

107TH CONGRESS  
1ST SESSION

# S. 1743

To create a temporary reinsurance mechanism to enhance the availability  
of terrorism insurance.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2001

Mr. HOLLINGS (for himself, Mrs. BOXER, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To create a temporary reinsurance mechanism to enhance  
the availability of terrorism insurance.

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 “National Terrorism Reinsurance Fund Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purpose.
- Sec. 4. National terrorism reinsurance program.
- Sec. 5. Fund operations.
- Sec. 6. Coverage provided.
- Sec. 7. Secretary to determine if loss is attributable to terrorism.
- Sec. 8. Mandatory coverage by property and casualty insurers for acts of terrorism.
- Sec. 9. Pass-throughs and other rate increases.

Sec. 10. Credit for reinsurance.  
Sec. 11. Administrative provisions.  
Sec. 12. Inapplicability of certain laws.  
Sec. 13. Sunset provision.  
Sec. 14. Definitions.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The terrorist attacks on the World Trade  
4 Center and Pentagon on September 11, 2001, have  
5 inflicted possibly the largest loss ever incurred by in-  
6 surers and reinsurers.

7 (2) The magnitude of the loss, and its impact  
8 on the current capacity of the reinsurance market,  
9 threaten the ability of the property and casualty in-  
10 surance market to provide coverage to building own-  
11 ers, businesses, and American citizens.

12 (3) It is necessary to create a temporary rein-  
13 surance mechanism to augment the capacity of pri-  
14 vate insurers to provide insurance for terrorism re-  
15 lated risks.

16 **SEC. 3. PURPOSE.**

17 The purpose of this Act is to facilitate the coverage  
18 by property and casualty insurers of the peril for losses  
19 due to acts of terrorism by providing additional reinsur-  
20 ance capacity for loss or damage due to acts of terrorism  
21 occurring within the United States, its territories, and  
22 possessions.

1 **SEC. 4. NATIONAL TERRORISM REINSURANCE PROGRAM.**

2 (a) IN GENERAL.—The Secretary of Commerce shall  
3 establish and administer a program to provide reinsurance  
4 to participating insurers for losses due to acts of ter-  
5 rorism.

6 (b) ADVISORY COMMITTEE; MEMBERSHIP.—There is  
7 established an advisory committee to provide advice and  
8 counsel to the Secretary in carrying out the program of  
9 reinsurance established by the Secretary. The advisory  
10 committee shall consist of 10 members, as follows:

11 (1) 3 representatives of the property and cas-  
12 uality insurance industry, appointed by the Sec-  
13 retary.

14 (2) A representative of property and casualty  
15 insurance agents, appointed by the Secretary.

16 (3) A representative of consumers of property-  
17 casualty insurance, appointed by the Secretary.

18 (4) A representative of a recognized national  
19 credit rating agency, appointed by the Secretary.

20 (5) A representative of the banking or real es-  
21 tate industry, appointed by the Secretary.

22 (6) 2 representatives of the National Associa-  
23 tion of Insurance Commissioners, designated by that  
24 organization.

1           (7) A representative of the Department of the  
2           Treasury, designated by the Secretary of the Treas-  
3           ury.

4           (c) NATIONAL TERRORISM REINSURANCE FUND.—

5           (1) ESTABLISHMENT.—To carry out the rein-  
6           surance program, the Secretary shall establish a Na-  
7           tional Terrorism Reinsurance Fund which shall be  
8           available, without fiscal year limitations—

9                   (A) to make such payments as may, from  
10                  time to time, be required under reinsurance  
11                  contracts under this Act;

12                   (B) to pay such administrative expenses as  
13                  may be necessary or appropriate to carry out  
14                  the purposes of this Act, but such expenses may  
15                  not exceed \$5,000,000 for each of fiscal years  
16                  2002, 2003, and 2004; and

17                   (C) to repay to the Secretary of the Treas-  
18                  ury such sums, including interest thereon, as  
19                  may be borrowed from the Treasury for pur-  
20                  poses of this Act.

