

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3210, AS REPORTED**

**OFFERED BY MR. LAFALCE OF NEW YORK**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Terrorism Risk Protection Act”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Authority of Secretary of the Treasury.
- Sec. 4. Submission of premium information to Secretary.
- Sec. 5. Initial and subsequent triggering determinations.
- Sec. 6. Federal cost-sharing for commercial insurers.
- Sec. 7. Assessments.
- Sec. 8. Terrorism loss repayment surcharge.
- Sec. 9. Administration of assessments and surcharges.
- Sec. 10. Application to self-insurance arrangements and offshore insurers and reinsurers.
- Sec. 11. Requirement to provide terrorism coverage.
- Sec. 12. State preemption.
- Sec. 13. Consistent State guidelines for coverage for acts of terrorism.
- Sec. 14. Consultation with State insurance regulators and NAIC.
- Sec. 15. Study of potential effects of terrorism on life insurance industry.
- Sec. 16. Railroad and trucking insurance study.
- Sec. 17. Study of reinsurance pool system for future acts of terrorism.
- Sec. 18. Definitions.
- Sec. 19. Covered period and extension of program.
- Sec. 20. Regulations.

**6 SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds that—

8 (1) the terrorist attacks on the World Trade  
9 Center and the Pentagon of September 11, 2001, re-



1       sulted in a large number of deaths and injuries, the  
2       destruction and damage to buildings, and interrup-  
3       tion of business operations;

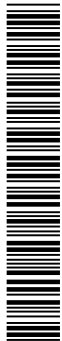
4               (2) the attacks have inflicted possibly the larg-  
5       est losses ever incurred by insurers and reinsurers in  
6       a single day;

7               (3) while the insurance and reinsurance indus-  
8       tries have committed to pay the losses arising from  
9       the September 11 attacks, the resulting disruption  
10      has created widespread market uncertainties with re-  
11      gard to the risk of losses arising from possible fu-  
12      ture terrorist attacks;

13              (4) such uncertainty threatens the continued  
14      availability of United States commercial property  
15      and casualty insurance for terrorism risk at mean-  
16      ingful coverage levels;

17              (5) the unavailability of affordable commercial  
18      property and casualty insurance for terrorist acts  
19      threatens the growth and stability of the United  
20      States economy, including impeding the ability of fi-  
21      nancial services providers to finance commercial  
22      property acquisitions and new construction;

23              (6) in the past, the private insurance and rein-  
24      surance markets have shown a remarkable resiliency  
25      in adapting to changed circumstances;



1 (7) given time, the private markets will diver-  
2 sify and develop risk spreading mechanisms to in-  
3 crease capacity and guard against possible future  
4 losses incurred by terrorist attacks;

5 (8) it is necessary to create a temporary indus-  
6 try risk sharing program to ensure the continued  
7 availability of commercial property and casualty in-  
8 surance and reinsurance for terrorism-related risks;

9 (9) such action is necessary to limit immediate  
10 market disruptions, encourage economic stabiliza-  
11 tion, and facilitate a transition to a viable market  
12 for private terrorism risk insurance; and

13 (10) terrorism insurance plays an important  
14 role in the efficient functioning of the economy and  
15 the financing of commercial property acquisitions  
16 and new construction and, therefore, the Congress  
17 intends to continue to monitor, review, and evaluate  
18 the private terrorism insurance and reinsurance  
19 marketplace to determine whether additional action  
20 is necessary to maintain the long-term stability of  
21 the real estate and capital markets.

22 **SEC. 3. AUTHORITY OF SECRETARY OF THE TREASURY.**

23 The Secretary of the Treasury shall be responsible  
24 for carrying out a program for financial assistance for



1 commercial property and casualty insurers, as provided in  
2 this Act.

3 **SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO SEC-**  
4 **RETARY.**

5 To the extent such information is not otherwise avail-  
6 able to the Secretary, the Secretary may require each in-  
7 surer to submit, to the Secretary or to the NAIC, a state-  
8 ment specifying the net premium amount of coverage writ-  
9 ten by such insurer under each line of commercial property  
10 and casualty insurance sold by such insurer during such  
11 periods as the Secretary may provide.

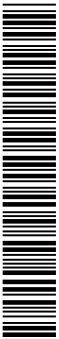
12 **SEC. 5. INITIAL AND SUBSEQUENT TRIGGERING DETER-**  
13 **MINATIONS.**

14 (a) IN GENERAL.—For purposes of this Act, a “trig-  
15 gering determination” is a determination by the Secretary  
16 that—

17 (1) an act of terrorism has occurred during the  
18 covered period; and

19 (2) the industry-wide losses resulting from such  
20 occurrence or from multiple occurrences of acts of  
21 terrorism all occurring during the covered period, ex-  
22 ceed \$100,000,000.

