

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3974

To provide for fair trade in insurance services, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1994

Mr. LEACH introduced the following bill; which was referred jointly to the  
Committees on Energy and Commerce and Ways and Means

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## A BILL

To provide for fair trade in insurance services, 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.**

4 This Act may be cited as the “Fair Trade in Insur-  
5 ance Services Act of 1994”.

6 **SEC. 2. EFFECTUATING THE PRINCIPLE OF NATIONAL**  
7 **TREATMENT FOR INSURANCE ORGANIZA-**  
8 **TIONS.**

9 (a) **PURPOSE.**—The purpose of this section is to en-  
10 courage foreign countries to accord national treatment to

1 United States insurance organizations that operate or  
2 seek to operate in those countries.

3 (b) IDENTIFYING COUNTRIES THAT DENY NATIONAL  
4 TREATMENT TO UNITED STATES INSURANCE ORGANIZA-  
5 TIONS.—The President shall identify the extent to which  
6 foreign countries deny national treatment to United States  
7 insurance organizations—

8 (1) according to the most recent report under  
9 section 3602 of the Omnibus Trade and Competi-  
10 tiveness Act of 1988 (or the most recent update of  
11 any such report); or

12 (2) based on more recent information that the  
13 President considers to be appropriate.

14 (c) DETERMINING WHETHER DENIAL OF NATIONAL  
15 TREATMENT HAS A SIGNIFICANT ADVERSE EFFECT.—

16 (1) IN GENERAL.—The President shall deter-  
17 mine whether the denial of national treatment to  
18 United States insurance organizations by a foreign  
19 country identified under subsection (b) has a signifi-  
20 cant adverse effect on such organizations.

21 (2) FACTORS TO BE CONSIDERED.—In deter-  
22 mining whether and to what extent a foreign country  
23 denies national treatment to United States insurance  
24 organizations, and in determining the effect of any  
25 such denial on such insurance organizations, the

1 President shall consider appropriate factors, includ-  
2 ing—

3 (A) the extent of United States trade with  
4 and investment in the foreign country, the size  
5 of the foreign country's markets for the insur-  
6 ance services involved, and the ability and the  
7 extent to which United States insurance organi-  
8 zations operate or seek to operate in those mar-  
9 kets;

10 (B) the importance of operations by  
11 United States insurance organizations in the  
12 foreign country to the export of goods and serv-  
13 ices by United States firms to such country;

14 (C) the extent to which the foreign country  
15 provides in advance to United States insurance  
16 organizations any measure of general applica-  
17 tion that the country proposes to adopt, such as  
18 regulations, guidelines or other policies regard-  
19 ing new products, services, and markets in  
20 order to allow an opportunity for such insur-  
21 ance organizations to comment on the measure  
22 and for such comments to be taken into account  
23 by the foreign country;

24 (D) the extent to which the foreign coun-  
25 try—

1 (i) makes available, in writing, to  
2 United States insurance organizations the  
3 foreign country's requirements for complet-  
4 ing applications relating to the provision of  
5 insurance services;

6 (ii) applies published, objective, stand-  
7 ards and criteria in evaluating any such  
8 applications from United States insurance  
9 organizations; and

10 (iii) renders administrative decisions  
11 with respect to any such application within  
12 a reasonable period of time;

13 (E) the extent to which United States in-  
14 surance organizations may conduct activities or  
15 provide services in the foreign country that in-  
16 surance organizations organized under the laws  
17 of the foreign country may not conduct or pro-  
18 vide in the foreign country; and

19 (F) the extent to which United States in-  
20 surance organizations are affected in their oper-  
21 ations and ability to compete on an equal basis  
22 by—

23 (i) the licensing policies of the insur-  
24 ance regulator of that country;

1 (ii) capital requirements applicable in  
2 that country with respect to insurance ac-  
3 tivities;

4 (iii) restrictions on acquisitions or  
5 joint ventures, and operations of such ac-  
6 quisitions and joint ventures, by insurance  
7 organizations in that country;

8 (iv) restrictions on the operation and  
9 establishment of branches in that country;  
10 and

11 (v) requirements for seeking approval  
12 of rates, rules, and policy forms when in-  
13 troducing new products, services, and pric-  
14 ing techniques.

15 (d) PUBLICATION OF DETERMINATION.—

16 (1) PUBLICATION.—If the President determines  
17 that the denial of national treatment to United  
18 States insurance organizations by a foreign country  
19 has a significant adverse effect on such organiza-  
20 tions, the President—

21 (A) may, after the Trade Representative  
22 has initiated negotiations in accordance with  
23 subsection (g) publish that determination in the  
24 Federal Register;

1 (B) shall, not less frequently than annu-  
2 ally, in consultation with any department or  
3 agency that the President considers to be ap-  
4 propriate, review each such determination to de-  
5 termine whether the determination should be  
6 rescinded; and

7 (C) shall inform State insurance commis-  
8 sioners or regulatory agencies of the publication  
9 of such determination.

