

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 2609
OFFERED BY MR. MOORE OF KANSAS**

Page 2, strike line 1 and insert the following:

1 “(b) LEADERSHIP AND EMPLOYEES.—

2 “(1) LEADERSHIP.—The Office shall be headed
3 by a”.

Page 2, after line 4, insert the following:

4 “(2) COMPENSATION.—The Director shall re-
5 ceive compensation at the rate prescribed under sec-
6 tion 5314 of title 5, United States Code, for posi-
7 tions at level III of the Executive Schedule.

8 “(3) EMPLOYEES.—

9 “(A) NUMBER AND COMPENSATION.—The
10 Director shall fix number of employees of the
11 Office, the compensation of such employees, as
12 necessary to carry out the provisions of this
13 section without regard to chapter 51 or sub-
14 chapter III of chapter 53 of title 5, United
15 States Code.

16 “(B) ADDITIONAL COMPENSATION AND
17 BENEFITS.—Notwithstanding subparagraph

1 (A), the Director may provide additional com-
2 pensation and benefits if the same type of com-
3 pensation or benefits are then being provided by
4 any Federal banking agency or, if not then
5 being provided, could be provided by any such
6 agency under applicable provisions of law or
7 regulation. In setting and adjusting the total
8 amount of compensation and benefits for em-
9 ployees of the Office, the Director shall consult,
10 and seek to maintain comparability with, the
11 Federal banking agencies.”.

Page 3, after line 15, insert the following new sub-
paragraph (and redesignate the succeeding subparagraph
accordingly):

12 “(G) With respect to the business of rein-
13 surance—

14 “(i) to license entities to transact the
15 business of reinsurance as a national rein-
16 surer pursuant to subsection (h)(1);

17 “(ii) to revoke, suspend, or restrict a
18 Federal license pursuant to subsection
19 (h)(1)(B);

20 “(iii) to coordinate Federal efforts
21 and establish Federal policy on inter-
22 national matters related to reinsurance, in-

1 cluding, without limitation, working with
2 international regulatory and standard-set-
3 ting bodies;

4 “(iv) to enter into supervisory ar-
5 rangements with qualified supervisory au-
6 thorities of non-United States jurisdictions
7 for the purposes authorized under sub-
8 section (h);

9 “(v) to establish and enforce appro-
10 priate standards and requirements gov-
11 erning national reinsurers consistent with
12 the criteria in subsection (h)(5);

13 “(vi) to determine that any State law,
14 regulation, or action is preempted as being
15 contrary to or inconsistent with the pur-
16 poses of subsection (h) and this subpara-
17 graph;

18 “(vii) to assess and collect reasonable
19 fees from authorized foreign reinsurers for
20 the reimbursement of costs incurred by the
21 Director related to supervisory arrange-
22 ments: and

23 “(viii) to assess and collect reasonable
24 fees from national reinsurers for the reim-
25 bursement of costs incurred by the Direc-

1 tor for the licensing and examination of
2 national reinsurers.”.

Page 10, after line 16, insert the following new subsection (and redesignate the succeeding subsections and any references to such subsections, accordingly):

3 “(h) AUTHORITY WITH RESPECT TO REINSUR-
4 ANCE.—

5 “(1) LICENSING OF NATIONAL INSURERS.—

6 “(A) LICENSING.—

7 “(i) ELIGIBILITY.—An entity shall be
8 eligible to apply for a Federal license
9 under this subsection to transact the busi-
10 ness of reinsurance this upon demonstra-
11 tion to the Director that the entity meets
12 the definition of reinsurer under this sec-
13 tion and all other criteria established by
14 the Director.

15 “(ii) NON-UNITED STATES ENTI-
16 TIES.—A non-United States entity may ob-
17 tain a Federal license through the estab-
18 lishment of a United States branch which
19 meets the eligibility requirements under
20 clause (i) and such regulations as the Di-
21 rector may prescribe.

1 “(iii) ISSUANCE OF LICENSE.—If the
2 Director determines that the applicant has
3 satisfied the applicable eligibility require-
4 ments, the Director shall issue a Federal
5 license to transact the business of reinsur-
6 ance.

7 “(B) REVOCATION, SUSPENSION, OR RE-
8 STRICTION OF LICENSE.—The Director may re-
9 voke, suspend, or restrict a license issued under
10 this paragraph whenever the Director deter-
11 mines that the national reinsurer is operating
12 in a manner consistent with criteria for such
13 revocation, suspension, and restriction that the
14 Director shall establish.