23 (b) DETERMINATIONS REGARDING OCCURRENCES.—  
24 The Secretary, after consultation with the Attorney Gen-  
25 eral of the United States and the Secretary of State, shall



1 have the sole authority which may not be delegated or des-  
2 ignated to any other officer, employee, or position, for de-  
3 termining whether—

4 (1) an occurrence was caused by an act of ter-  
5 rorism; and

6 (2) an act of terrorism occurred during the cov-  
7 ered period.

8 **SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSUR-**  
9 **ERS.**

10 (a) IN GENERAL.—Pursuant to a triggering deter-  
11 mination, the Secretary shall provide financial assistance  
12 to commercial insurers in accordance with this section to  
13 the extent provided under this section to cover eligible in-  
14 sured losses resulting from acts of terrorism, which shall  
15 be repaid in accordance with subsection (g).

16 (b) INDUSTRY OBLIGATION AMOUNT.—For purposes  
17 of this section, the industry obligation amount in connec-  
18 tion with a triggering determination is the following  
19 amount:

20 (1) INITIAL COVERED PERIOD.—In the case of  
21 a triggering determination occurring during the cov-  
22 ered period specified in section 19(a), the difference  
23 between—

24 (A) \$5,000,000,000; and



1 (B) the aggregate amount of industry-wide  
2 losses resulting from the triggering events in-  
3 volved in any triggering determinations pre-  
4 ceeding such triggering determination.

5 (2) EXTENDED COVERED PERIOD.—If the Sec-  
6 retary exercises the authority under section 19(b) to  
7 extend the covered period, in the case of a triggering  
8 determination occurring during the portion of the  
9 covered period consisting of such extension, the dif-  
10 ference between—

11 (A) \$10,000,000,000; and

12 (B) the aggregate amount of industry-wide  
13 losses resulting from the triggering events in-  
14 volved in any triggering determinations pre-  
15 ceeding such triggering determination.

16 (c) ELIGIBLE INSURED LOSSES.—For purposes of  
17 this section, the term “eligible insured losses” means, with  
18 respect to a triggering determination, any insured losses  
19 resulting from the triggering event involved that are in  
20 excess of the industry obligation amount for such trig-  
21 gering determination.

22 (d) AMOUNT OF FINANCIAL ASSISTANCE.—Subject  
23 to subsection (e), with respect to a triggering determina-  
24 tion, financial assistance shall be made available under  
25 this section to each commercial insurer in an amount



1 equal to 90 percent of the amount of the eligible insured  
2 losses of the insurer as a result of the triggering event  
3 involved.

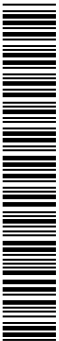
4 (e) LIMITATIONS.—

5 (1) AGGREGATE LIMITATION.—The aggregate  
6 amount of financial assistance provided pursuant to  
7 this section may not exceed \$100,000,000,000.

8 (2) NOTICE TO CONGRESS.—The Secretary  
9 shall notify the Congress if the amount of financial  
10 assistance provided pursuant to this section reaches  
11 \$100,000,000,000 and the Congress shall determine  
12 the procedures for, and the source of, any additional  
13 payments of financial assistance to cover such addi-  
14 tional insured losses.

15 (3) DEFAULT ON ASSESSMENTS AND SUR-  
16 CHARGES.—The Secretary may establish such limita-  
17 tions as may be necessary to ensure that payments  
18 under this section in connection with a triggering  
19 determination are made only to commercial insurers  
20 that are not in default of any obligation under this  
21 section or section 7 to pay assessments or under sec-  
22 tion 8 to collect surcharges.

23 (f) ANNUAL LIMIT ON INDIVIDUAL INSURER LIABIL-  
24 ITY.—

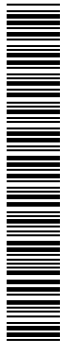


1 (1) DEFINITIONS.—For purposes of this sub-  
2 section, the following definitions shall apply:

3 (A) ANNUAL INSURER LIMIT.—The term  
4 “annual insurer limit” means, with respect to a  
5 commercial insurer and a program year, the  
6 amount equal to 7 percent of the aggregate pre-  
7 mium amount of all commercial property and  
8 casualty insurance coverage, written by such in-  
9 surer during the calendar year preceding such  
10 program year, under all lines of commercial  
11 property and casualty insurance.

12 (B) LIMITABLE LOSSES.—The term “limit-  
13 able losses” means, for any program year, the  
14 industry-wide losses in such program year that  
15 do not exceed the dollar amount specified in  
16 subsection (b)(1)(A) or (b)(2)(A), as applicable  
17 to the program year.

18 (C) PROGRAM YEAR.—The term “program  
19 year” means the period beginning on the date  
20 of the enactment of this Act and ending on  
21 January 1, 2003. If the Secretary extends the  
22 covered period pursuant to section 20(b), each  
23 calendar year (or portion thereof) covered by  
24 such extension shall be a program year for pur-  
25 poses of this subsection.

