goods or nonmanagement services, or otherwise,  
5 unless the power is the result of an official position  
6 with or corporate office held by the person. Control  
7 shall be presumed to exist if any person, directly or  
8 indirectly, owns, controls, holds with the power to  
9 vote, or holds proxies representing, 10 percent or  
10 more of the voting securities of any person. This  
11 presumption may be rebutted by a showing that con-  
12 trol does not exist in fact. The Commission may,  
13 after furnishing all persons in interest notice and op-  
14 portunity to comment, determine that control exists  
15 in fact, notwithstanding the absence of a presump-  
16 tion to that effect.

17 (15) The term “creditor” means a person hav-  
18 ing any claim, whether matured or unmatured, liq-  
19 uidated or unliquidated, secured or unsecured, abso-  
20 lute, fixed, or contingent.

21 (16) The term “declaration of insolvency”  
22 means an order entered by a United States District  
23 Court pursuant to section 725(d).

24 (17) The term “direct placement” means a  
25 placement in which an insured procures insurance

1 from a nonadmitted insurer without utilizing the  
2 services of a surplus lines licensee licensed by the  
3 State in which the insured resides or the insured  
4 risk is located.

5 (18) The term “doing business” includes any of  
6 the following acts, whether effected by mail or other-  
7 wise:

8 (A) The issuance or delivery of contracts  
9 of insurance.

10 (B) The issuance or delivery of any con-  
11 tract of guaranty or suretyship as a vocation  
12 and not merely incidental to any other legiti-  
13 mate business or activity of the guarantor or  
14 surety.

15 (C) The solicitation of applications for  
16 such contracts, or other negotiations prelimi-  
17 nary to the execution of such contracts;

18 (D) The receipt or collection of premiums,  
19 membership fees, assessments, or other consid-  
20 eration for such contracts.

21 (E) The transaction of matters subsequent  
22 to execution of such contracts and arising out  
23 of them.

24 (F) The transaction of business in sub-  
25 stance equivalent to subparagraphs (A) through

1 (E) in a manner designed to evade laws regard-  
2 ing the regulation of insurance.

3 (G) Operating under a license or certificate  
4 of authority or a certificate of solvency issued  
5 by the Commission or by a State insurance reg-  
6 ulator.

7 (19) The term “domestic insurer or reinsurer”  
8 means an entity which is domiciled in the United  
9 States and is authorized by the Commission or a  
10 State to conduct the business of insurance or rein-  
11 surance within the States, territories, or possessions  
12 of the United States. It includes the duly licensed  
13 United States branch of a foreign insurer or rein-  
14 surer.

15 (20) The term “domiciliary State” means the  
16 State in which an insurer or reinsurer is incor-  
17 porated or organized.

18 (21) The term “eligible surplus lines insurer”  
19 means a nonadmitted insurer with which a surplus  
20 lines licensee may place surplus lines insurance  
21 under this Act.

22 (22) The term “fair consideration” means con-  
23 sideration given for property or an obligation—

24 (A) when in exchange for such property or  
25 obligation, as a fair equivalent therefor, and in

1 good faith, property is conveyed or services are  
2 rendered or an obligation is incurred or an an-  
3 tecedent debt is satisfied; or

4 (B) when such property or obligation is re-  
5 ceived in good faith to secure a present advance  
6 or antecedent debt in an amount not  
7 disproportionally small as compared to the  
8 value of the property or obligation obtained.

9 (23) The term “financial impairment” means a  
10 member insurer which is not an insolvent insurer,  
11 and which is—

12 (A) determined by the Commission to be  
13 potentially unable to fulfill its contractual obli-  
14 gations; or

15 (B) placed under an order of rehabilitation  
16 or conservation by a court of competent juris-  
17 diction.

18 (24) The term “financial statement” means any  
19 financial statement which an insurer is required by  
20 law to file with its principal regulatory agency or, if  
21 none is so required, the insurer’s annual financial  
22 report.

23 (25) The term “foreign country” means any ju-  
24 risdiction not in any State.

1           (26) The term “foreign insurer or reinsurer”  
2 means an entity which is domiciled outside the Unit-  
3 ed States and is authorized to conduct the business  
4 of insurance or reinsurance by a jurisdiction, coun-  
5 try, territory, or possession outside the United  
6 States.

