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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. 4314

To extend the applicability of the Terrorism Risk Insurance Act of 2002.

IN THE HOUSE OF REPRESENTATIVES

Mr. BAKER (for himself, Mr. OXLEY, Mrs. KELLY, Ms. PRYCE of Ohio, Mr. SESSIONS, Mr. FERGUSON, and Mr. RENZI) introduced the following bill; which was referred to the Committee on

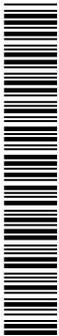
A BILL

To extend the applicability of the Terrorism Risk Insurance Act of 2002.

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 “Terrorism Risk Insur-
5 ance Revision Act of 2005”.



1 **SEC. 2. EXTENSION OF PROGRAM AND PROGRAM CHANGES.**

2 (a) IN GENERAL.—Title I of the Terrorism Risk In-
3 surance Act of 2002 (15 U.S.C. 6701 note) is amended—

4 (1) by striking sections 102 through 106 and
5 inserting the following new sections:

6 **“SEC. 102. DEFINITIONS.**

7 “In this title, the following definitions shall apply:

8 “(1) ACT OF TERRORISM.—

9 “(A) CERTIFICATION.—The term ‘act of
10 terrorism’ means any act that is certified by the
11 Secretary, in concurrence with the Secretary of
12 State, and the Attorney General of the United
13 States—

14 “(i) to be an act of terrorism;

15 “(ii) to be a violent act or an act that
16 is dangerous to—

17 “(I) human life;

18 “(II) property; or

19 “(III) infrastructure;

20 “(iii) to have resulted in damage with-
21 in the United States, or outside of the
22 United States in the case of—

23 “(I) an air carrier or vessel de-
24 scribed in paragraph (5)(B); or

25 “(II) the premises of a United
26 States mission; and



1 “(iv) to have been committed by an
2 individual or individuals as part of an ef-
3 fort to coerce the civilian population of the
4 United States or to influence the policy or
5 affect the conduct of the United States
6 Government by coercion.

7 “(B) LIMITATION.—No act shall be cer-
8 tified by the Secretary as an act of terrorism if
9 the act is committed as part of the course of a
10 war declared by the Congress, except that this
11 clause shall not apply with respect to any cov-
12 erage for workers’ compensation or group life
13 coverage.

14 “(C) DETERMINATIONS FINAL.—Any cer-
15 tification of, or determination not to certify, an
16 act as an act of terrorism under this paragraph
17 shall be final, and shall not be subject to judi-
18 cial review.

19 “(D) NONDELEGATION.—The Secretary
20 may not delegate or designate to any other offi-
21 cer, employee, or person, any determination
22 under this paragraph of whether, during the ef-
23 fective period of the Program, an act of ter-
24 rorism has occurred.



1 “(2) AFFILIATE.—The term ‘affiliate’ means,
2 with respect to an insurer, any insurer that owns, is
3 owned by, or is under common ownership with an-
4 other insurer.

5 “(3) CASUALTY INSURANCE.—The term ‘cas-
6 ualty insurance’ means—

7 “(A) insurance, including excess insurance
8 and surety insurance, against legal liability for
9 losses caused by the death, injury, or disability
10 of any person or for damage to property, with
11 provision for medical, hospital and surgical ben-
12 efits to the injured persons; and

13 “(B) for the purposes of this Act, does not
14 include any type of commercial automobile or
15 workers’ compensation insurance.

16 “(4) COVERED LINE OF INSURANCE.—The term
17 ‘covered line of insurance’ means—

18 “(A) commercial property insurance, com-
19 mercial casualty insurance, workers’ compensa-
20 tion insurance and group life insurance; and

21 “(B) does not include—

22 “(i) Federal crop insurance issued or
23 reinsured under the Federal Crop Insur-
24 ance Act (7 U.S.C. 1501 et seq.), or any



1 other type of crop or livestock insurance
2 that is privately issued or reinsured;

3 “(ii) private mortgage insurance (as
4 that term is defined in section 2 of the
5 Homeowners Protection Act of 1998 (12
6 U.S.C. 4901)) or title insurance;

7 “(iii) financial guaranty insurance
8 issued by monoline financial guaranty in-
9 surance corporations;

10 “(iv) insurance for medical mal-
11 practice;

12 “(v) health or life insurance, except
13 group life insurance;

14 “(vi) flood insurance provided under
15 the National Flood Insurance Act of 1968
16 (42 U.S.C. 4001 et seq.);

17 “(vii) reinsurance or retrocessional re-
18 insurance; or

19 “(viii) commercial automobile insur-
20 ance.

21 “(5) DIRECT EARNED PREMIUM.—The term ‘di-
22 rect earned premium’ means a direct earned pre-
23 mium for commercial property, commercial casualty,
24 workers’ compensation, or group life insurance
25 issued by any insurer for insurance against losses



1 occurring at the locations described in subpara-
2 graphs (A) and (B) of paragraph (10).

3 “(6) EXEMPT COMMERCIAL PURCHASER.—The
4 term ‘exempt commercial purchaser’ means any per-
5 son purchasing commercial insurance that meets the
6 following requirements:

7 “(A) The person employs or retains a
8 qualified risk manager to negotiate insurance
9 coverage.

10 “(B) The person meets at least two of the
11 following criteria:

12 “(i) The person possesses a net worth
13 in excess of \$10,000,000.

14 “(ii) The person generates annual rev-
15 enues in excess of \$25,000,000.

16 “(iii) The person employs more than
17 25 full time or full time equivalent employ-
18 ees per individual insured or is a member
19 of affiliated group employing more than 50
20 employees in the aggregate.

21 “(iv) The person pays annual aggre-
22 gate nationwide insurance premiums in ex-
23 cess of \$10,000 for covered lines of insur-
24 ance.



1 “(v) The person is a not-for-profit or-
2 ganization or public entity generating an-
3 nual budgeted expenditures of at least
4 \$10,000,000.

5 “(vi) The person is a municipality
6 with a population in excess of 30,000 per-
7 sons.

8 “(7) EXEMPT COMMERCIAL PURCHASER CER-
9 TIFICATION.—The term ‘exempt commercial pur-
10 chaser certification’ means a written certification
11 that the insurer offering a policy to an exempt com-
12 mercial purchaser has obtained, at least within the
13 previous 12 months, a certification signed by the
14 qualified risk manager, the chief executive officer, or
15 the chief financial officer of the exempt commercial
16 purchaser, certifying with respect to the insurance to
17 which the requirements of section 103(c)(1) apply to
18 that insurer that—

19 “(A) the purchaser has an employee that
20 meets the definition of a qualified risk manager
21 under this section;

22 “(B) the purchaser meets the definition of
23 an exempt commercial purchaser in accordance
24 with this section;



1 “(C) the purchaser is aware that the policy
2 being considered for purchase contains forms
3 and rates that are not subject to State regu-
4 latory review or approval;

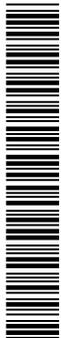
5 “(D) the purchaser has or has retained the
6 necessary expertise to negotiate its own policy
7 language and rates; and

8 “(E) the purchaser agrees to the use of ex-
9 empted rates and forms by its insurer or insur-
10 ers.