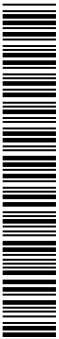




1           (2) TRIGGERING OF INDUSTRY ASSESS-  
2           MENTS.—If, for any program year, the amount of  
3           the limitable losses for such program year that are  
4           incurred by any single commercial insurer exceed the  
5           annual insurer limit for the commercial insurer for  
6           such program year, the Secretary shall apportion the  
7           amount of such excess limitable losses pursuant to  
8           assessments under paragraph (3).

9           (3) INDUSTRY ASSESSMENTS TO COVER LOSSES  
10          EXCEEDING LOSS LIMIT.—For each program year,  
11          the Secretary shall, as soon as practicable, determine  
12          the aggregate amount of excess limitable losses de-  
13          scribed in paragraph (2), for all commercial insur-  
14          ers. Subject to paragraph (4), the Secretary shall as-  
15          sess, to each commercial insurer not described in  
16          paragraph (2), a portion of such aggregate limitable  
17          losses based on the proportion, written by each such  
18          commercial insurer, of the aggregate written pre-  
19          mium for the calendar year preceding such program  
20          year.

21          (4) OPERATION OF ANNUAL INSURER LIMIT TO  
22          ASSESSMENTS.—The sum of the amount of limitable  
23          losses incurred by a commercial insurer in a pro-  
24          gram year and the aggregate amount of an assess-  
25          ment under this subsection to such insurer may not

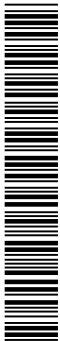


1 in any case exceed the annual insurer limit for the  
2 insurer.

3 (5) NOTICE.—Upon determining the amount of  
4 the assessments under this subsection for a program  
5 year, the Secretary shall, as soon as practicable, pro-  
6 vide written notice to each commercial insurer that  
7 is subject to an assessment of the amount of the as-  
8 sessment and the deadline pursuant to paragraph  
9 (6) for payment of the assessment.

10 (6) PAYMENT.—Each commercial insurer that  
11 is subject to an assessment under this subsection  
12 shall pay to the Secretary the amount of the assess-  
13 ment not later than 60 days after the Secretary pro-  
14 vides notice of the assessment under paragraph (5).

15 (7) DISTRIBUTION OF ASSESSMENT  
16 AMOUNTS.—Upon receiving payment of assessments  
17 under this subsection, the Secretary shall promptly  
18 distribute all such amounts among commercial in-  
19 surers described in paragraph (2), based on limitable  
20 losses incurred in excess of the annual insurer limits  
21 for such insurers. The Secretary may take such ac-  
22 tions, including making such adjustments and reim-  
23 bursements, as may be necessary to carry out the  
24 purposes of this subsection.



1 (g) REPAYMENT.—Financial assistance made avail-  
2 able under this section shall be repaid through assess-  
3 ments under section 7 collected by the Secretary and sur-  
4 charges remitted to the Secretary under section 8. Any  
5 such amounts collected or remitted shall be deposited into  
6 the general fund of the Treasury.

7 (h) FINAL NETTING.—The Secretary shall have sole  
8 discretion to determine the time at which claims relating  
9 to any insured loss or act of terrorism shall become final.

10 (i) FINALITY OF DETERMINATIONS.—Any determina-  
11 tion of the Secretary under this section shall be final, and  
12 shall not be subject to judicial review.

13 (j) EMERGENCY DESIGNATION.—Congress des-  
14 ignates the amount of new budget authority and outlays  
15 in all fiscal years resulting from this section as an emer-  
16 gency requirement pursuant to section 252(e) of the Bal-  
17 anced Budget and Emergency Deficit Control Act of 1985  
18 (2 U.S.C. 901(e)). Such amount shall be available only  
19 to the extent that a request, that includes designation of  
20 such amount as an emergency requirement as defined in  
21 such Act, is transmitted by the President to Congress.

22 **SEC. 7. ASSESSMENTS.**

23 (a) IN GENERAL.—In the case of a triggering deter-  
24 mination, each commercial insurer shall be subject to as-  
25 sessments under this section for the purpose of repaying



1 a portion of the financial assistance made available under  
2 section 6 in connection with such determination.

3 (b) AGGREGATE ASSESSMENT.—Pursuant to a trig-  
4 gering determination, the Secretary shall determine the  
5 aggregate amount (if any) to be assessed under this sec-  
6 tion among all commercial insurers, which shall be equal  
7 to the lesser of—

8 (1) the difference between—

9 (A) \$20,000,000,000; and

10 (B) the dollar amount specified in para-  
11 graph (1)(A) or (2)(A) of section 6(b), as appli-  
12 cable for such triggering determination; and

13 (2) the amount of financial assistance paid  
14 under section 6 in connection with the triggering de-  
15 termination.

16 (c) METHOD AND TIMING.—

17 (1) IN GENERAL.—The aggregate assessment  
18 amount in connection with a triggering determina-  
19 tion shall be assessed through one or more, as may  
20 be necessary pursuant to paragraph (3), assessments  
21 under this section.