21           (2) CREDITS TO FUND.—The Fund shall be  
22           credited with—

23                   (A) reinsurance premiums, fees, and other  
24                  charges which may be paid or collected in con-

1           nection with reinsurance provided under this  
2           Act;

3           (B) interest which may be earned on in-  
4           vestments of the Fund;

5           (C) receipts from any other source which  
6           may, from time to time, be credited to the  
7           Fund; and

8           (D) Funds borrowed by the Secretary from  
9           the Treasury.

10          (3) INVESTMENT IN OBLIGATIONS ISSUED OR  
11          GUARANTEED BY UNITED STATES.—If the Secretary  
12          determines that the moneys of the Fund are in ex-  
13          cess of current needs, he may request the investment  
14          of such amounts as he deems advisable by the Sec-  
15          retary of the Treasury in obligations issued or guar-  
16          anteed by the United States.

17          (4) LOANS TO FUND.—The Secretary of the  
18          Treasury shall grant loans to the Fund in the man-  
19          ner and to the extent provided in this Act.

20          (d) UNDERWRITING STANDARDS.—In order to carry  
21          out the responsibilities of the Secretary under this Act and  
22          protect the Fund, the Secretary shall establish minimum  
23          underwriting standards for participating insurers.

24          (e) MONITORING OF TERRORISM INSURANCE  
25          RATES.—

1           (1) SECRETARY TO ESTABLISH SPECIAL COM-  
2           MITTEE ON RATES.—The Secretary shall establish a  
3           special committee on rates, the size and membership  
4           of which shall be determined by the Secretary, ex-  
5           cept that the committee shall, at a minimum,  
6           include—

7                   (A) representatives of providers of insur-  
8                   ance for losses due to acts of terrorism;

9                   (B) representatives of purchasers of such  
10                  insurance;

11                  (C) at least 2 representatives of NAIC;  
12                  and

13                  (D) at least 2 independent insurance actu-  
14                  aries.

15           (2) DUTIES.—The special committee on rates  
16           shall meet at the call of the Secretary and shall—

17                   (A) review reports filed with the Secretary  
18                   by State insurance regulatory authorities;

19                   (B) collect data on rate disclosure prac-  
20                   tices of participating insurers for insurance for  
21                   covered lines and for losses due to acts of ter-  
22                   rorism; and

23                   (C) provide such advice and counsel to the  
24                   Secretary as the Secretary may require.

1 **SEC. 5. FUND OPERATIONS.**

2 (a) FUNDING BY PREMIUM.—

3 (1) IN GENERAL.—For the year beginning Jan-  
4 uary 1, 2002, and each subsequent year of oper-  
5 ation, participating insurers shall pay into the Fund  
6 an annual reinsurance contract premium of not less  
7 than 3 percent of their respective gross direct writ-  
8 ten premiums for covered lines for the calendar year.  
9 The annual premium shall be paid in installments at  
10 the end of each calendar quarter. The reinsurance  
11 contract premium and any annual assessment may  
12 be recovered by a participating insurer from its cov-  
13 ered lines policyholders as a direct surcharge cal-  
14 culated as a uniform percentage of premium.

15 (2) ADDITIONAL CREDIT RISK PREMIUM.—If  
16 the Secretary determines that a participating insurer  
17 has a credit rating that is lower than the second  
18 from highest credit rating awarded by nationally rec-  
19 ognized credit rating agencies, the Secretary may  
20 charge an additional credit risk premium, of up to  
21 0.5 percent of gross direct written premiums for cov-  
22 ered lines received by that insurer, to compensate  
23 the Fund for credit risk associated with providing  
24 reinsurance to that insurer.