10 (2) EXCEPTION FOR COUNTRIES WITH NA-  
11 TIONAL TREATMENT COMMITMENTS.—Paragraph (1)  
12 shall not apply to a foreign country that the Presi-  
13 dent determines has provided the United States with  
14 a binding and substantially full market access and  
15 national treatment commitment in insurance serv-  
16 ices, and adheres to that commitment in practice.

17 (e) DISCRETIONARY SANCTIONS.—

18 (1) ACTION BY THE PRESIDENT.—

19 (A) IN GENERAL.—Subject to subpara-  
20 graph (B), the President may recommend to  
21 the Secretary of the Treasury that the Sec-  
22 retary suspend the acceptance of, or not accept,  
23 a registration statement that is filed pursuant  
24 to section 3 after the date of publication of a  
25 determination under subsection (d)(1) by a per-

1 son of a foreign country listed in such publica-  
2 tion if the President determines that—

3 (i) such action would assist the  
4 United States in negotiations to eliminate  
5 denials of national treatment against Unit-  
6 ed States insurance organizations;

7 (ii) negotiations undertaken pursuant  
8 to subsection (g) are not likely to result in  
9 an agreement that eliminates the denial of  
10 national treatment; or

11 (iii) the country has not adequately  
12 adhered to an agreement reached as a re-  
13 sult of negotiations undertaken pursuant  
14 to subsection (g).

15 (B) CONSISTENCY WITH BILATERAL AND  
16 MULTILATERAL AGREEMENTS.—The authority  
17 of the President under subparagraph (A) may  
18 not be used to take actions which are inconsis-  
19 tent with any bilateral or multilateral agreement  
20 that governs insurance services that has been  
21 entered into by the President and approved by  
22 the Senate and House of Representatives.

23 (C) SUSPENSIONS OF FILINGS OF REG-  
24 ISTRATIONS.—

1 (i) IN GENERAL.—Notwithstanding  
2 any other provision of law, if the President  
3 recommends, pursuant to subparagraph  
4 (A), that the Secretary suspend the accept-  
5 ance of any registration of an alien insur-  
6 ance company under section 3, the Sec-  
7 retary shall—

8 (I) suspend the Secretary’s ac-  
9 ceptance of such registration for a pe-  
10 riod of 180 days; and

11 (II) at the recommendation of  
12 the President, extend such suspension  
13 for an additional period of 180 days.

14 (ii) TERMINATION OF SUSPENSION.—  
15 The Secretary shall, on the recommenda-  
16 tion of the President, terminate any sus-  
17 pension in effect under clause (i).

18 (D) ALTERNATIVE ACTION.—If the Presi-  
19 dent determines that the procedure outlined in  
20 subparagraph (A) is either inappropriate or im-  
21 practical to achieve the purpose of this section,  
22 the President may take such action under other  
23 provisions of law as the President considers  
24 necessary and appropriate to encourage foreign  
25 countries to accord national treatment to

1 United States insurance organizations that op-  
2 erate or seek to operate in those countries.

3 (f) EXISTING ALIEN INSURANCE ORGANIZATION AC-  
4 TIVITY.—The authority of subsection (e) may not be exer-  
5 cised with the respect to any registration filed by an alien  
6 insurance organization which is engaged in insurance ac-  
7 tivities within the United States as of March 8, 1994.

8 (g) NEGOTIATIONS.—

9 (1) IN GENERAL.—The Trade Representative—

10 (A) shall initiate negotiations with any for-  
11 eign country with respect to which a determina-  
12 tion made under subsection (c)(1) is in effect to  
13 ensure that such country accords national treat-  
14 ment to United States insurance organizations;  
15 and

16 (B) may initiate negotiations with any for-  
17 eign country that denies national treatment to  
18 United States insurance organizations to ensure  
19 that the foreign country accords national treat-  
20 ment to such organizations.

21 (2) EXCEPTIONS.—Paragraph (1) shall not  
22 apply with respect to any foreign country if the  
23 President—

24 (A) determines that the negotiations—

1 (i) would be unlikely to result in  
2 progress toward according national treat-  
3 ment to United States insurance organiza-  
4 tions; or

5 (ii) would impair the economic inter-  
6 ests of the United States; and

7 (B) submits a written notice of that deter-  
8 mination to the Congress.

9 (h) REPORT.—

10 (1) CONTENTS OF REPORT.—Not later than  
11 December 1, 1994, and biennially thereafter, the  
12 President shall transmit to the Congress a report  
13 that—

14 (A) specifies the foreign countries identi-  
15 fied under subsection (b);

16 (B) if a determination has been published  
17 under subsection (d)(1) with respect to the for-  
18 eign country, provides the reasons for such de-  
19 termination;

20 (C) if the President has not made or has  
21 rescinded such a determination with respect to  
22 the foreign country, provides the reasons for  
23 the failure to make the determination or for the  
24 rescission;

1 (D) describes the results of any negotia-  
2 tions conducted under subsection (g)(1) with  
3 the foreign country; and

4 (E) discusses the effectiveness of this sec-  
5 tion in achieving the purposes of the section.