22 (2) TIMING.—An assessment under this section  
23 in connection with a triggering determination shall  
24 be imposed only upon the expiration of any 12-  
25 month period beginning after such determination



1 during which no other assessments under this sec-  
2 tion have been imposed.

3 (3) LIMITATION.—The aggregate amount of  
4 any assessments imposed under this section on any  
5 single commercial insurer during any 12-month pe-  
6 riod shall not exceed the amount that is equal to 3  
7 percent of the net premium for such insurer for such  
8 period.

9 (d) ALLOCATION.—The portion of the aggregate  
10 amount of any assessment under this section that is allo-  
11 cated to each commercial insurer shall be based on the  
12 ratio that the net premium written by such commercial  
13 insurer during the year during which the assessment is  
14 imposed bears to the aggregate written premium for such  
15 year, subject to section 9 and the limitation under sub-  
16 section (c)(3) of this section.

17 (e) NOTICE AND OBLIGATION TO PAY.—

18 (1) NOTICE.—As soon as practicable after any  
19 triggering determination, the Secretary shall notify  
20 each commercial insurer in writing of an assessment  
21 under this section, which notice shall include the  
22 amount of the assessment allocated to such insurer.

23 (2) EFFECT OF NOTICE.—Upon notice to a  
24 commercial insurer, the commercial insurer shall be  
25 obligated to pay to the Secretary, not later than 60



1 days after receipt of such notice, the amount of the  
2 assessment on such commercial insurer.

3 (3) FAILURE TO MAKE TIMELY PAYMENT.—If  
4 any commercial insurer fails to pay an assessment  
5 under this section before the deadline established  
6 under paragraph (2) for the assessment, the Sec-  
7 retary may take either or both of the following ac-  
8 tions:

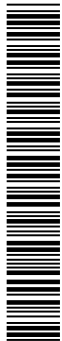
9 (A) CIVIL MONETARY PENALTY.—Assess a  
10 civil monetary penalty pursuant to section 9(d)  
11 upon such insurer.

12 (B) INTEREST.—Require such insurer to  
13 pay interest, at such rate as the Secretary con-  
14 siders appropriate, on the amount of the assess-  
15 ment that was not paid before the deadline es-  
16 tablished under paragraph (2).

17 (f) ADMINISTRATIVE FLEXIBILITY.—

18 (1) ADJUSTMENT OF ASSESSMENTS.—The Sec-  
19 retary may provide for or require estimations of  
20 amounts under this section and may provide for sub-  
21 sequent refunds or require additional payments to  
22 correct such estimations, as appropriate.

23 (2) DEFERRAL OF CONTRIBUTIONS.—The Sec-  
24 retary may defer the payment of part or all of an  
25 assessment required under this section to be paid by



1 a commercial insurer, but only to the extent that the  
2 Secretary determines that such deferral is necessary  
3 to avoid the likely insolvency of the commercial in-  
4 surer.

5 (3) TIMING OF ASSESSMENTS.—The Secretary  
6 shall make adjustments regarding the timing and  
7 imposition of assessments (including the calculation  
8 of net premiums and aggregate written premium) as  
9 appropriate for commercial insurers that provide  
10 commercial property and casualty insurance on a  
11 non-calendar year basis.

12 **SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.**

13 (a) DETERMINATION OF IMPOSITION AND COLLEC-  
14 TION.—

15 (1) IN GENERAL.—If, pursuant to a triggering  
16 determination, the Secretary determines that the ag-  
17 gregate amount of financial assistance provided pur-  
18 suant to section 6 exceeds the amount determined  
19 pursuant to section 7(b)(1), the Secretary shall con-  
20 sider and weigh the factors under paragraph (2) to  
21 determine the extent to which a surcharge under  
22 this section should be established.

23 (2) FACTORS.—The factors under this para-  
24 graph are—



1 (A) the ultimate costs to taxpayers if a  
2 surcharge under this section is not established;

3 (B) the economic conditions in the com-  
4 mercial marketplace;

5 (C) the affordability of commercial insur-  
6 ance for small- and medium-sized business; and

7 (D) such other factors as the Secretary  
8 considers appropriate.

9 (3) POLICYHOLDER PREMIUM.—Any amount  
10 established by the Secretary as a surcharge under  
11 this section shall be established and imposed as a  
12 policyholder premium surcharge on commercial prop-  
13 erty and casualty insurance written after such deter-  
14 mination, for the purpose of repaying financial as-  
15 sistance made available under section 6 in connec-  
16 tion with such triggering determination.

17 (4) COLLECTION.—The Secretary shall provide  
18 for commercial insurers to collect surcharge amounts  
19 established under this section and remit such  
20 amounts collected to the Secretary.

21 (b) AMOUNT AND DURATION.—Subject to subsection  
22 (c), the surcharge under this section shall be established  
23 in such amount, and shall apply to commercial property  
24 and casualty insurance written during such period, as the  
25 Secretary determines is necessary to recover the aggregate





1 amount of financial assistance provided under section 6  
2 in connection with the triggering determination that ex-  
3 ceeds the amount determined pursuant to section 7(b)(1).