25 (b) INITIAL CAPITAL.—

1           (1) LOAN.—The Fund shall have an initial cap-  
2           ital of \$2,000,000,000, which the Secretary shall  
3           borrow from the Treasury of the United States.  
4           Upon application by the Secretary, the Secretary of  
5           the Treasury shall transfer that amount to the  
6           Fund, out of amounts in the Treasury not otherwise  
7           appropriated, at standard market rates.

8           (2) REPAYMENT OF START-UP LOAN.—The Sec-  
9           retary shall use premiums received from assessments  
10          in calendar year 2002 to repay the loan provided to  
11          the Fund under paragraph (1).

12          (c) SHORTFALL LOANS.—

13          (1) IN GENERAL.—If the Secretary determines  
14          that the balance in the accounts of the Fund is in-  
15          sufficient to cover anticipated claims, administrative  
16          expenses, and maintain adequate reserves for any  
17          other reason, after taking into account premiums as-  
18          sessed under subsection (a) and any other amounts  
19          receivable, the Secretary shall borrow from the  
20          Treasury an amount sufficient to satisfy the obliga-  
21          tions of the Fund and to maintain a positive balance  
22          of \$2,000,000,000 in the accounts of the Fund.  
23          Upon application by the Secretary, the Secretary of  
24          the Treasury shall transfer to the Fund, out of

1 amounts in the Treasury not otherwise appropriated,  
2 the requested amount as an interest-bearing loan.

3 (2) INTEREST RATE.—The rate of interest on  
4 any loan made to the Fund under paragraph (1)  
5 shall be established by the Secretary of the Treasury  
6 and based on the weighted average credit rating of  
7 the Fund before the loss that made the loan nec-  
8 essary.

9 (3) \$50 BILLION LOAN LIMIT.—Notwith-  
10 standing any other provision of this Act, the total  
11 amount of loans outstanding at any time from the  
12 Treasury to the Fund may not exceed the amount  
13 by which \$50,000,000,000 exceeds the Fund's as-  
14 sets.

15 (4) REPAYMENT OF LOANS BY ASSESSMENT.—  
16 Any loan under paragraph (1) shall be repaid from  
17 reserves of the Fund, assessments of participating  
18 insurers, or a combination thereof. If an assessment  
19 is necessary, the maximum annual assessment under  
20 this subsection shall be not more than 3 percent of  
21 the direct written premium for covered lines. The re-  
22 insurance contract premium and any annual assess-  
23 ment may be recovered by a participating insurer  
24 from its covered lines policyholders as a direct sur-

1 charge calculated as a uniform percentage of pre-  
2 mium.

3 **SEC. 6. COVERAGE PROVIDED.**

4 (a) IN GENERAL.—The Fund shall provide reinsur-  
5 ance for losses resulting from acts of terrorism covered  
6 by reinsurance contracts entered into between the Fund  
7 and participating insurers that write covered lines of in-  
8 surance within the meaning of section 14(5)(A) or that  
9 have elected, under section 14(5)(C), to voluntarily include  
10 another line of insurance.

11 (b) RETENTION.—The Fund shall reimburse partici-  
12 pating insurers for losses resulting from acts of terrorism  
13 on direct losses in any calendar year in excess of 10 per-  
14 cent of a participating insurer's average gross direct writ-  
15 ten premiums and policyholders' surplus for covered lines  
16 for the most recently ended calendar year for which data  
17 are available, based on each participating insurer's annual  
18 statement for that calendar year as reported to NAIC.