7           (27) The term “general assets” means all prop-  
8 erty, real, personal, or otherwise, not specifically  
9 mortgaged, pledged, deposited, or otherwise encum-  
10 bered for the security or benefit of specified persons  
11 or classes of persons. As to specifically encumbered  
12 property, the term “general assets” includes all such  
13 property or its proceeds in excess of the amount nec-  
14 essary to discharge the sum secured thereby.

15           (28) The term “guaranty association” means  
16 any property, casualty, worker’s compensation, life,  
17 health, and any other association established for the  
18 payment of claims of an insurer in receivership.

19           (29) The term “highly capitalized insurer”  
20 means an insurer that maintains at all times a mini-  
21 mum net worth or trusteed surplus of at least  
22 \$50,000,000 (to be subject to periodic adjustment  
23 for inflation pursuant to section 202(c)(2)).

1           (30) The term “holding company” means any  
2 person or entity which directly or indirectly controls  
3 an insurer.

4           (31) The term “holding company system”  
5 means a holding company together with its con-  
6 trolled insurers, reinsurers, and other controlled ac-  
7 tivities.

8           (32) The term “insolvency” or “insolvent”  
9 means that an insurer or reinsurer is unable to pay  
10 its obligations when they are due or that its admit-  
11 ted assets (as determined under this Act or its State  
12 of regulation) do not exceed its liabilities plus the  
13 greater of—

14                   (A) any net worth required by law for its  
15 organization; or

16                   (B) the total par or stated value of its au-  
17 thorized and issued capital stock.

18 For purposes of this paragraph, the term “liabil-  
19 ities” shall include specific requirements imposed by  
20 the Commission upon the insurer or reinsurer at the  
21 time of certification or subsequent thereto.

22           (33) The term “insurer” means any corpora-  
23 tion, association, society, order, firm, company, part-  
24 nership, individual, or aggregation of individuals  
25 which is subject to examination or supervision by the

1 Commission or any State insurance regulator, or  
2 which is doing or represents an insurance business.

3 (34) The term “large insurance buyer” means  
4 a purchaser with assets in excess of liabilities of at  
5 least \$10,000,000 as of December 31 of the preced-  
6 ing year (to be subject to periodic adjustment for in-  
7 flation pursuant to section 202(c)(2)) and where—

8 (A) the purchaser certifies to the insurer,  
9 under standards established by the Commission,  
10 that it meets the net worth requirement;

11 (B) the insurer maintains such certifi-  
12 cation in its files; and

13 (C) the insurer submits to the Commission  
14 in its annual report a list of all such large in-  
15 surance purchasers.

16 (35) The term “life insurance” means insur-  
17 ance upon the lives of human beings and insurance  
18 pertaining thereto.

19 (36) The term “market assistance plan” means  
20 any plan, other than a residual market plan, estab-  
21 lished by a State to assist insurance consumers to  
22 procure coverage from admitted insurers.

23 (37) The term “member insurer” means an in-  
24 surer which is a member of the National Insurance  
25 Protection Corporation.

1           (38) The term “NARAB” means the National  
2 Association of Registered Agents and Brokers.

3           (39) The term “net direct written premiums”  
4 means direct gross premiums written on insurance  
5 policies to which title V applies, less returned pre-  
6 miums thereon and dividends paid or credited to pol-  
7 icyholders on such direct business. “Net direct writ-  
8 ten premiums” does not include premiums on con-  
9 tracts between insurers and reinsurers.

10          (40) The term “net reinsurance premium”  
11 means premiums paid for reinsurance to which this  
12 title applies less premiums paid to another reinsurer.

13          (41) The term “net worth” means, with respect  
14 to an insurer, the excess of total assets over liabil-  
15 ities of an insurer, which is the sum of all net worth  
16 accounts minus any impairment thereof.

17          (42) The term “NIPC” means the National In-  
18 surance Protection Corporation.

19          (43) The term “nonadmitted insurer” means an  
20 insurer not licensed to do an insurance business pur-  
21 suant to a certificate of authority issued by a State,  
22 except that an insurer holding a certificate of au-  
23 thority issued by one or more States may be a  
24 nonadmitted insurer with respect to risks located in

1 any State in which the insurer does not hold a cer-  
2 tificate of authority.