4 (c) PERCENTAGE LIMITATION.—The surcharge  
5 under this section applicable to commercial property and  
6 casualty insurance coverage may not exceed, on an annual  
7 basis, the amount equal to 3 percent of the premium  
8 charged for such coverage.

9 (d) OTHER TERMS.—The surcharge under this sec-  
10 tion shall—

11 (1) be based on a percentage of the premium  
12 amount charged for commercial property and cas-  
13 ualty insurance coverage that a policy provides; and

14 (2) be imposed with respect to all commercial  
15 property and casualty insurance coverage written  
16 during the period referred to in subsection (b).

17 (e) EXCLUSIONS.—For purposes of this section, com-  
18 mercial property and casualty insurance does not include  
19 any reinsurance provided to primary insurance companies.

20 **SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SUR-**  
21 **CHARGES.**

22 (a) MANNER AND METHOD.—

23 (1) IN GENERAL.—Except to the extent speci-  
24 fied in such sections, the Secretary shall provide for  
25 the manner and method of carrying out assessments



1 under section 7 and surcharges under section 8, in-  
 2 cluding the timing and procedures of making assess-  
 3 ments and surcharges, notifying commercial insurers  
 4 of assessments and surcharge requirements, col-  
 5 lecting payments from and surcharges through com-  
 6 mercial insurers, and refunding of any excess  
 7 amounts paid or crediting such amounts against fu-  
 8 ture assessments.

9 (2) EFFECT OF ASSESSMENTS AND SUR-  
 10 CHARGES ON URBAN AND SMALLER COMMERCIAL  
 11 AND RURAL AREAS AND DIFFERENT LINES OF IN-  
 12 SURANCE.—In determining the method and manner  
 13 of imposing assessments under section 7 and sur-  
 14 charges under section 8, including the amount of  
 15 such assessments and surcharges, the Secretary  
 16 shall take into consideration—

17 (A) the economic impact of any such as-  
 18 sements and surcharges on commercial cen-  
 19 ters of urban areas, including the effect on  
 20 commercial rents and commercial insurance  
 21 premiums, particularly rents and premiums  
 22 charged to small businesses, and the availability  
 23 of lease space and commercial insurance within  
 24 urban areas;



1 (B) the risk factors related to rural areas  
2 and smaller commercial centers, including the  
3 potential exposure to loss and the likely mag-  
4 nitude of such loss, as well as any resulting  
5 cross-subsidization that might result; and

6 (C) the various exposures to terrorism risk  
7 for different lines of commercial property and  
8 casualty insurance.

9 (b) TIMING OF COVERAGES AND ASSESSMENTS.—  
10 The Secretary may adjust the timing of coverages and as-  
11 sessments provided under this Act to provide for equiva-  
12 lent application of the provisions of this Act to commercial  
13 insurers and policies that are not based on a calendar  
14 year.

15 (c) ADJUSTMENT.—The Secretary may adjust the as-  
16 sessments charged under section 7 or the percentage im-  
17 posed under the surcharge under section 8 at any time,  
18 as the Secretary considers appropriate to protect the na-  
19 tional interest, which may include avoiding unreasonable  
20 economic disruption or excessive market instability and  
21 avoiding undue burdens on small businesses.

22 (d) CIVIL MONETARY PENALTY.—

23 (1) IN GENERAL.—The Secretary may assess a  
24 civil monetary penalty in an amount not exceeding  
25 the amount under paragraph (2) against any com-



1       mercial insurer that the Secretary determines, on  
2       the record after opportunity for a hearing—

3               (A) has failed to pay an assessment under  
4               section 7 in accordance with the requirements  
5               of, or regulations issued, under this Act;

6               (B) has failed to charge, collect, or remit  
7               surcharges under section 8 in accordance with  
8               the requirements of, or regulations issued  
9               under, this Act;

10              (C) has intentionally provided to the Sec-  
11              retary erroneous information regarding pre-  
12              mium or loss amounts; or

13              (D) has otherwise failed to comply with the  
14              provisions of, or the regulations issued under,  
15              this Act.

16              (2) AMOUNT.—The amount under this para-  
17              graph is the greater of \$1,000,000 and, in the case  
18              of any failure to pay, charge, collect, or remit  
19              amounts in accordance with this Act or the regula-  
20              tions issued under this Act, such amount in dispute.

21 **SEC. 10. APPLICATION TO SELF-INSURANCE ARRANGE-**  
22 **MENTS AND OFFSHORE INSURERS AND REIN-**  
23 **SURERS.**

24              (a) SELF-INSURANCE ARRANGEMENTS.—The Sec-  
25              retary may, in consultation with the NAIC, apply the pro-



1 visions of this Act, as appropriate, to self-insurance ar-  
2 rangements by municipalities and other entities, but only  
3 if such application is determined before the occurrence of  
4 a triggering event and all of the provisions of this Act are  
5 applied uniformly to such entities.