19 (c) REIMBURSEMENT AMOUNT.—If a participating  
20 insurer demonstrates to the satisfaction of the Secretary  
21 that it has paid claims for losses resulting from acts of  
22 terrorism equal to or in excess of the amount of retention  
23 required by subsection (b), then the Fund shall reimburse  
24 the participating insurer for—

1           (1) 90 percent of its covered losses in calendar  
2           year 2002; and

3           (2) a percentage of its covered losses in cal-  
4           endar years beginning after calendar year 2002  
5           equal to—

6                   (A) 90 percent if the insurer pays an as-  
7                   essment equal to 4 percent of the insurer's av-  
8                   erage gross direct written premiums and policy-  
9                   holders' surplus for the most recently ended cal-  
10                  endar year;

11                   (B) 80 percent if the insurer pays an as-  
12                   essment equal to 3 percent of the insurer's av-  
13                   erage gross direct written premiums and policy-  
14                   holders' surplus for the most recently ended cal-  
15                  endar year; and

16                   (C) 70 percent if the insurer pays an as-  
17                   essment equal to 2 percent of the insurer's av-  
18                   erage gross direct written premiums and policy-  
19                   holders' surplus for the most recently ended cal-  
20                  endar year.

21           (d) \$50,000,000,000 LIMIT.—Except as provided in  
22           subsection (e), the Fund may not reimburse participating  
23           insurers for covered losses in excess of a total Fund reim-  
24           bursement amount for all participating insurers of  
25           \$50,000,000,000.

1 (e) LOSSES EXCEEDING \$50,000,000,000 LIMIT.—If  
2 the Secretary determines that reimbursable losses in a cal-  
3 endar year from an event exceed \$50,000,000,000, the  
4 Secretary—

5 (1) shall pay, out of amounts in the Treasury  
6 not otherwise appropriated—

7 (A) 90 percent of the covered losses occur-  
8 ring in calendar year 2002 in excess, in the ag-  
9 gregate, of \$50,000,000,000 but not in excess  
10 of \$100,000,000; and

11 (B) 80 percent of the covered losses occur-  
12 ring in calendar year 2003 or 2004 in excess,  
13 in the aggregate, of \$50,000,000,000 but not in  
14 excess of \$100,000,000; and

15 (2) shall notify the Congress of that determina-  
16 tion and transmit to the Congress recommendations  
17 for responding to the insufficiency of available  
18 amounts to cover reimbursable losses.

19 (f) REPORTS TO STATE REGULATOR; CERTIFI-  
20 CATION.—

21 (1) REPORTING TERRORISM COVERAGE.—A  
22 participating insurer shall—

23 (A) report the amount of its terrorism in-  
24 surance coverage to the insurance regulatory

1 authority for each State in which it does busi-  
2 ness; and

3 (B) obtain a certification from the State  
4 that it is not providing terrorism insurance cov-  
5 erage in excess of its capacity under State sol-  
6 vency requirements.

7 (2) REPORTS TO SECRETARY.—The State regu-  
8 lator shall furnish a copy of the certification received  
9 under paragraph (1) to the Secretary.

10 **SEC. 7. SECRETARY TO DETERMINE IF LOSS IS ATTRIB-**  
11 **UTABLE TO TERRORISM.**

12 (a) INITIAL DETERMINATION.—If a participating in-  
13 surer files a claim for reimbursement from the Fund, the  
14 Secretary shall make an initial determination as to wheth-  
15 er the losses or expected losses were caused by an act of  
16 terrorism.

17 (b) NOTICE AND HEARING.—The Secretary shall give  
18 public notice of the initial determination and afford all in-  
19 terested parties an opportunity to be heard on the question  
20 of whether the losses or expected losses were caused by  
21 an act of terrorism.

22 (c) FINAL DETERMINATION.—Within 30 days after  
23 the Secretary's initial determination, the Secretary shall  
24 make a final determination as to whether the losses or  
25 expected losses were caused by an act of terrorism.

1 (d) STANDARD OF REVIEW.—The Secretary’s deter-  
2 mination shall be upheld upon judicial review if based  
3 upon substantial evidence.