11 “(8) GROUP LIFE INSURANCE.—The term
12 ‘group life insurance’ means an insurance contract
13 that provides term life insurance coverage, acci-
14 dental death coverage, or a combination thereof, for
15 a number of individuals under a single contract, on
16 the basis of a group selection of risks, but does not
17 include ‘Corporate Owned Life Insurance’ or ‘Busi-
18 ness Owned Life Insurance,’ each as defined under
19 the Internal Revenue Code of 1986, or any similar
20 product.

21 “(9) HOME STATE.—The term ‘home State’
22 means as follows:

23 “(A) In the case of a policy written for
24 commercial risks that are primarily located in a
25 State, such term means such State.



1 “(B) If subparagraph (A) does not apply,
2 such term means the State where the commer-
3 cial policyholder has its principal place of busi-
4 ness (such as where the policyholder’s head-
5 quarters are located, as determined by the pre-
6 dominant physical location in the United States
7 of the officers and senior management of the
8 policyholder).

9 “(10) INSURED LOSS.—The term ‘insured loss’
10 means any loss resulting from an act of terrorism
11 (including an act of war, in the case of workers’
12 compensation and group life insurance) that is cov-
13 ered by primary or excess property, casualty, work-
14 ers’ compensation, or group life insurance issued by
15 an insurer if such loss—

16 “(A) occurs within the United States; or

17 “(B) occurs to an air carrier (as defined in
18 section 40102 of title 49, United States Code),
19 to a United States flag vessel (or a vessel based
20 principally in the United States, on which
21 United States income tax is paid and whose in-
22 surance coverage is subject to regulation in the
23 United States), regardless of where the loss oc-
24 curs, or at the premises of any United States
25 mission.



1 “(11) INSURER.—The term ‘insurer’ means any
2 entity, including any affiliate thereof—

3 “(A) that is—

4 “(i) licensed or admitted to engage in
5 the business of providing primary or excess
6 insurance in any State;

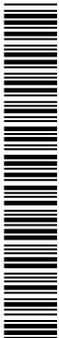
7 “(ii) not licensed or admitted as de-
8 scribed in clause (i), if it is an eligible sur-
9 plus line carrier listed on the Quarterly
10 Listing of Alien Insurers of the NAIC, or
11 any successor thereto;

12 “(iii) approved for the purpose of of-
13 fering a covered line of insurance by a
14 Federal agency in connection with mari-
15 time, energy, or aviation activity;

16 “(iv) a State residual market insur-
17 ance entity or State workers’ compensation
18 fund; or

19 “(v) any other entity described in sec-
20 tion 103(f), to the extent provided in the
21 rules of the Secretary issued under section
22 103(f);

23 “(B) that receives direct earned premiums
24 for any type of covered line of insurance cov-
25 erage, other than in the case of entities de-



1 scribed in subsections (d) and (f) of section
2 103; and

3 “(C) that meets any other criteria that the
4 Secretary may reasonably prescribe.

5 “(12) INSURER DEDUCTIBLE.—The term ‘in-
6 surer deductible’ means—

7 “(A) for the Transition Period, the value
8 of an insurer’s direct earned premiums over the
9 calendar year immediately preceding the date of
10 enactment of this Act, multiplied by 1 percent;

11 “(B) for Program Year 1, the value of an
12 insurer’s direct earned premiums over the cal-
13 endar year immediately preceding Program
14 Year 1, multiplied by 7 percent;

15 “(C) for Program Year 2, the value of an
16 insurer’s direct earned premiums over the cal-
17 endar year immediately preceding Program
18 Year 2, multiplied by 10 percent;

19 “(D) for Program Year 3, the value of an
20 insurer’s direct earned premiums over the cal-
21 endar year immediately preceding Program
22 Year 3, multiplied by 15 percent;

23 “(E) for Program Year 4—

24 “(i) except as provided in clause (ii),
25 the value of an insurer’s direct earned pre-



1 mium for a covered line of insurance over
2 the calendar year immediately preceding
3 Program Year 4, multiplied by—

4 “(I) for workers’ compensation
5 insurance, 17.5 percent;

6 “(II) for group life insurance, 20
7 percent;

8 “(III) for property insurance, 20
9 percent; and

10 “(IV) for casualty insurance, 25
11 percent; and

12 “(ii) with respect to NBCR terrorism
13 coverage, the value of an insurer’s direct
14 earned premium for a covered line of in-
15 surance over the calendar year immediately
16 preceding Program Year 4, multiplied by
17 the following percentages which shall be
18 treated as sub-deductibles that apply in
19 lieu of the deductibles set forth in clause
20 (i) for NBCR terrorism losses—

21 “(I) for workers’ compensation
22 insurance, 7.5 percent;

23 “(II) for group life insurance, 7.5
24 percent;



1 “(III) for property insurance, 7.5
2 percent; and

3 “(IV) for casualty insurance, 7.5
4 percent; and

5 “(iii) if, for any covered line of insur-
6 ance, an insurer incurs insured losses
7 caused by NBCR terrorism, such NBCR
8 insured losses shall be applied against both
9 the deductible set forth in clause (i) and
10 the NBCR terrorism deductible set forth in
11 clause (ii) for that covered line of insur-
12 ance;

13 “(F) for any Additional Program Years—

14 “(i) except as provided in clause (ii),
15 the value of an insurer’s direct earned pre-
16 mium for a covered line of insurance over
17 the calendar year immediately preceding
18 that year, multiplied by the insurer deduct-
19 ible for each covered line of insurance for
20 the preceding calendar year plus an addi-
21 tional percentage, as follows—

22 “(I) for workers’ compensation
23 insurance, 2.5 percent;

24 “(II) for group life insurance, 2.5
25 percent;



1 “(III) for property insurance, 2.5
2 percent; and

3 “(IV) for casualty insurance, 5.0
4 percent; and

5 “(ii) with respect to NBCR terrorism
6 coverage, the value of an insurer’s direct
7 earned premium for a covered line of in-
8 surance over the calendar year immediately
9 preceding that year, multiplied by the
10 NBCR terrorism deductible for the pre-
11 ceding year for that covered line of insur-
12 ance plus the following additional percent-
13 ages, all of which shall be treated as
14 subdeductibles that apply in lieu of the
15 deductibles listed in clause (i) for NBCR
16 terrorism insured losses—

17 “(I) for workers’ compensation
18 insurance, 0.75 percent;

19 “(II) for group life insurance,
20 0.75 percent;

21 “(III) for property insurance,
22 0.75 percent; and

23 “(IV) for casualty insurance,
24 0.75 percent; and



1 “(iii) if, for any covered line of insur-
2 ance, an insurer incurs insured losses
3 caused by NBCR terrorism, such NBCR
4 insured losses shall be applied against both
5 the deductible set forth in clause (i) and
6 the NBCR terrorism deductible set forth in
7 clause (ii) for that covered line of insur-
8 ance;

9 “(G) notwithstanding subparagraphs (A)
10 through (F), for the Transition Period and any
11 other Program Year or other calendar year, if
12 an insurer has not had a full year of operations
13 during the calendar year immediately preceding
14 such Period or year, such portion of the direct
15 earned premiums of the insurer as the Sec-
16 retary determines appropriate, subject to appro-
17 priate methodologies established by the Sec-
18 retary for measuring such direct earned pre-
19 miums; and

20 “(H) if, in any calendar year, aggregate
21 industry insured losses exceed \$1,000,000,000,
22 the insurer deductibles for the next calendar
23 year shall be reduced by 0.1 percent for each
24 \$1,000,000,000 in insured losses that have oc-
25 curred during the preceding calendar year, ex-



1 cept that no insurer deductible shall be reduced
2 below 5 percent.