6 (b) OFFSHORE INSURERS AND REINSURERS.—The  
7 Secretary shall ensure that the provisions of this Act are  
8 applied as appropriate to any offshore or non-admitted en-  
9 tities that provide commercial property and casualty insur-  
10 ance.

11 **SEC. 11. REQUIREMENT TO PROVIDE TERRORISM COV-**  
12 **ERAGE.**

13 The Secretary shall require each commercial insurer  
14 to include, in each policy for commercial property and cas-  
15 ualty insurance coverage made available, sold, or otherwise  
16 provided by such insurer, coverage for insured losses re-  
17 sulting from the occurrence of an act of terrorism that—

18 (1) does not differ materially from the terms,  
19 amounts, and other coverage limitations applicable  
20 to losses arising from events other than acts of ter-  
21 rorism;

22 (2) may not be eliminated, waived, or excluded,  
23 by mutual agreement, request or consent of the pol-  
24 icyholder, or otherwise; and



1           (3) that meets any other criteria that the Sec-  
2           retary may reasonably prescribe.

3 **SEC. 12. STATE PREEMPTION.**

4           (a) COVERED PERILS.—A commercial insurer shall  
5 be considered to have complied with any State law that  
6 requires or regulates the provision of insurance coverage  
7 for acts of terrorism if the insurer provides coverage in  
8 accordance with the definitions regarding acts of terrorism  
9 under this Act or under any regulations issued by the Sec-  
10 retary.

11          (b) RATE LAWS.—If any provision of any State law  
12 prevents an insurer from increasing its premium rates in  
13 an amount necessary to recover any assessments pursuant  
14 to section 7, such provision is preempted only to the extent  
15 necessary to provide for such insurer to recover such  
16 losses.

17          (c) FILE AND USE.—

18           (1) IN GENERAL.—With respect only to com-  
19 mercial property and casualty insurance covering  
20 acts of terrorism, any provision of State law that re-  
21 quires, as a condition precedent to the effectiveness  
22 of rates or policies for such insurance that is made  
23 available by an insurer licensed to transact such  
24 business in the State, any action (including prior ap-  
25 proval by the State insurance regulator for such



1 State) other than filing of such rates and policies  
2 and related information with such State insurance  
3 regulator is preempted to the extent such law re-  
4 quires such additional actions for such insurance  
5 coverage.

6 (2) SUBSEQUENT REVIEW AUTHORITY.—Para-  
7 graph (1) shall not be considered to preempt a pro-  
8 vision of State law solely because the law provides  
9 that rates and policies for such insurance coverage  
10 are, upon such filing, subject to subsequent review  
11 and action, which may include actions to disapprove  
12 or discontinue use of such rates or policies, by the  
13 State insurance regulator.

14 (3) TREATMENT OF PRIOR REVIEW PROVI-  
15 SIONS.—Any authority for prior review and action  
16 by a State regulator preempted under paragraph (1)  
17 shall be deemed to be authority to conduct a subse-  
18 quent review and action on such filings.

19 **SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE**  
20 **FOR ACTS OF TERRORISM.**

21 (a) SENSE OF CONGRESS REGARDING COVERED  
22 PERILS.—It is the sense of the Congress that—

23 (1) the NAIC, in consultation with the Sec-  
24 retary, should develop appropriate definitions for  
25 acts of terrorism that are consistent with this Act



1 and appropriate standards for making determina-  
2 tions regarding occurrences of acts of terrorism;

3 (2) each State should adopt the definitions and  
4 standards developed by the NAIC for purposes of  
5 regulating insurance coverage made available in that  
6 State;

7 (3) in consulting with the NAIC, the Secretary  
8 should advocate and promote the development of  
9 definitions and standards that are appropriate for  
10 purposes of this Act; and

11 (4) after consultation with the NAIC, the Sec-  
12 retary should adopt further definitions for acts of  
13 terrorism and standards for determinations that are  
14 appropriate for this Act.

15 (b) INSURANCE RESERVE GUIDELINES.—

16 (1) SENSE OF CONGRESS REGARDING ADOPTION  
17 BY STATES.—It is the sense of the Congress that—

18 (A) the NAIC should develop appropriate  
19 guidelines for commercial insurers and pools re-  
20 garding maintenance of reserves against the  
21 risks of acts of terrorism; and

22 (B) each State should adopt such guide-  
23 lines for purposes of regulating commercial in-  
24 surers doing business in that State.



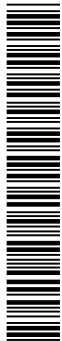


1           (2) CONSIDERATION OF ADOPTION OF NA-  
2           TIONAL GUIDELINES.—Upon the expiration of the 6-  
3           month period beginning on the date of the enact-  
4           ment of this Act, the Secretary shall make a deter-  
5           mination of whether the guidelines referred to in  
6           paragraph (1) have, by such time, been developed  
7           and adopted by nearly all States in a uniform man-  
8           ner. If the Secretary determines that such guidelines  
9           have not been so developed and adopted, the Sec-  
10          retary shall consider adopting, and may adopt, such  
11          guidelines on a national basis in a manner that  
12          supercedes any State law regarding maintenance of  
13          reserves against such risks.