15 “(C) CONVERSION TO STATE LICENSE.—A
16 national reinsurer may convert to a State-li-
17 censed reinsurer in accordance with applicable
18 State law if—

19 “(i) such national reinsurer notifies
20 the Director of its intention to convert in
21 accordance with such procedures as the Di-
22 rector may prescribe by regulation; and

23 “(ii) after conducting an appropriate
24 review, the Director approves the conver-
25 sion.

1 “(D) DELINQUENCY PROCEEDINGS.—

2 “(i) APPLICABILITY OF BANKRUPTCY
3 CODE.—A delinquency proceeding for the
4 liquidation or reorganization of a United
5 States entity licensed as a national rein-
6 surer shall proceed under the provisions of
7 title 11, United States Code.

8 “(ii) AUTHORITY OF DIRECTOR.—
9 The Director shall have the sole authority
10 to determine the grounds for and com-
11 mence any delinquency proceeding under
12 clause (i) and shall be appointed in such
13 proceeding as the receiver, trustee, or debt-
14 or in possession, as applicable.

15 “(2) SUPERVISORY ARRANGEMENTS.—

16 “(A) IN GENERAL.—The Secretary shall
17 have the authority, after consultation with any
18 other responsible United States authorities, to
19 enter into supervisory arrangements with quali-
20 fied supervisory authorities of non-United
21 States jurisdictions for the purposes authorized
22 by this subsection.

23 “(B) EXCHANGE OF INFORMATION.—The
24 Secretary’s entry into arrangements with quali-
25 fied supervisory authorities of non-United

1 States jurisdictions shall be preceded by an ex-
2 change and evaluation of relevant information
3 regarding the form and nature of regulation in
4 each such jurisdiction and the Secretary's de-
5 termination that such jurisdiction's supervisory
6 authority maintains and applies legal standards
7 and regulatory requirements substantially
8 equivalent to those applied by the Secretary and
9 that the awards of arbitration panels and judg-
10 ments of appropriate United States courts are
11 enforceable and collectable in the jurisdiction,
12 pursuant to treaty, other agreement or oper-
13 ation of that jurisdiction's law.

14 “(C) REQUIREMENTS FOR VALIDITY.—The
15 Secretary may enter into supervisory arrange-
16 ments only in cases in which the Secretary has
17 determined that the requirements of subpara-
18 graph (B) have been satisfied and the arrange-
19 ment explicitly provides for all of the following:

20 “(i) Identification of areas of regula-
21 tion that will be the exclusive responsibility
22 of the respective jurisdictions.

23 “(ii) The reciprocal treatment of rein-
24 surance entities in accordance with each
25 subject jurisdiction's rules and regulations.

1 “(iii) A commitment to exchange rel-
2 evant information on an on-going basis.

3 “(iv) A process for resolving disputed
4 issues.

5 “(v) The application of chapter 15 of
6 title 11, United States Code, to cross-bor-
7 der insolvency cases involving entities from
8 the subject jurisdiction.

9 “(vi) The terms and conditions for
10 terminating the supervisory arrangement.

11 “(D) STATUS OF AUTHORIZED FOREIGN
12 REINSURERS.—An authorized foreign reinsurer
13 shall be authorized to transact the business of
14 reinsurance to the extent authorized by the ap-
15 plicable supervisory arrangement.

16 “(3) PREEMPTION OF STATE LAW.—

17 “(A) INCONSISTENT LAWS.—All laws, reg-
18 ulations, provisions, or other actions of a State
19 contrary to or inconsistent with the purposes of
20 this subsection, except those which may be ap-
21 plicable to corporate taxes generally, are pre-
22 empted to the extent that they apply to national
23 reinsurers or authorized foreign reinsurers, or
24 to their reinsurance agreements.

1 “(B) LAWS WITH DISPARATE TREAT-
2 MENT.—All laws, regulations, provisions, or
3 other actions of a State are preempted to the
4 extent that national reinsurers or authorized
5 foreign reinsurers receive more or less favorable
6 treatment than State licensed insurers or rein-
7 surers pursuant to such laws, regulations, pro-
8 visions, or other actions, solely on the basis of
9 an entity’s status as a national reinsurer or au-
10 thorized foreign reinsurer.

11 “(C) PROHIBITION OF INTERFERENCE.—
12 No State shall interfere, directly or indirectly,
13 with a U.S. insurer or reinsurer—

14 “(i) applying for a license or oper-
15 ating as a national reinsurer; or

16 “(ii) ceding insurance to a national
17 reinsurer or an authorized foreign rein-
18 surer for any purpose under this sub-
19 section.