3 “(13) NAIC.—The term ‘NAIC’ means the Na-
4 tional Association of Insurance Commissioners.

5 “(14) OWNERSHIP.—An insurer ‘owns’ another
6 insurer if the insurer, directly or indirectly or acting
7 through one or more other persons, owns 25 percent
8 or more of any class of voting securities of the other
9 insurer.

10 “(15) NBCR TERRORISM.—The term ‘NBCR
11 terrorism’ means an act of terrorism involving nu-
12 clear, biological, chemical and, or, radiological reac-
13 tions, releases, or contaminations, to the extent any
14 insured losses are caused by any such reactions, re-
15 leases, or contaminations.

16 “(16) PERSON.—The term ‘person’ means any
17 individual, business or nonprofit entity (including
18 those organized in the form of a partnership, limited
19 liability company, corporation, or association), trust
20 or estate, or a State or political subdivision of a
21 State or other governmental unit.

22 “(17) PROGRAM.—The term ‘Program’ means
23 the Terrorism Insurance Program established by
24 this title.

25 “(18) PROGRAM YEARS.—



1 “(A) TRANSITION PERIOD.—The term
2 ‘Transition Period’ means the period beginning
3 on the date of enactment of this Act and ending
4 on December 31, 2002.

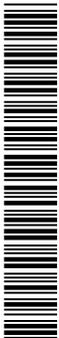
5 “(B) PROGRAM YEAR 1.—The term ‘Pro-
6 gram Year 1’ means the period beginning on
7 January 1, 2003 and ending on December 31,
8 2003.

9 “(C) PROGRAM YEAR 2.—The term ‘Pro-
10 gram Year 2’ means the period beginning on
11 January 1, 2004 and ending on December 31,
12 2004.

13 “(D) PROGRAM YEAR 3.—The term ‘Pro-
14 gram Year 3’ means the period beginning on
15 January 1, 2005 and ending on December 31,
16 2005.

17 “(E) PROGRAM YEAR 4.—The term ‘Pro-
18 gram Year 4’ means the period beginning on
19 January 1, 2006 and ending on December 31,
20 2006.

21 “(F) ADDITIONAL PROGRAM YEARS.—The
22 term ‘Additional Program Year’ means any ad-
23 ditional one-year period after Program Year 4
24 during which the Program is in effect, which



1 period shall begin on January 1 and end on De-
2 cember 31 of the same calendar year.

3 “(19) PROPERTY INSURANCE.—The term ‘prop-
4 erty insurance’ means—

5 “(A) except as provided in subparagraph
6 (B), insurance on real or personal property of
7 every kind, including excess insurance, against
8 loss or damage from any and all hazard or
9 cause and against loss consequential upon such
10 loss or damage, including business interruption
11 insurance, other than non-contractual legal li-
12 ability for such loss or damage; and

13 “(B) does not include any type of commer-
14 cial automobile or workers’ compensation insur-
15 ance.

16 “(20) QUALIFIED RISK MANAGER.—The term
17 ‘qualified risk manager’ means any person who
18 meets all of the following criteria:

19 “(A) The person is an employee of, or
20 third party consultant retained by, the commer-
21 cial policyholder.

22 “(B) The person provides skilled services
23 in loss prevention, loss reduction, or risk and
24 insurance coverage analysis, and purchase of in-
25 surance.



1 “(C) The person possesses at least 1 of the
2 following credentials:

3 “(i) A bachelor’s or higher degree in
4 risk management issued by an accredited
5 college or university.

6 “(ii) A designation as a Chartered
7 Property and Casualty Underwriter (in
8 this subparagraph referred to as ‘CPCU’)
9 issued by the American Institute for
10 CPCU/Insurance Institute of America.

11 “(iii) A designation as an Associate in
12 Risk Management (ARM) issued by Amer-
13 ican Institute for CPCU/Insurance Insti-
14 tute of America.

15 “(iv) A designation as a Certified
16 Risk Manager (CRM) issued by the Na-
17 tional Alliance for Insurance Education &
18 Research.

19 “(v) A designation as a Fellow in Risk
20 Management (FRM) issued by the Global
21 Risk Management Institute/Risk & Insur-
22 ance Management.

23 “(vi) At least 5 years of experience in
24 1 or more of the following areas of com-



1 merchial property insurance and/or commer-
2 cial casualty insurance:

3 “(I) Risk financing.

4 “(II) Claims administration.

5 “(III) Loss prevention.

6 “(IV) Risk and insurance cov-
7 erage analysis.

8 “(21) SECRETARY.—The term ‘Secretary’
9 means the Secretary of the Treasury.

10 “(22) STATE.—The term ‘State’ means any
11 State of the United States, the District of Columbia,
12 the Commonwealth of Puerto Rico, the Common-
13 wealth of the Northern Mariana Islands, American
14 Samoa, Guam, each of the United States Virgin Is-
15 lands, and any territory or possession of the United
16 States.

17 “(23) TRANSPARENT STANDARDS.—The term
18 ‘transparent standards’ means that any disapproval
19 of a rate or form filing for an applicable line of
20 insurance—

21 “(A) is clearly stated in writing;

22 “(B) is based on specific standards that
23 are published in a State statute, rule, or regula-
24 tion (with general ‘public policy’ grounds alone
25 not being considered a specific standard unless



1 based on a good faith comprehensive actuarial
2 analysis by the State of a covered risk); and

3 “(C) if based on an interpretation, is based
4 on an identical or substantially similar interpre-
5 tation by majority of States with interpretations
6 of an identical or substantially similar provision
7 of a statute or regulation, if a substantial num-
8 ber of States has made such interpretation.

9 “(24) UNITED STATES.—The term ‘United
10 States’ means the several States, and includes the
11 territorial sea and the continental shelf of the
12 United States, as those terms are defined in the Vio-
13 lent Crime Control and Law Enforcement Act of
14 1994 (18 U.S.C. 2280, 2281).

15 “(25) WORKERS’ COMPENSATION.—The term
16 ‘workers’ compensation’ means insurance against
17 loss from liability imposed by law upon employers to
18 compensate employees and their dependents for in-
19 jury sustained by the employees arising out of and
20 in the course of the employment, irrespective of neg-
21 ligence or of the fault of either party.

22 “(26) RULE OF CONSTRUCTION FOR DATES.—
23 With respect to any reference to a date in this title,
24 such day shall be construed—



1 “(A) to begin at 12:01 a.m. on that date;

2 and

3 “(B) to end at midnight on that date.

4 **“SEC. 103. TERRORISM INSURANCE PROGRAM.**

5 “(a) ESTABLISHMENT OF PROGRAM.—

6 “(1) IN GENERAL.—There is established in the
7 Department of the Treasury the Terrorism Insur-
8 ance Program.