3 (44) The term “personal lines insurer” means  
4 any property and casualty insurance issued for non-  
5 commercial personal, family, or household purposes.

6 (45) The term “property and casualty insur-  
7 ance” means insurance against loss of, damage to,  
8 loss of income or extra expense incurred because of  
9 loss of, or damage to, property; insurance against  
10 third party liability claims caused by negligence or  
11 imposed by statute or contract; insurance providing  
12 benefits pursuant to any workers’ compensation law.

13 (46) The term “professional reinsurer” means a  
14 reinsurer, including the United States branch of a  
15 foreign reinsurer which, as its exclusive business,  
16 contracts to indemnify insurers against loss or obli-  
17 gations contractually undertaken by the insurer, and  
18 retains substantial net risk for its own account. Re-  
19 gardless of how such business is regulated for other  
20 purposes, a professional reinsurer may undertake co-  
21 surety obligations if—

22 (A) the lead surety is licensed by a State;

23 (B) the obligations of such co-surety are  
24 not covered by any State guaranty fund; and

1 (C) premiums for such obligations are sub-  
2 ject to State premium taxes.

3 (47) The term “qualified financial institution”  
4 means any financial institution that—

5 (A) is organized, or in the case of a United  
6 States branch or office of a foreign banking or-  
7 ganization licensed, under the laws of the Unit-  
8 ed States or any State thereof;

9 (B) is regulated, supervised, and examined  
10 by Federal or State authorities having regu-  
11 latory authority over banks and trust compa-  
12 nies; and

13 (C) has been determined by the Commis-  
14 sion to meet such standards of financial condi-  
15 tion and strength as are considered necessary  
16 for the protection of the public.

17 (48) The term “railroad insurance” means in-  
18 surance on operations of railroads engaged in trans-  
19 portation in interstate commerce and their property  
20 used in those operations.

21 (49) The term “receiver” means the Commis-  
22 sion or the appropriate State insurance regulator  
23 acting in the capacity of rehabilitator or liquidator  
24 of an insurer or reinsurer.

1           (50) The term “receivership” means the reha-  
2           bilitation or liquidation of an insurer or reinsurer.

3           (51) The term “reinsurance” means the as-  
4           sumption by the reinsurer of all or part of a risk  
5           originally undertaken by the ceding insurer, but does  
6           not mean the substitution of one insurer for another  
7           through a novation.

8           (52) the term “reinsurer” means an insurer  
9           which contracts to indemnify a ceding insurer for all  
10          or part of a risk originally undertaken by the ceding  
11          insurer. “Reinsurer” shall not include any entity  
12          that is more than 25 percent owned or financially  
13          controlled by any State, by a foreign government, or  
14          by any political subdivision, instrumentality, or  
15          agency of either, if—

16                (A) such government, subdivision, instru-  
17                mentality, or agency provides financial support  
18                to the business of insurance of the entity and  
19                thereby enables it to compete unfairly for busi-  
20                ness with other reinsurers; or

21                (B) such ownership or control provides the  
22                insurer with sovereign immunity.

23          (53) The term “residual market” means an as-  
24          signed risk plan, joint underwriting association, or  
25          any similar mechanism designed to make insurance

1 available to those unable to obtain it in the vol-  
2 untary market.

3 (54) The term “secured claim” means any  
4 claim secured by mortgage, trust, deed, pledge, de-  
5 posit as security, escrow, or otherwise, but does not  
6 include claims against general assets.

7 (55) The term “special deposit claim” means  
8 any claim secured by a deposit made pursuant to  
9 statute for the security or benefit of a limited class  
10 or classes of persons, but does not include any claim  
11 secured by general assets.

12 (56) The term “State” means any State, the  
13 District of Columbia, the Commonwealth of Puerto  
14 Rico, the Northern Mariana Islands, the Virgin Is-  
15 lands, American Samoa, and the Trust Territory of  
16 the Pacific Islands.

17 (57) The term “State insurance regulator”  
18 means the principal insurance regulatory authority  
19 of a State.