4 **SEC. 8. MANDATORY COVERAGE BY PROPERTY AND CAS-**  
5 **UALTY INSURERS FOR ACTS OF TERRORISM.**

6 (a) IN GENERAL.—An insurer that provides lines of  
7 coverage described in section 14(5)(A) or 14(5)(B) may  
8 not—

9 (1) exclude or limit coverage in those lines for  
10 losses from acts of terrorism in the United States,  
11 its territories, and possessions in property and cas-  
12 ualty insurance policy forms; or

13 (2) deny or cancel coverage solely due to the  
14 risk of losses from acts of terrorism in the United  
15 States.

16 (b) TERMS AND CONDITIONS.—Insurance against  
17 losses from acts of terrorism in the United States shall  
18 be covered with the same deductibles, limits, terms, and  
19 conditions as the standard provisions of the policy for non-  
20 catastrophic perils.

21 **SEC. 9. PASS-THROUGHS AND OTHER RATE INCREASES.**

22 (a) LIMITATION ON RATE INCREASES FOR COVERED  
23 RISKS.—Except as provided in subsection (b), a partici-  
24 pating insurer that provides lines of coverage described in  
25 section 14(5)(A) or 14(5)(B) may not increase annual

1 rates on covered risks during any period in which the in-  
2 surer participates in the Fund by a percent in excess of  
3 the sum of—

4 (1) the percent used to determine the insurer's  
5 assessment under section 5(a)(1); and

6 (2) if there is an assessment against the insurer  
7 under section 5(c)(4), a percent equivalent to the  
8 percent assessment of the insurer's gross direct writ-  
9 ten premium for covered lines.

10 (b) TERRORISM-RELATED INCREASES IN EXCESS OF  
11 PASS-THROUGHS.—

12 (1) REPORTS BY INSURERS.—Not less than 30  
13 days before the date on which a participating insurer  
14 increases the premium rate for insurance on any  
15 covered line of insurance described in section 14(5)  
16 based, in whole or in part, on risk associated with  
17 insurance against losses due to acts of terrorism, the  
18 insurer shall file a report with the State insurance  
19 regulatory authority for the State in which the pre-  
20 mium increase is effective that—

21 (A) explains the need for the increased  
22 premium; and

23 (B) identifies the portion of the increase  
24 properly attributable to risk associated with in-

1           surance offered by that insurer against losses  
2           due to acts of terrorism; and

3                   (C) demonstrates, by substantial evidence,  
4           why that portion of the increase is warranted.

5           (2) REPORTS BY STATE REGULATORS.—Within  
6           15 days after a State insurance regulatory authority  
7           receives a report from an insurer required by para-  
8           graph (1), the authority—

9                   (A) shall transmit a copy of the report to  
10           the Secretary;

11                   (B) may include a determination with re-  
12           spect to whether an insurer has met the re-  
13           quirement of paragraph (1)C); and

14                   (C) may include with the report any com-  
15           mentary or analysis it deems appropriate.

16 **SEC. 10. CREDIT FOR REINSURANCE.**

17           Each State shall afford an insurer obtaining reinsur-  
18           ance from the Fund credit for such reinsurance on the  
19           same basis and to the same extent that credit for reinsur-  
20           ance would be available to that insurer under applicable  
21           State law when reinsurance is obtained from an assuming  
22           insurer licensed or accredited in that State.

1 **SEC. 11. ADMINISTRATIVE PROVISIONS; REPORTS AND**  
2 **ANALYSIS.**

3 (a) IN GENERAL.—IN CARRYING OUT THIS ACT, THE  
4 SECRETARY MAY—

5 (1) issue such rules and regulations as may be  
6 necessary to administer this Act;

7 (2) enter into reinsurance contracts, adjust and  
8 pay claims as provided in this Act, and carry out the  
9 activities necessary to implement this Act;

10 (3) set forth the coverage provided by the Fund  
11 to accomplish the purposes of this Act;

12 (4) provide for an audit of the books and  
13 records of the Fund by the General Accounting Of-  
14 fice;

15 (5) take appropriate action to collect premiums  
16 or assessments under this Act; and

17 (6) audit the reports, claims, books, and records  
18 of participating insurers.