9 “(2) AUTHORITY OF THE SECRETARY.—Not-
10 withstanding any other provision of State or Federal
11 law, the Secretary shall administer the Program,
12 and shall pay the Federal share of compensation for
13 insured losses in accordance with subsection (e).

14 “(3) MANDATORY PARTICIPATION.—Each entity
15 that meets the definition of an insurer under this
16 title shall participate in the Program.

17 “(b) CONDITIONS FOR FEDERAL PAYMENTS.—No
18 payment may be made by the Secretary under this section
19 with respect to an insured loss that is covered by an in-
20 surer, unless—

21 “(1) the person that suffers the insured loss, or
22 a person acting on behalf of that person, files a
23 claim with the insurer;

24 “(2) the insurer provides clear and conspicuous
25 disclosure to the policyholder of the premium



1 charged for insured losses covered by the program
2 and the Federal share of compensation for insured
3 losses under the Program—

4 “(A) in the case of any policy that is
5 issued before the date of enactment of this Act,
6 not later than 90 days after that date of enact-
7 ment;

8 “(B) in the case of any policy that is
9 issued within 90 days of the date of enactment
10 of this Act, at the time of offer, purchase, and
11 renewal of the policy; and

12 “(C) in the case of any policy that is
13 issued more than 90 days after the date of en-
14 actment of this Act, on a separate line item in
15 the policy, at the time of offer, purchase, and
16 renewal of the policy;

17 “(3) the insurer processes the claim for the in-
18 sured loss in accordance with appropriate business
19 practices, and any reasonable procedures that the
20 Secretary may prescribe; and

21 “(4) the insurer submits to the Secretary, in ac-
22 cordance with such reasonable procedures as the
23 Secretary may establish—



1 “(A) a claim for payment of the Federal
2 share of compensation for insured losses under
3 the Program;

4 “(B) written certification—

5 “(i) of the underlying claim; and

6 “(ii) of all payments made for insured
7 losses; and

8 “(C) certification of its compliance with
9 the provisions of this subsection.

10 “(c) MANDATORY AVAILABILITY.—Each entity that
11 meets the definition of an insurer under section 102—

12 “(1) shall make available, in all of its covered
13 lines of insurance policies, coverage for insured
14 losses that does not differ materially from the terms,
15 amounts, and other coverage limitations applicable
16 to losses arising from events other than acts of ter-
17 rorism; and

18 “(2) shall make available, in any of its covered
19 lines of insurance policies that exclude coverage for
20 losses resulting from NBCR terrorism, coverage for
21 losses resulting from NBCR terrorism that may dif-
22 fer materially from the terms, amounts, and other
23 coverage limitations applicable to losses arising from
24 events other than NBCR terrorism.



1 “(d) STATE RESIDUAL MARKET INSURANCE ENTI-
2 TIES.—

3 “(1) IN GENERAL.—The Secretary shall issue
4 regulations, as soon as practicable after the date of
5 enactment of this Act, that apply the provisions of
6 this title to State residual market insurance entities
7 and State workers’ compensation funds.

8 “(2) TREATMENT OF CERTAIN ENTITIES.—For
9 purposes of the regulations issued pursuant to para-
10 graph (1)—

11 “(A) a State residual market insurance en-
12 tity that does not share its profits and losses
13 with private sector insurers shall be treated as
14 a separate insurer; and

15 “(B) a State residual market insurance en-
16 tity that shares its profits and losses with pri-
17 vate sector insurers shall not be treated as a
18 separate insurer, and shall report to each pri-
19 vate sector insurance participant its share of
20 the insured losses of the entity, which shall be
21 included in each private sector insurer’s insured
22 losses.

23 “(3) TREATMENT OF PARTICIPATION IN CER-
24 TAIN ENTITIES.—Any insurer that participates in
25 sharing profits and losses of a State residual market



1 insurance entity shall include in its calculations of
2 premiums any premiums distributed to the insurer
3 by the State residual market insurance entity.

4 “(e) INSURED LOSS SHARED COMPENSATION.—

5 “(1) FEDERAL SHARE.—

6 “(A) IN GENERAL.—Subject to subpara-
7 graphs (B) and (C), the Federal share of com-
8 pensation under the Program to be paid by the
9 Secretary for insured losses of an insurer dur-
10 ing each Program Year shall be equal to that
11 portion of the amount of such insured losses for
12 each covered line of insurance that exceeds the
13 applicable insurer deductible required to be paid
14 during such Program Year, multiplied by a per-
15 centage based on aggregate industry insured
16 losses for a Program Year, which shall be as
17 follows:

18 “(i) 80 percent of the aggregate in-
19 dustry insured losses of less than
20 \$10,000,000,000;

21 “(ii) 85 percent of the aggregate in-
22 dustry insured losses between
23 \$10,000,000,000 and \$20,000,000,000;

24 “(iii) 90 percent of the aggregate in-
25 dustry insured losses between



1 \$20,000,000,000 and \$40,000,000,000;

2 and

3 “ (iv) 95 percent of the aggregate in-
4 dustry insured losses above industry losses
5 above \$40,000,000,000;

6 and shall be prorated by insurer based on each
7 insurer’s percentage of the aggregate industry
8 insured losses for that Program Year.

9 “(B) PROGRAM TRIGGER.—No compensa-
10 tion shall be paid by the Secretary under sub-
11 section (a) unless the aggregate industry in-
12 sured losses exceed—

13 “(i) \$50,000,000, with respect to in-
14 sured losses occurring in Program Year 4;

15 “(ii) \$100,000,000, with respect to in-
16 sured losses occurring in the Additional
17 Program Year beginning on January 1,
18 2007;

19 “(iii) an additional cumulative
20 \$100,000,000, with respect to each succes-
21 sive Additional Program Year that cov-
22 erage is provided under this program;

23 except that the applicable Program Trigger
24 amount shall be reduced by \$10,000,000 for
25 each \$1,000,000,000 in insured losses occurring



1 in any preceding year, provided that the Pro-
2 gram Trigger shall not be reduced below
3 \$50,000,000 for any year.

4 “(C) PROHIBITION ON DUPLICATIVE COM-
5 PENSATION.—The Federal share of compensa-
6 tion for insured losses under the Program shall
7 be reduced by the amount of compensation pro-
8 vided by the Federal Government to any person
9 under any other Federal program for those in-
10 sured losses.

11 “(2) TRIA CAPITAL RESERVE FUNDS.—

12 “(A) ESTABLISHMENT.—Any insurer may
13 establish a TRIA Capital Reserve Fund (in this
14 section referred to as a ‘CRF’) in which it may
15 hold funds in a fiduciary capacity on behalf of
16 the Secretary.

17 “(B) FUNDING.—An insurer may fund a
18 CRF by making an election, in advance, to
19 treat some or all of the premiums it has dis-
20 closed pursuant to section 103(b)(2) as TRIA
21 program fee charges imposed by the Secretary.
22 Any such premiums for which such an election
23 has been made must be maintained in seg-
24 regated accounts in a fiduciary capacity on be-
25 half of the Secretary. Such funds may be in-



1 vested in any otherwise legally permissible man-
2 ner but all interest, dividends, and capital accu-
3 mulations also shall be retained in such seg-
4 regated accounts on behalf of the Secretary.