20 (58) The term “State law” means the constitu-  
21 tion and statutes of any State and any regulation,  
22 rule, or requirement promulgated pursuant to statu-  
23 tory authority.

24 (59) The term “surplus lines insurance” means  
25 any insurance permitted to be placed through a sur-

1 plus lines licensee with a nonadmitted insurer eligi-  
2 ble to accept such insurance pursuant to section  
3 203.

4 (60) The term “surplus lines licensee” means  
5 an individual partnership, firm, association, or cor-  
6 poration licensed in one or more States to place sur-  
7 plus lines insurance with nonadmitted insurers eligi-  
8 ble to accept such insurance.

9 (61) The term “transfer” includes the sale and  
10 every other and different mode, direct or indirect, of  
11 disposing of or of parting with property or with an  
12 interest therein, disposing of or of parting with the  
13 possession thereof, or fixing a lien upon property or  
14 upon an interest therein, absolutely, conditionally, or  
15 voluntarily, by or without judicial proceedings. The  
16 retention of a security title to property delivered to  
17 a debtor shall be deemed a transfer suffered by the  
18 debtor.

19 (62) The term “trusteed surplus” means the  
20 fair market value of the amount placed in trust by  
21 a reinsurer for the exclusive benefit of its ceding in-  
22 surers, minus any incurred losses.

23 (63) The term “United States branch” means  
24 the business unit through which business is trans-  
25 acted in the United States by an insurer, including

1 the assets and liabilities of such insurer within the  
2 United States pertaining to such business and the  
3 management powers pertaining to such business.

4 (64) The term “United States reinsurance li-  
5 abilities” means the amount reflected as an asset or  
6 deduction from liabilities on the financial statement  
7 of a domestic insurer for reinsurance recoverable  
8 from a domestic or foreign insurer or reinsurer.

9 (65) The term “wet marine and transportation  
10 insurance” means—

11 (A) insurance upon vessels, crafts, hulls,  
12 and of interests therein or with relation thereto;

13 (B) insurance of marine builders’ risks,  
14 marine war risks, and contracts of marine pro-  
15 tection and indemnity insurance;

16 (C) insurance of freights and disburse-  
17 ments pertaining to a subject of insurance com-  
18 ing within this subsection; and

19 (D) insurance of personal property and in-  
20 terests therein, in the course of exportation  
21 from or importation into any country, or in the  
22 course of transportation coastwide or on inland  
23 waters, including transportation by land, water,  
24 or air from point of origin to final destination;  
25 in connection with any and all risks or perils of

1 navigation, transit or transportation; and while  
2 being prepared for and while awaiting ship-  
3 ment; and during any delays, transshipment, or  
4 reshipment incident thereto.

5 **TITLE IX—TECHNICAL AND**  
6 **CONFORMING AMENDMENTS**

7 **SEC. 901. EXECUTIVE SCHEDULE TECHNICAL AND CON-**  
8 **FORMING AMENDMENTS.**

9 (a) TITLE 5.—

10 (1) Section 5314 of title 5, United States Code,  
11 is amended by adding at the end the following:

12 “Chairman, Federal Insurance Solvency Com-  
13 mission.”.

14 (2) Section 5315 of such title is amended by  
15 adding at the end the following:

16 “Members, Federal Insurance Solvency Com-  
17 mission.”.

18 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
19 15A of the Securities Exchange Act of 1934 (15 U.S.C.  
20 78o-3) is amended by adding at the end the following:

21 “(j) COORDINATION WITH NARAB.—Each reg-  
22 istered national securities association shall coordinate with  
23 the National Association of Registered Agents and Bro-  
24 kers established under section 601 of the Federal Insur-  
25 ance Solvency Act of 1993 in order to ease any adminis-

1 trative burdens that fall on persons that are members of  
2 both associations, consistent with the purposes of such Act  
3 and this Act.

○

HR 1290 SC—2

HR 1290 SC—3

HR 1290 SC—4

HR 1290 SC—5

HR 1290 SC—6

HR 1290 SC—7

HR 1290 SC—8

HR 1290 SC—9

HR 1290 SC—10

HR 1290 SC—11

HR 1290 SC—12

HR 1290 SC—13

HR 1290 SC—14

HR 1290 SC—15

HR 1290 SC—16

HR 1290 SC—17