14          (c) GUIDELINES REGARDING DISCLOSURE OF PRIC-  
15          ING AND TERMS OF COVERAGE.—

16           (1) SENSE OF CONGRESS.—It is the sense of  
17          the Congress that the States should require, by laws  
18          or regulations governing the provision of commercial  
19          property and casualty insurance that includes cov-  
20          erage for acts of terrorism, that the price of any  
21          such terrorism coverage, including the costs of any  
22          terrorism related assessments or surcharges under  
23          this Act, be separately disclosed.

24           (2) ADOPTION OF NATIONAL GUIDELINES.—If  
25          the Secretary determines that the States have not



1 enacted laws or adopted regulations adequately pro-  
2 viding for the disclosures described in paragraph (1)  
3 within a reasonable period of time after the date of  
4 the enactment of this Act, the Secretary shall, after  
5 consultation with the NAIC, adopt guidelines on a  
6 national basis requiring such disclosure in a manner  
7 that supercedes any State law regarding such disclo-  
8 sure.

9 **SEC. 14. CONSULTATION WITH STATE INSURANCE REGU-**  
10 **LATORS AND NAIC.**

11 (a) **IN GENERAL.**—The Secretary shall consult with  
12 the State insurance regulators and the NAIC in carrying  
13 out this Act.

14 (b) **FINANCIAL ASSISTANCE, ASSESSMENTS, AND**  
15 **SURCHARGES.**—The Secretary may take such actions, in-  
16 cluding entering into such agreements and providing such  
17 technical and organizational assistance to insurers and  
18 State insurance regulators, as may be necessary to provide  
19 for the distribution of financial assistance under section  
20 6 and the collection of assessments under section 7 and  
21 surcharges under section 8.

22 (c) **INVESTIGATING AND AUDITING CLAIMS.**—The  
23 Secretary may, in consultation with the State insurance  
24 regulators and the NAIC, investigate and audit claims of  
25 insured losses by commercial insurers and otherwise re-



1 quire verification of amounts of premiums or losses, as  
2 appropriate.

3 **SEC. 15. STUDY OF POTENTIAL EFFECTS OF TERRORISM**  
4 **ON LIFE INSURANCE INDUSTRY.**

5 (a) ESTABLISHMENT.—Not later than 30 days after  
6 the date of enactment of this Act, the President shall es-  
7 tablish a commission (in this section referred to as the  
8 “Commission”) to study and report on the potential ef-  
9 fects of an act or acts of terrorism on the life insurance  
10 industry in the United States and the markets served by  
11 such industry.

12 (b) MEMBERSHIP AND OPERATIONS.—

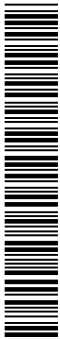
13 (1) APPOINTMENT.—The Commission shall con-  
14 sist of 7 members, as follows:

15 (A) The Secretary of the Treasury or the  
16 designee of the Secretary.

17 (B) The Chairman of the Board of Gov-  
18 ernors of the Federal Reserve System or the  
19 designee of the Chairman.

20 (C) The Assistant to the President for  
21 Homeland Security.

22 (D) 4 members appointed by the Presi-  
23 dent, who shall be—



1 (i) a representative of direct under-  
2 writers of life insurance within the United  
3 States;

4 (ii) a representative of reinsurers of  
5 life insurance within the United States;

6 (iii) an officer of the NAIC; and

7 (iv) a representative of insurance  
8 agents for life underwriters.

9 (2) OPERATIONS.—The chairperson of the  
10 Commission shall determine the manner in which  
11 the Commission shall operate, including funding,  
12 staffing, and coordination with other governmental  
13 entities.

14 (c) STUDY.—The Commission shall conduct a study  
15 of the life insurance industry in the United States, which  
16 shall identify and make recommendations regarding—

17 (1) possible actions to encourage, facilitate, and  
18 sustain the provision, by the life insurance industry  
19 in the United States, of coverage for losses due to  
20 death or disability resulting from an act or acts of  
21 terrorism, including in the face of threats of such  
22 acts; and

23 (2) possible actions or mechanisms to sustain or  
24 supplement the ability of the life insurance industry  
25 in the United States to cover losses due to death or



1 disability resulting from an act or acts of terrorism  
2 in the event that—

3 (A) such acts significantly affect mortality  
4 experience of the population of the United  
5 States over any period of time;

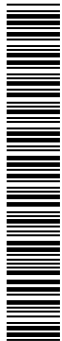
6 (B) such losses jeopardize the capital and  
7 surplus of the life insurance industry in the  
8 United States as a whole; or

9 (C) other consequences from such acts  
10 occur, as determined by the Commission, that  
11 may significantly affect the ability of the life in-  
12 surance industry in the United States to inde-  
13 pendently cover such losses.