6 (2) SUBMISSION OF REPORT.—The report re-  
7 quired by paragraph (1) may be submitted as part  
8 of a report or update submitted under section 3602  
9 of the Omnibus Trade and Competitiveness Act of  
10 1988.

11 (i) DELEGATION.—

12 (1) IN GENERAL.—The President may delegate  
13 any authority of the President under this section.

14 (2) EXERCISE OF AUTHORITY.—If the Presi-  
15 dent delegates any authority of the President under  
16 this section, the designee's authority shall be exer-  
17 cised according to the specific direction (if any) of  
18 the President.

19 (j) CONSULTATION.—In carrying out the duties  
20 under this Act, the President, or the President's designee,  
21 may consult with the appropriate State insurance commis-  
22 sioners or regulatory agencies and other entities the Presi-  
23 dent or designee may consider appropriate.

24 (k) DEFINITIONS.—For purposes of this section, the  
25 following definitions shall apply:

1           (1) ALIEN INSURANCE ORGANIZATION.—The  
2 term “alien insurance organization” means an insur-  
3 ance organization which is a person of a foreign  
4 country.

5           (2) INSURANCE ORGANIZATION.—The term “in-  
6 surance organization” means any insurer and any  
7 reinsurer.

8           (3) INSURER.—The term “insurer” means a  
9 party to a contract of insurance who assumes the  
10 risk and undertakes to indemnify the insured, or to  
11 pay a certain sum on the occurrence of a specified  
12 contingency.

13           (4) NATIONAL TREATMENT.—The term “na-  
14 tional treatment” means, with respect to any foreign  
15 country, treatment that offers United States insur-  
16 ance organizations the same competitive opportuni-  
17 ties (including effective market access and market  
18 penetration) in such country as are available to the  
19 country’s domestic insurance organizations in like  
20 circumstances.

21           (5) PERSON OF A FOREIGN COUNTRY.—The  
22 term “person of a foreign country” means—

23                   (A) an entity that—

24                           (i) is organized under the laws of the  
25 foreign country, or

1 (ii) has its principal place of business  
2 in the foreign country;

3 (B) an individual who—

4 (i) is a citizen of the foreign country,

5 or

6 (ii) is domiciled in the foreign coun-  
7 try; or

8 (C) any person that is directly or indirectly  
9 controlled by any entity or individual described  
10 in subparagraph (A) or (B).

11 (6) REINSURER.—The term “reinsurer” means  
12 an insurer which contracts to indemnify a ceding in-  
13 surer for all or part of a risk originally undertaken  
14 by the ceding insurer.

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

17 (8) TRADE REPRESENTATIVE.—The term  
18 “Trade Representative” means the United States  
19 Trade Representative.

20 **SEC. 3. REGISTRATION OF ALIEN INSURANCE ORGANIZA-**  
21 **TIONS WITH THE SECRETARY OF THE TREAS-**  
22 **URY.**

23 (a) IN GENERAL.—No alien insurance organization  
24 (as defined in section 2(i)(1)) may engage in insurance

1 activities within the United States after the date of the  
2 enactment of this Act unless—

3 (1) a registration statement has been filed by  
4 the company with the Secretary of the Treasury in-  
5 dicating the organization’s intention to engage in in-  
6 surance activities within the United States; and

7 (2) applicable State insurance requirements  
8 have been satisfied.

9 (b) ANNUAL REPORT.—The Secretary of the Treas-  
10 ury shall submit an annual report to the Congress on the  
11 level of alien insurance organization activity within the  
12 United States.

13 **SEC. 4. CONFORMING AMENDMENT.**

14 (a) REPORT ON DENIAL OF NATIONAL TREATMENT  
15 FOR INSURANCE ORGANIZATIONS.—Section 3602(3) of  
16 the Omnibus Trade and Competitiveness Act of 1988 (22  
17 U.S.C. 5352(3)) is amended by inserting “, insurance or-  
18 ganizations,” after “banking organizations”.

19 (b) REPORTS ON FOREIGN TREATMENT OF UNITED  
20 STATES FINANCIAL INSTITUTIONS.—Section 3602 of the  
21 Omnibus Trade and Competitiveness Act of 1988 (22  
22 U.S.C. 5352) is amended—

23 (1) in the 1st sentence, by inserting “with up-  
24 dates on significant developments every 2 years fol-

1       lowing the study conducted in 1994,” before “the  
2       Secretary of the Treasury”; and

3               (2) by adding at the end the following: “For  
4       purposes of this section, a foreign country denies na-  
5       tional treatment to United States entities unless the  
6       foreign country offers such entities the same com-  
7       petitive opportunities (including effective market ac-  
8       cess) as are available to the domestic entities of the  
9       foreign country.”.

10       (c) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FI-  
11       NANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus  
12       Trade and Competitiveness Act of 1988 (22 U.S.C.  
13       5353(a)(1)) is amended by inserting “effective” before  
14       “access”.

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