5 “(C) USE.—Funds from a CRF shall be
6 collected and used by the Secretary to offset, in
7 whole or in part, the Federal share of com-
8 pensation provided to all insurers under the
9 Program as provided for in paragraph (1), ex-
10 cept that an insurer may first use the funds in
11 a CRF of that insurer to satisfy any one or
12 more of the following:

13 “(i) The applicable insurer deductibles
14 for the insurer.

15 “(ii) The portion of the insurer’s
16 losses that exceed the insurer deductible
17 but are not compensated by the Federal
18 share pursuant to paragraph (1).

19 “(iii) The insurer’s obligations to pay
20 for insured losses if the program trigger
21 established in paragraph (1)(B) is not sat-
22 isfied.

23 “(iv) Any risk sharing obligations the
24 insurer may have under any agreements



1 made pursuant to or in accordance with
2 paragraph (3).

3 “(D) TERMINATION.—

4 “(i) TERMINATION OF PROGRAM.—

5 Upon termination of the Program under
6 section 108(a), and subject to the Sec-
7 retary’s continuing authority under section
8 108(b) to adjust claims in satisfaction of
9 the Federal share of compensation under
10 the Program as provided in paragraph (1)
11 of this subsection, 10 percent of each in-
12 surer’s CRF funds shall be remitted to the
13 Secretary and the remainder shall be re-
14 mitted to the insurer. The Secretary shall
15 determine the manner in which the remit-
16 tance of such income to the insurer shall
17 be made.

18 “(ii) ELIMINATION OF FEDERAL
19 SHARE OF COMPENSATION.—If the Pro-
20 gram remains in effect but the Federal
21 share of compensation for insured losses
22 under the Program is eliminated from the
23 Program, the CRF funds shall be retained
24 and used for the purposes set forth in sub-
25 paragraph (C) of this paragraph. At such



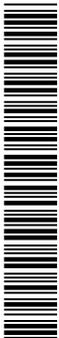
1 time as an insurer's liability for insured
2 losses under the Program terminates, as a
3 consequence of the insurer's termination of
4 its business or otherwise, the insurer shall
5 remit any remaining CRF funds to the
6 Secretary.

7 “(3) RISK-SHARING MECHANISMS.—

8 “(A) FINDING; RULE OF CONSTRU-
9 TION.—Congress finds that it is desirable to en-
10 courage the growth of nongovernmental, private
11 market reinsurance capacity for protection
12 against losses arising from acts of terrorism.
13 Therefore, nothing in this title shall prohibit in-
14 surers from developing risk-sharing mechanisms
15 (including mutual reinsurance facilities and
16 agreements) to voluntarily reinsure terrorism
17 losses between and among themselves that are
18 not subject to reimbursement under this section
19 103.

20 “(B) ESTABLISHMENT OF ADVISORY COM-
21 MITTEE.—The Secretary shall appoint an Advi-
22 sory Committee to—

23 “(i) encourage the creation and devel-
24 opment of such mechanisms;



1 “(ii) assist the Secretary and be avail-
2 able to administer such mechanisms; and

3 “(iii) develop articles of incorporation,
4 bylaws, and a plan of operation for any
5 long-term reinsurance facility authorized or
6 created in the future.

7 “(C) MEMBERSHIP.—The Advisory Com-
8 mittee shall be composed of nine members who
9 are directors, officers, or other employees of in-
10 surers that are participating or that desire to
11 participate in such mechanisms, and who are
12 representative of the affected sectors of the in-
13 surance industry. In making these appoint-
14 ments, the Secretary shall solicit major trade
15 associations of the insurance industry to nomi-
16 nate lists of qualified individuals representative
17 of the commercial property insurance, commer-
18 cial casualty insurance, group life insurance,
19 and reinsurance industries.

20 “(4) CAP ON ANNUAL LIABILITY.—

21 “(A) IN GENERAL.—Notwithstanding para-
22 graph (1) or any other provision of Federal or
23 State law, if the aggregate insured losses exceed
24 \$100,000,000,000 during any Program Year



1 (until such time as the Congress may act other-
2 wise with respect to such losses)—

3 “(i) the Secretary shall not make any
4 payment under this title for any portion of
5 the amount of such losses that exceeds
6 \$100,000,000,000; and

7 “(ii) no insurer that has met its in-
8 surer deductible shall be liable for the pay-
9 ment of any portion of that amount that
10 exceeds \$100,000,000,000.

11 “(B) INSURER SHARE.—For purposes of
12 subparagraph (A), the Secretary shall deter-
13 mine the pro rata share of insured losses to be
14 paid by each insurer that incurs insured losses
15 under the Program.

16 “(5) NOTICE TO CONGRESS.—The Secretary
17 shall notify the Congress if estimated or actual ag-
18 gregate insured losses exceed \$100,000,000,000 dur-
19 ing during any Program Year and the Congress
20 shall determine the procedures for and the source of
21 any payments for such excess insured losses.

22 “(6) FINAL NETTING.—The Secretary shall
23 have sole discretion to determine the time at which
24 claims relating to any insured loss or act of ter-
25 rorism shall become final.



1 “(7) DETERMINATIONS FINAL.—Any deter-
2 mination of the Secretary under this subsection shall
3 be final, unless expressly provided, and shall not be
4 subject to judicial review.

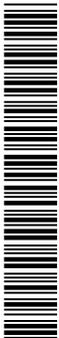
5 “(8) FULL RECOUPMENT OF FEDERAL
6 SHARE.—The Secretary shall collect, for repayment
7 of the Federal financial assistance provided in con-
8 nection with all acts of terrorism (or acts of war, in
9 the case of workers’ compensation and group life in-
10 surance), terrorism loss risk-spreading premiums in
11 an amount equal to the total amount paid by the
12 Secretary in accordance with this section.

13 “(9) POLICY SURCHARGE FOR TERRORISM LOSS
14 RISK-SPREADING PREMIUMS.—

15 “(A) POLICYHOLDER PREMIUM.—Any
16 amount established by the Secretary as a ter-
17 rorism loss risk-spreading premium shall—

18 “(i) be imposed as a policyholder pre-
19 mium surcharge on all covered lines of in-
20 surance policies in force after the date of
21 such establishment;

22 “(ii) begin with such period of cov-
23 erage during the year as the Secretary de-
24 termines appropriate; and



1 “(iii) be based on a percentage of the
2 premium amount charged for covered lines
3 of insurance coverage under the policy.

4 “(B) COLLECTION.—The Secretary shall
5 provide for insurers to collect terrorism loss
6 risk-spreading premiums and remit such
7 amounts collected to the Secretary.

8 “(C) PERCENTAGE LIMITATION.—A ter-
9 rorism loss risk-spreading premium may not ex-
10 ceed, on an annual basis, the amount equal to
11 3 percent of the premium charged for covered
12 lines of insurance coverage under the policy.