19 (b) REPORTS FROM INSURERS.—Participating insur-  
20 ers shall submit reports on a quarterly or other basis (as  
21 required by the Secretary) to the Secretary, the Federal  
22 Trade Commission, and the General Accounting Office  
23 setting forth rates, premiums, risk analysis, coverage, re-  
24 serves, claims made for reimbursement from the Fund,  
25 and such additional financial and actuarial information as

1 the Secretary may require regarding lines of coverage de-  
2 scribed in section 14(5)(A) or 14(5)(B).

3 (c) FTC ANALYSIS AND ENFORCEMENT.—The Fed-  
4 eral Trade Commission shall review the reports submitted  
5 under subsection (b), treating the information contained  
6 in the reports as privileged and confidential, for the pur-  
7 pose of determining whether any insurer is engaged in un-  
8 fair methods of competition or unfair or deceptive acts or  
9 practices in or affecting commerce (within the meaning  
10 of section 5 of the Federal Trade Commission Act (15  
11 U.S.C. 45)).

12 (d) GAO REVIEW.—The Comptroller General shall  
13 provide for review and analysis of the reports submitted  
14 under subsection (b), and, if necessary, provide of audit  
15 of reimbursement claims filed by insurers with the Fund.

16 (e) REPORTS BY SECRETARY.—No later than March  
17 31st of each calendar year, the Secretary shall transmit  
18 to the Senate Committee on Commerce, Science, and  
19 Technology and the House of Representatives Committee  
20 on Commerce an annual report on insurance rate in-  
21 creases for the preceding calendar year in the United  
22 States based upon the reports received by the Secretary  
23 under this Act. The Secretary may include in the report  
24 a recommendation for legislation to impose Federal regu-  
25 lation of insurance rates on covered lines of insurance if

1 the Secretary determines that premium rates for insur-  
2 ance on covered lines of insurance are—

3 (A) unreasonable; and

4 (B) attributable to insurance for losses  
5 from acts of terrorism.

6 **SEC. 12. INAPPLICABILITY OF CERTAIN LAWS.**

7 (a) IN GENERAL.—State laws relating to insurance  
8 rates, insurance policy forms, insurance rates on any cov-  
9 ered lines of insurance described in section 14(5)(A) or  
10 14(5)(B), insurer financial requirements, and insurer li-  
11 censing do not apply to contracts entered into by the  
12 Fund. The Fund is not subject to State tax and is exempt  
13 from Federal income tax. The reinsurance contract pre-  
14 mium paid and assessments collected by insurers shall not  
15 be subject to local, State, or Federal tax. The reinsurance  
16 contract premium and assessments recovered from policy-  
17 holders shall not be subject to local, State, or Federal tax.

18 (b) EXCEPTION FOR UNFAIR TRADE PRACTICE  
19 LAWS.—Notwithstanding subsection (a), nothing in this  
20 Act supersedes or preempts a State law that prohibits un-  
21 fair methods of competition in commerce, unfair or decep-  
22 tive acts or practices in commerce, or unfair insurance  
23 claims practices.

1 **SEC. 13. SUNSET PROVISION.**

2 (a) ASSESSMENT AND COLLECTION OF PREMIUMS.—

3 The Secretary shall continue the premium assessment and  
4 collection operations of the Fund under this Act as long  
5 as loans due from the Fund to the United States Treasury  
6 are outstanding.

7 (b) PROVISION OF REINSURANCE.—The Secretary  
8 shall suspend other operations of the Fund for new con-  
9 tract years on the close of business on December 31, 2004,  
10 and may suspend the offering of reinsurance contracts for  
11 new contract years at any time before that date if the Sec-  
12 retary determines that the reinsurance provided by the  
13 Fund is no longer needed for covered lines due to market  
14 conditions.