20 “(D) CREDIT FOR REINSURANCE.—No
21 State shall deny credit, either as an asset or a
22 reduction of liabilities, on account of reinsur-
23 ance ceded to a national reinsurer or an author-
24 ized foreign reinsurer under this subsection.

1 “(E) PROHIBITION OF ENFORCEMENT.—
2 No State shall enforce a State law, regulation,
3 provision, or other action to the extent that it
4 is preempted pursuant to this paragraph.

5 “(F) DETERMINATIONS BY DIRECTOR.—

6 “(i) PREEMPTION.—The Director
7 shall be authorized to determine that any
8 State law, regulation, provision, or action
9 shall be preempted pursuant to this para-
10 graph.

11 “(ii) JUDICIAL REVIEW.—Any State
12 or any other person aggrieved by action of
13 the Director under this paragraph may
14 seek judicial review in the manner specified
15 in chapter 7 of title 5, United States Code.

16 “(4) COOPERATION BETWEEN DIRECTOR AND
17 STATE INSURANCE REGULATORS.—The Director
18 shall consult, as the Director deems appropriate,
19 with the relevant State insurance regulators con-
20 cerning regulatory matters, shall notify all State in-
21 surance regulators of supervisory arrangements en-
22 tered into pursuant to paragraph (2), and shall no-
23 tify the relevant State insurance regulators of a
24 change in the status of, or any administrative action

1 taken by the Director against, a national reinsurer
2 or an authorized foreign reinsurer.

3 “(5) RULES AND REGULATIONS.—

4 “(A) IN GENERAL.—The Director shall
5 adopt regulations implementing the provisions
6 of this subsection. The Director may issue any
7 other rules, regulations, orders and interpreta-
8 tions as the Director determines to be necessary
9 to carry out the purposes of this subsection.

10 “(B) CRITERIA.—The rules and regula-
11 tions prescribed under subparagraph (A) shall
12 give due consideration to—

13 “(i) promoting financially secure rein-
14 surance recoverables and capacity that pro-
15 tects the solvency of United States ceding
16 insurers;

17 “(ii) the need for a competitive and
18 healthy reinsurance market that provides
19 sufficient capacity to meet ceding compa-
20 nies’ risk management needs through open
21 market contracting and pricing practices;

22 “(iii) global capital and risk manage-
23 ment, taking into account capital ade-
24 quacy, assessment of internal controls, rec-

1 ognition of qualified internal capital mod-
2 els, and effective corporate governance;

3 “(iv) financial transparency that en-
4 courages and supports the cedents’ ability
5 to assess counter party credit risk, includ-
6 ing information regarding the national re-
7 insurer’s financial condition and the na-
8 tional reinsurer’s performance in paying
9 covered claims;

10 “(v) access to all necessary financial
11 information with appropriate provision for
12 the confidentiality of that information; and

13 “(vi) harmonization with international
14 standards for the prudential regulation of
15 the business of reinsurance.

16 “(6) IMPLEMENTATION.—

17 “(A) LICENSING.—The Director shall com-
18 mence licensing of national reinsurers and the
19 entry into supervisory arrangements after pro-
20 mulgation of final rules and regulations under
21 this subsection, which shall occur not later than
22 the expiration of the 2-year period beginning on
23 the date of the enactment of this Act.

24 “(B) APPLICABILITY.—The provisions of
25 this subsection shall apply only to reinsurance

1 agreements and supervisory arrangements en-
2 tered into on or after the date of the enactment
3 of this Act.”.

Page 12, after line 15, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

4 “(2) AUTHORIZED FOREIGN REINSURER.—The
5 term ‘authorized foreign reinsurer’ means a rein-
6 surer that is domiciled in and subject to the regula-
7 tion of a non-United States jurisdiction’s supervisory
8 authority that has entered into a supervisory ar-
9 rangement with the Director.”.

Page 13, after line 5, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

10 “(6) NATIONAL REINSURER.—The term ‘na-
11 tional reinsurer’ means an entity to which the Direc-
12 tor has issued a Federal license under subsection
13 (h)(1) to transact the business of reinsurance.”.

Page 13, after line 12, insert the following new paragraphs (and redesignate succeeding paragraphs accordingly):

1 “(9) REINSURANCE.—The term ‘reinsurance’
2 means the assumption by one insuring entity of all
3 or part of the risk under a contract of insurance or
4 reinsurance undertaken by another insuring entity.

5 “(10) REINSURER.—The term ‘reinsurer’
6 means an entity that is, as determined by the Direc-
7 tor, principally engaged in the business of reinsur-
8 ance and not engaged on an ongoing basis in the
9 business of soliciting direct insurance.”.