13 “(D) ADJUSTMENT FOR URBAN AND
14 SMALLER COMMERCIAL AND RURAL AREAS AND
15 DIFFERENT LINES OF INSURANCE.—

16 “(i) ADJUSTMENTS.—In determining
17 the method and manner of imposing ter-
18 rorism loss risk-spreading premiums, in-
19 cluding the amount of such premiums, the
20 Secretary shall take into consideration—

21 “(I) the economic impact on com-
22 mercial centers of urban areas, includ-
23 ing the effect on commercial rents and
24 commercial insurance premiums, par-
25 ticularly rents and premiums charged



1 to small businesses, and the avail-
2 ability of lease space and commercial
3 insurance within urban areas;

4 “(II) the risk factors related to
5 rural areas and smaller commercial
6 centers, including the potential expo-
7 sure to loss and the likely magnitude
8 of such loss, as well as any resulting
9 cross-subsidization that might result;
10 and

11 “(III) the various exposures to
12 terrorism risk for different lines of in-
13 surance.

14 “(ii) RECOUPMENT OF ADJUST-
15 MENTS.—Any recoupment amounts not
16 collected by the Secretary because of ad-
17 justments under this subparagraph shall
18 be recouped through additional terrorism
19 loss risk-spreading premiums.

20 “(E) TIMING OF PREMIUMS.—The Sec-
21 retary may adjust the timing of terrorism loss
22 risk-spreading premiums to provide for equiva-
23 lent application of the provisions of this title to
24 policies that are not based on a calendar year,



1 or to apply such provisions on a daily, monthly,
2 or quarterly basis, as appropriate.

3 “(F) REPLENISHMENT OF TRIA CAPITAL
4 RESERVE FUNDS.—After any funds expended
5 directly from the United States Treasury are
6 fully repaid, the balance of the amounts col-
7 lected under this paragraph shall be used to
8 fully replenish all insurer CRFs used by the
9 Secretary in accordance with the provisions of
10 paragraph (2)(C) that were not used by the in-
11 surer to satisfy its obligations in accordance
12 with clauses (i) through (iv) of paragraph
13 (2)(C).

14 “(f) CAPTIVE INSURERS AND OTHER SELF-INSUR-
15 ANCE ARRANGEMENTS.—The Secretary may, in consulta-
16 tion with the NAIC or the appropriate State regulatory
17 authority, apply the provisions of this title, as appropriate,
18 to other classes or types of captive insurers and other self-
19 insurance arrangements by municipalities and other enti-
20 ties (such as workers’ compensation self-insurance pro-
21 grams and State workers’ compensation reinsurance
22 pools), but only if such application is determined before
23 the occurrence of an act of terrorism in which such an
24 entity incurs an insured loss and all of the provisions of
25 this title are applied comparably to such entities.



1 “(g) REINSURANCE TO COVER EXPOSURE.—

2 “(1) OBTAINING COVERAGE.—This title may
3 not be construed to limit or prevent insurers from
4 obtaining reinsurance coverage for insurer
5 deductibles or insured losses retained by insurers
6 pursuant to this section, nor shall the obtaining of
7 such coverage affect the calculation of such
8 deductibles or retentions.

9 “(2) LIMITATION ON FINANCIAL ASSISTANCE.—

10 The amount of financial assistance provided pursu-
11 ant to this section, including amounts from a CRF
12 used pursuant to subsection (e)(2)(C), shall not be
13 reduced by reinsurance paid or payable to an insurer
14 from other sources, except that recoveries from such
15 other sources, taken together with financial assist-
16 ance for the Transition Period or a Program Year
17 provided pursuant to this section, may not exceed
18 the aggregate amount of the insurer’s insured losses
19 for such period. If such recoveries and financial as-
20 sistance for the Transition Period or a Program
21 Year exceed such aggregate amount of insured losses
22 for that period and there is no agreement between
23 the insurer and any reinsurer to the contrary, an
24 amount in excess of such aggregate insured losses
25 shall be returned to the Secretary.



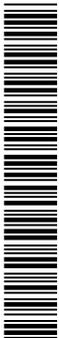
1 “(h) PERSONAL LINES STUDY.—

2 “(1) IN GENERAL.—The Comptroller General of
3 the United States, after consultation with the NAIC,
4 representatives of the insurance industry, and other
5 experts in the insurance field, including a cross-sec-
6 tion of insurers, independent insurance agents and
7 brokers, and policyholders, shall conduct a study
8 concerning the exposure of personal lines (including
9 homeowners insurance) to terrorism risk, the cov-
10 erage currently available, and potential policy re-
11 sponses.

12 “(2) REPORT.—Not later than September 1,
13 2006, the Comptroller General shall submit a report
14 to the Congress on the results of the study con-
15 ducted under subparagraph (1), together with spe-
16 cific policy recommendations.

17 “(i) STUDY OF RISKS STEMMING FROM NUCLEAR,
18 BIOLOGICAL, CHEMICAL AND RADIOLOGICAL EVENTS.—

19 “(1) IN GENERAL.—The Comptroller General of
20 the United States, after consultation with the NAIC,
21 representatives of the insurance industry, including
22 a cross-section of insurers, independent insurance
23 agents and brokers, and policyholders, and other ex-
24 perts in the insurance field, shall conduct a study
25 concerning the risk of potential terrorist acts stem-



1 ming from the use of nuclear, biological, chemical,
2 and radiological weapons.

3 “(2) REPORT.—Not later than September 1,
4 2006, the Comptroller General shall submit a report
5 to the Congress on the results of the study con-
6 ducted under paragraph (1), together with specific
7 policy recommendations.

8 “(j) STUDY OF NEED FOR FEDERAL NATURAL DIS-
9 ASTER CATASTROPHE PROGRAM.—

10 “(1) IN GENERAL.—The Comptroller General of
11 the United States, after consultation with the NAIC,
12 representatives of the insurance industry, including
13 a cross-section of insurers, independent insurance
14 agents and brokers, and policyholders, and other ex-
15 perts in the insurance field, shall conduct a study
16 concerning the need for a Federal program that pro-
17 vides for a system of shared public and private com-
18 pensation for insured losses resulting from natural
19 disaster.

20 “(2) REPORT.—Not later than September 1,
21 2006, the Comptroller General shall submit a report
22 to the Congress on the results of the study con-
23 ducted under paragraph (1), together with specific
24 policy recommendations.



1 **“SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF**
2 **CLAIMS.**

3 “(a) GENERAL AUTHORITY.—The Secretary shall
4 have the powers and authorities necessary to carry out the
5 program, including authority—

6 “(1) to investigate and audit all claims under
7 the Program; and

8 “(2) to prescribe regulations and procedures to
9 effectively administer and implement the Program,
10 and to ensure that all insurers and self-insured enti-
11 ties that participate in the Program are treated com-
12 parably under the Program.

13 “(b) INTERIM RULES AND PROCEDURES.—The Sec-
14 retary may issue interim final rules or procedures speci-
15 fying the manner in which—

16 “(1) insurers may file and certify claims under
17 the Program;

18 “(2) the Federal share of compensation for in-
19 sured losses will be paid under the Program, includ-
20 ing payments based on estimates of or actual in-
21 sured losses;

22 “(3) the Secretary may, at any time, seek re-
23 payment from or reimburse any insurer, based on
24 estimates of insured losses under the Program, to ef-
25 fectuate the insured loss sharing provisions in sec-
26 tion 103; and



1 “(4) the Secretary will determine any final net-
2 ting of payments under the Program, including pay-
3 ments owed to the Federal Government from any in-
4 surer and any Federal share of compensation for in-
5 sured losses owed to any insurer, to effectuate the
6 insured loss sharing provisions in section 103.