15 (c) REVIEW OF PRIVATE REINSURANCE AVAIL-  
16 ABILITY.—The Secretary shall review the cost and avail-  
17 ability of private reinsurance for acts of terrorism at least  
18 annually and shall report the findings and any rec-  
19 ommendations to Congress by June 1 of each year the  
20 Fund is in operation.

21 (d) DISSOLUTION OF FUND.—

22 (1) DISTRIBUTION FOR RESERVES.—When the  
23 Secretary determines that all Fund operations have  
24 been terminated, the Secretary shall dissolve the  
25 Fund. Any unencumbered Fund assets remaining  
26 after the satisfaction of all outstanding claims, loans

1 from the Treasury, and other liabilities of the Fund  
2 shall be distributed, on a pro rata basis based on  
3 premiums paid, to any insurer that—

4 (A) participated in the Fund during its op-  
5 eration; and

6 (B) demonstrates, to the satisfaction of the  
7 Secretary, that any amount received as a dis-  
8 tribution from the Fund will be permanently  
9 credited to a reserve account maintained by  
10 that insurer against claims for industrywide ag-  
11 gregate losses of \$2,000,000,000 from—

12 (i) acts of terrorism in the United  
13 States; or

14 (ii) the effects of earthquakes, vol-  
15 canic eruptions, tsunamis, or hurricanes.

16 (2) RETENTION REQUIREMENT FOR TAP-  
17 PING RESERVE.—Amounts credited to a reserve  
18 under paragraph (a) may not be used by an in-  
19 surer to pay claims until the insurer has paid  
20 claims for losses resulting from acts or events  
21 described in paragraph (1)(B) in excess of 10  
22 percent of that insurer's average gross direct  
23 written premiums and policyholders' surplus for  
24 covered lines for the most recently ended cal-  
25 endar year for which data are available.

1           (3) OFFICER AND DIRECTOR PENALTIES FOR  
2 MISUSE OF RESERVES.—Any officer or director of an  
3 insurer who knowingly authorizes or directs the use  
4 of any amount received from the Fund under para-  
5 graph (1) for any purpose other than an appropriate  
6 use of amounts in the reserve to which the amount  
7 is credited shall be guilty of a Class E felony and  
8 sentenced in accordance with the provisions of sec-  
9 tion 3551 of title 18, United States Code.

10           (4) RESIDUAL DISTRIBUTION TO TREASURY.—  
11 Any unencumbered Fund assets remaining after the  
12 distribution under paragraph (1) shall be covered  
13 into the Treasury of the United States as miscella-  
14 neous receipts.

15 **SEC. 14. DEFINITIONS.**

16 In this Act:

17           (1) SECRETARY.—Except where otherwise spe-  
18 cifically provided, the term “Secretary” means the  
19 Secretary of Commerce.

20           (2) NAIC.—The term “NAIC” means the Na-  
21 tional Association of Insurance Commissioners.

22           (3) FUND.—The term “Fund” means the Na-  
23 tional Terrorism Reinsurance Fund established  
24 under section 4.

1           (4) PARTICIPATING INSURER.—The term “par-  
2           ticipating insurer” means every property and cas-  
3           ualty insurer writing on a direct basis a covered line  
4           or lines of insurance in any jurisdiction of the  
5           United States, its territories, or possessions, includ-  
6           ing residual market insurers.

7           (5) COVERED LINE.—

8                   (A) IN GENERAL.—The term “covered  
9                   line” means any one or a combination of the  
10                  following, written on a direct basis, as reported  
11                  by property and casualty insurers in required fi-  
12                  nancial reports on Statutory Page 14 of the  
13                  NAIC Annual Statement Blank:

- 14                           (i) Fire.
- 15                           (ii) Allied lines.
- 16                           (iii) Commercial multiple peril.
- 17                           (iv) Ocean marine.
- 18                           (v) Inland marine.
- 19                           (vi) Workers compensation.
- 20                           (vii) Products liability.
- 21                           (viii) Commercial auto no-fault (per-  
22                           sonal injury protection), other commercial  
23                           auto liability, or commercial auto physical  
24                           damage.
- 25                           (ix) Aircraft (all peril).