7 “(c) CONSULTATION.—The Secretary shall consult
8 with the NAIC, as the Secretary determines appropriate,
9 concerning the Program.

10 “(d) CONTRACTS FOR SERVICES.—The Secretary
11 may employ persons or contract for services as may be
12 necessary to implement the Program.

13 “(e) CIVIL PENALTIES.—

14 “(1) IN GENERAL.—The Secretary may assess
15 a civil monetary penalty in an amount not exceeding
16 the amount under paragraph (2) against any insurer
17 that the Secretary determines, on the record after
18 opportunity for a hearing——

19 “(A) has failed to charge, collect, or remit
20 terrorism loss risk-spreading premiums under
21 section 103(e) in accordance with the require-
22 ments of, or regulations issued under, this title;

23 “(B) has intentionally provided to the Sec-
24 retary erroneous information regarding pre-
25 mium or loss amounts;



1 “(C) submits to the Secretary fraudulent
2 claims under the Program for insured losses;

3 “(D) has failed to provide the disclosures
4 required under subsection (f); or

5 “(E) has otherwise failed to comply with
6 the provisions of, or the regulations issued
7 under, this title.

8 “(2) AMOUNT.—The amount under this para-
9 graph is the greater of \$1,000,000 and, in the case
10 of any failure to pay, charge, collect, or remit
11 amounts in accordance with this title or the regula-
12 tions issued under this title, such amount in dispute.

13 “(3) RECOVERY OF AMOUNT IN DISPUTE.—A
14 penalty under this subsection for any failure to pay,
15 charge, collect, or remit amounts in accordance with
16 this title or the regulations under this title shall be
17 in addition to any such amounts recovered by the
18 Secretary.

19 “(f) SUBMISSION OF PREMIUM INFORMATION.—

20 “(1) IN GENERAL.—The Secretary shall annu-
21 ally compile information on the terrorism risk insur-
22 ance premium rates of insurers for the preceding
23 year.

24 “(2) ACCESS TO INFORMATION.—To the extent
25 that such information is not otherwise available to



1 the Secretary, the Secretary may require each in-
2 surer to submit to the NAIC terrorism risk insur-
3 ance premium rates, as necessary to carry out para-
4 graph (1), and the NAIC shall make such informa-
5 tion available to the Secretary.

6 “(3) AVAILABILITY TO CONGRESS.—The Sec-
7 retary shall make information compiled under this
8 subsection available to the Congress, upon request.

9 “(g) FUNDING.—

10 “(1) FEDERAL PAYMENTS.—There are hereby
11 appropriated, out of funds in the Treasury not oth-
12 erwise appropriated, such sums as may be necessary
13 to pay the Federal share of compensation for in-
14 sured losses under the Program to the extent such
15 Federal share exceeds funds collected by the Sec-
16 retary pursuant to section 103(e)(2).

17 “(2) ADMINISTRATIVE EXPENSES.—There are
18 hereby appropriated, out of funds in the Treasury
19 not otherwise appropriated, such sums as may be
20 necessary to pay reasonable costs of administering
21 the Program.



1 **“SEC. 105. ESTABLISHMENT OF COMMISSION ON TER-**
2 **RORISM RISK INSURANCE.**

3 “(a) IN GENERAL.—There is hereby established the
4 Commission on Terrorism Risk Insurance (in this section
5 referred to as the ‘Commission’).

6 “(b) MEMBERSHIP.—

7 “(1) The Commission shall consist of nine
8 members, as follows:

9 “(A) The Secretary of the Treasury or his
10 designee.

11 “(B) One State insurance commissioner
12 designated by the members of the NAIC.

13 “(C) Seven members appointed by the
14 President, who shall be—

15 “(i) a representative of group life in-
16 surers;

17 “(ii) a representative of property and
18 casualty insurers with direct written pre-
19 mium of \$1,000,000,000 or less;

20 “(iii) a representative of property and
21 casualty insurers with direct written pre-
22 mium of more than \$1,000,000,000;

23 “(iv) a representative of multiline in-
24 surers;

25 “(v) a representative of independent
26 insurance agents;



1 “(vi) a representative of insurance
2 brokers; and

3 “(vii) a policyholder representative.

4 “(2) SECRETARY.—The Program Director of
5 the Terrorism Risk Insurance Act shall serve as Sec-
6 retary of the Commission. The Secretary of the
7 Commission shall determine the manner in which
8 the Commission shall operate, including funding and
9 staffing.

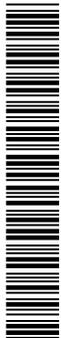
10 “(c) DUTIES.—

11 “(1) IN GENERAL.—The Commission shall iden-
12 tify and make recommendations regarding—

13 “(A) possible actions to encourage, facili-
14 tate, and sustain provision by the private insur-
15 ance industry in the United States of coverage
16 for losses due to an act or acts of terrorism;

17 “(B) possible actions or mechanisms to
18 sustain or supplement the ability of the insur-
19 ance industry in the United States to cover
20 losses resulting from acts of terrorism in the
21 event that—

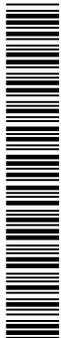
22 “(i) such losses jeopardize the capital
23 and surplus of the insurance industry in
24 the United States as a whole; or



1 “(ii) other consequences from such
2 acts occur, as determined by the Commis-
3 sion, that may significantly affect the abil-
4 ity of the insurance industry in the United
5 States to independently cover such losses;
6 and

7 “(C) significantly reducing the expected
8 Federal role over time in any continuing Fed-
9 eral terrorism risk insurance program.

10 “(2) EVALUATIONS.—In identifying and mak-
11 ing the recommendations required under paragraph
12 (1), the Commission shall specifically evaluate the
13 utility and viability of TRIA Capital Reserve Funds
14 made available under section 103(e)(2), any risk
15 sharing mechanism created or made available under
16 section 103(e)(3), a Federally created or mandated
17 reinsurance facility, empowering such a facility to
18 issue pre-event financing bonds, post-event financing
19 bonds, assessments, single or multiple pooling ar-
20 rangements, and other risk sharing arrangements to
21 accomplish, in whole or in part, the specified objec-
22 tives, taking into consideration the studies and re-
23 ports to the Congress pursuant to subsections (h)
24 and (i) of section 103.



1 “(3) REPORT.—Not later than December 31,
2 2006, the Commission shall submit a report to Con-
3 gress evaluating and making recommendations re-
4 garding whether there is a need for a Federal ter-
5 rorism risk insurance program and, if so, shall make
6 a specific, detailed recommendation for the replace-
7 ment of the Program, including specific, detailed
8 recommendations for the creation of a terrorism re-
9 insurance facility or facilities or single or multiple
10 pooling arrangements, or both.

11 “(d) EFFECT ON EXISTING PROGRAM.—For pur-
12 poses of section 108(a), the Secretary shall make a deter-
13 mination not later than January 31, 2007, of whether the
14 Commission has satisfied its obligations under subsection
15 (c)(3).

16 **“SEC. 106. PRESERVATION PROVISIONS.**

17 “(a) STATE LAW.—Nothing in this title shall affect
18 the jurisdiction or regulatory authority of the insurance
19 commissioner (or any agency or office performing like
20 functions) of any State over any insurer or other person—

21 “(1) except as specifically provided in this title;

22 and

23 “(2) except that—

24 “(A) the definition of the term ‘act of ter-
25 rorism’ in section 102 shall be the exclusive def-



1 initiation of that term for purposes of compensa-
2 tion for insured losses under this title, and shall
3 preempt any provision of State law that is in-
4 consistent with that definition, to the extent
5 that such provision of law would otherwise
6 apply to any type of insurance covered by this
7 title; and

8 “(B) during the period beginning on the
9 date of enactment of this Act and for so long
10 as the Program is in effect, as provided in sec-
11 tion 108, including authority in subsection
12 108(b), books and records of any insurer that
13 are relevant to the Program shall be provided,
14 or caused to be provided, to the Secretary, upon
15 request by the Secretary, notwithstanding any
16 provision of the laws of any State prohibiting or
17 limiting such access; and

18 “(3) except that with respect to coverage re-
19 quired to be made available under section 103(c)—

20 “(A) rates and forms filed with any State
21 shall not be subject to prior approval or a wait-
22 ing period under any law of a State that would
23 otherwise be applicable, except that where a
24 State has prior approval authority, such author-
25 ity shall apply to allow subsequent review to in-



1 validate a rate as in adequate or unfairly dis-
2 criminate, and, with respect to forms, such
3 authority shall apply to allow subsequent review
4 of such forms for compliance with the statutes
5 and regulations of the State, except that such
6 subsequent review must allow sub-limits for cov-
7 erage for acts of terrorism for property insur-
8 ance and casualty insurance and must be based
9 on transparent standards;

10 “(B) no laws or regulations of a State with
11 respect to rate and form approval or dis-
12 approval other than disclosure requirements re-
13 garding exempt commercial purchases and in-
14 formational filing requirements, shall apply to
15 insurance offered by an insurer to an exempt
16 commercial purchaser, so long as the insurer
17 files and retains the exempt commercial pur-
18 chaser certification and any policies issued pur-
19 suant to such certification for at least three
20 years and makes such certification and policies
21 available to such State for review as required by
22 the statutes and regulations of such State;

23 “(C) no laws or regulations of a State,
24 other than the home State, shall apply to a
25 multi-State commercial insurance policy relat-



1 ing to the policy form or the terms of the policy
2 (including any requirement of the State relating
3 to policy form filing, the coverages the policy
4 must afford, the terms of such coverages, policy
5 termination, policy cancellation, policy renewal,
6 premium finance, premium payment, and policy
7 application), except laws and regulations relat-
8 ing to workers' compensation coverage;

9 “(D) no laws or regulations of a State im-
10 posing a diligent search requirement for the
11 placement of a surplus lines policy shall apply
12 in connection with the purchase of such insur-
13 ance by an exempt commercial policyholder; and

14 “(E) no laws or regulations of a State, ex-
15 cept the home State, imposing a diligent search
16 requirement for the placement of a surplus lines
17 policy shall apply with respect to the placement
18 of a multi-State surplus lines commercial insur-
19 ance policy, provided the contract of insurance
20 insures risks in the home State.

21 “(b) STREAMLINED RATE AND FORM FILING.—
22 Within two years of the date of enactment of this Act,
23 the Congress intends that all States, with respect to sub-
24 mission of a commercial property insurance policy or com-



1 merical casualty insurance policy that includes coverage
2 for acts of terrorism—

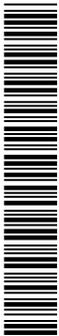
3 “(1) implement and fully utilize the System for
4 Electronic Rate and Form Filing (in this section re-
5 ferred to as ‘SERFF’), developed by the NAIC,
6 without deviation to provide a single point for elec-
7 tronic filing of property insurance and casualty in-
8 surance forms for review;

9 “(2) update SERFF to provide a single coordi-
10 nated checklist for inputting the required informa-
11 tion used by various States for filing reviews and
12 designating to which States the information will be
13 submitted;

14 “(3) allow the option of filing of self-certified
15 commercial property insurance and commercial cas-
16 ualty insurance forms through a substantially na-
17 tionwide coordinated electronic filing system that—

18 “(A) includes a review checklist with uni-
19 form nomenclature clearly establishing what is
20 required under the laws of such State for a
21 compliant filing of such forms;

22 “(B) uses a single input system and trans-
23 mittal document that allows the filer to submit
24 such form for review without required format



1 deviations to any combination of the States par-
2 ticipating in the system;

3 “(C) does not require prior approval for
4 such self-certified form filing;

5 “(D) keeps such filings confidential until
6 they are implemented, deemed implemented, or
7 disapproved; and

8 “(E) only allows disapproval of such filings
9 in writing based on specific standards that are
10 published in statute, rule, or regulation.

11 “(c) STREAMLINED SURPLUS LINES PLACEMENT.—

12 Within two years of the date of enactment of this Act,
13 the Congress intends that all States streamline their sur-
14 plus lines diligent search rules with respect to the place-
15 ment of surplus lines policies in any covered line of insur-
16 ance that includes coverage for acts of terrorism by pro-
17 viding for—

18 “(1) automatic export for exempt commercial
19 purchasers, under which a surplus lines broker seek-
20 ing to obtain, provide, or place insurance in a State
21 for an insured that qualifies as an exempt commer-
22 cial purchaser may procure surplus lines insurance
23 from or place surplus lines insurance with any non-
24 admitted insurer without making a diligent search to
25 determine whether the full amount or type of insur-



1 ance sought by the exempt commercial purchaser
2 can be obtained from admitted insurers in such
3 State.

4 “(2) home State regulation of diligent search
5 requirements, that provides that, except as provided
6 in paragraph (1), only the home State may impose
7 a diligent search requirement for the placement of a
8 multi-State surplus lines commercial insurance pol-
9 icy, provided the contract of insurance insures risks
10 in the Home State.

11 “(d) EXISTING REINSURANCE AGREEMENTS.—Noth-
12 ing in this title shall be construed to alter, amend, or ex-
13 pand the terms of coverage under any reinsurance agree-
14 ment in effect on the date of enactment of this Act. The
15 terms and conditions of such an agreement shall be deter-
16 mined by the language of that agreement.”; and

17 (2) in section 108—

18 (A) by striking subsection (a) and insert-
19 ing the following new subsection:

20 “(a) TERMINATION OF PROGRAM.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), the Program shall terminate on December
23 31, 2008.

24 “(2) FAILURE OF COMMISSION TO SUBMIT RE-
25 PORT.—If the Secretary determines pursuant to sec-



1 tion 105(d) that the Commission on Terrorism Risk
2 Insurance established under section 105 has not sat-
3 isfied its obligations under section 105(c)(3), the
4 Program shall terminate on December 31, 2007.”;
5 and

6 (B) in subsection (c)(1), by striking “para-
7 graph (4), (5), (6), (7), or (8) of”.

8 (b) APPLICABILITY.—The amendments made by sub-
9 section (a) shall apply beginning on January 1, 2006. The
10 provisions of the Terrorism Risk Insurance Act of 2002,
11 as in effect on the day before the date of the enactment
12 of this Act, shall apply through the end of December 31,
13 2005.