- 1 (x) Fidelity and surety.
- 2 (xi) Burglary and theft.
- 3 (xii) Boiler and machinery.
- 4 (xiii) Any other line of insurance that
- 5 is reported by property and casualty insur-
- 6 ers in required financial reports on Statu-
- 7 tory Page 14 of the NAIC Annual State-
- 8 ment Blank which is voluntarily elected by
- 9 an participating insurer to be included in
- 10 its reinsurance contract with the Fund.

11 (B) OTHER LINES.—For purposes of  
12 clause (xiii), the lines of business that may be  
13 voluntarily selected are the following:

- 14 (i) Farmowners multiple peril.
- 15 (ii) Homeowners multiple peril.
- 16 (iii) Mortgage guaranty.
- 17 (iv) Financial guaranty.
- 18 (v) Private passenger automobile in-
- 19 surance.

20 (C) ELECTION.—The election to volun-

21 tarily include another line of insurance, if made,

22 must apply to all affiliated insurers that are

23 members of an insurer group. Any voluntary

24 election is on a one-time basis and is irrev-

25 ocable.

1           (6) LOSSES.—The term “losses” means direct  
2           incurred losses from an act of terrorism for covered  
3           lines, plus defense and cost containment expenses.  
4           Notwithstanding the preceding sentence, a loss shall  
5           not be recognized as a loss for the purpose of deter-  
6           mining the amount of an insurer’s retention or reim-  
7           bursement under this Act unless the claim for the  
8           loss has been paid within 12 months after the ter-  
9           rorism event occurs and other loss adjustments.

10           (7) COVERED LOSSES.—The term “covered  
11           losses” means direct losses in excess of the partici-  
12           pating insurer’s retention.

13           (8) TERRORISM; ACT OF TERRORISM.—

14           (A) IN GENERAL.—The terms “terrorism”  
15           and “act of terrorism” mean any act, certified  
16           by the Secretary in concurrence with the Sec-  
17           retary of State and the Attorney General, as a  
18           violent act or act dangerous to human life,  
19           property or infrastructure, within the United  
20           States, its territories and possessions, that is  
21           committed by an individual or individuals acting  
22           on behalf of foreign agents or foreign interests  
23           (other than a foreign government) as part of an  
24           effort to coerce or intimidate the civilian popu-  
25           lation of the United States or to influence the

1 policy or affect the conduct of the United  
2 States government.

3 (B) ACTS OF WAR.—No act shall be cer-  
4 tified as an act of terrorism if the act is com-  
5 mitted in the course of a war declared by the  
6 Congress of the United States or by a foreign  
7 government.

8 (C) FINALITY OF CERTIFICATION.—Any  
9 certification, or determination not to certify, by  
10 the Secretary under subparagraph (A) is final  
11 and not subject to judicial review.

12 (9) INSURER.—

13 (A) IN GENERAL.—The term “insurer”  
14 means an entity writing covered lines on a di-  
15 rect basis and licensed as a property and cas-  
16 ualty insurer, risk retention group, or other en-  
17 tity authorized by law as a residual market  
18 mechanism providing property or casualty cov-  
19 erage in at least one jurisdiction of the United  
20 States, its territories, or possessions.

21 (B) VOLUNTARY PARTICIPATION.—A State  
22 workers’ compensation, auto, or property insur-  
23 ance Fund may voluntarily participate as an in-  
24 surer.

1           (10) CONTRACT YEAR.—The term “contract  
2           year” means the period of time that obligations exist  
3           between a participating insurer and the Fund for a  
4           given annual reinsurance contract.

5           (11) RETENTION.—The term “retention”  
6           means the level of direct losses retained by a partici-  
7           pating insurer for which the insurer is not entitled  
8           to reimbursement by the Fund.

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