14 (d) RECOMMENDATIONS.—The Commission may  
15 make a recommendation pursuant to subsection (c) only  
16 upon the concurrence of a majority of the members of the  
17 Commission.

18 (e) REPORT.—Not later than 120 days after the date  
19 of enactment of this Act, the Commission shall submit to  
20 the House of Representatives and the Senate a report de-  
21 scribing the results of the study and any recommendations  
22 developed under subsection (c).

23 (f) TERMINATION.—The Commission shall terminate  
24 60 days after submission of the report pursuant to sub-  
25 section (e).



1 **SEC. 16. RAILROAD AND TRUCKING INSURANCE STUDY.**

2 The Secretary of the Treasury shall conduct a study  
3 to determine how the Federal Government can address a  
4 possible crisis in the availability and affordability of rail-  
5 road and trucking insurance by making such insurance for  
6 acts of terrorism available on commercially reasonable  
7 terms. Not later than 120 days after the date of the enact-  
8 ment of this Act the Secretary shall submit to the Con-  
9 gress a report regarding the results and conclusions of the  
10 study.

11 **SEC. 17. STUDY OF REINSURANCE POOL SYSTEM FOR FU-**  
12 **TURE ACTS OF TERRORISM.**

13 (a) STUDY.—The Secretary, the Board of Governors  
14 of the Federal Reserve System, and the Comptroller Gen-  
15 eral of the United States shall jointly conduct a study on  
16 the advisability and effectiveness of establishing a reinsur-  
17 ance pool system relating to future acts of terrorism to  
18 replace the program provided for under this Act.

19 (b) CONSULTATION.—In conducting the study under  
20 subsection (a), the Secretary, the Board of Governors of  
21 the Federal Reserve System, and the Comptroller General  
22 shall consult with (1) academic experts, (2) the United  
23 Nations Secretariat for Trade and Development, (3) rep-  
24 resentatives from the property and casualty insurance in-  
25 dustry, (4) representatives from the reinsurance industry,



1 (5) the NAIC, and (6) such consumer organizations as  
2 the Secretary considers appropriate.

3 (c) REPORT.—Not later than 6 months after the date  
4 of the enactment of this Act, the Secretary, the Board of  
5 Governors of the Federal Reserve System, and the Comp-  
6 troller General shall jointly submit a report to the Con-  
7 gress on the results of the study under subsection (a).

8 **SEC. 18. DEFINITIONS.**

9 For purposes of this Act, the following definitions  
10 shall apply:

11 (1) ACT OF TERRORISM.—

12 (A) IN GENERAL.—The term “act of ter-  
13 rorism” means any act that the Secretary de-  
14 termines meets the requirements under sub-  
15 paragraph (B), as such requirements are fur-  
16 ther defined and specified by the Secretary in  
17 consultation with the NAIC.

18 (B) REQUIREMENTS.—An act meets the  
19 requirements of this subparagraph if the act—

20 (i) is unlawful;

21 (ii) causes harm to a person, property,  
22 or entity, in the United States, or in the  
23 case of a domestic United States air car-  
24 rier or a United States flag vessel (or a  
25 vessel based principally in the United



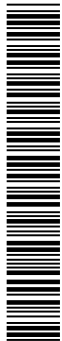
1 States on which United States income tax  
2 is paid and whose insurance coverage is  
3 subject to regulation in the United States),  
4 in or outside the United States;

5 (iii) is committed by a person or  
6 group of persons or associations who are  
7 recognized, either before or after such act,  
8 by the Department of State or the Sec-  
9 retary as an international terrorist group  
10 or have conspired with such a group or the  
11 group's agents or surrogates;

12 (iv) has as its purpose to overthrow or  
13 destabilize the government of any country,  
14 or to influence the policy or affect the con-  
15 duct of the government of the United  
16 States or any segment of the economy of  
17 United States, by coercion; and

18 (v) is not considered an act of war,  
19 except that this clause shall not apply with  
20 respect to any coverage for workers com-  
21 pensation.

22 (2) AFFILIATE.—The term “affiliate” means,  
23 with respect to an insurer, any company that con-  
24 trols, is controlled by, or is under common control  
25 with the insurer.





1           (3) AGGREGATE WRITTEN PREMIUM.—The  
2 term “aggregate written premium” means, with re-  
3 spect to a year, the aggregate premium amount of  
4 all commercial property and casualty insurance cov-  
5 erage written during such year under all lines of  
6 commercial property and casualty insurance.

7           (4) COMMERCIAL INSURER.—The term “com-  
8 mercial insurer” means any corporation, association,  
9 society, order, firm, company, mutual, partnership,  
10 individual, aggregation of individuals, or any other  
11 legal entity that provides commercial property and  
12 casualty insurance. Such term includes any affiliates  
13 of a commercial insurer.

14           (5) COMMERCIAL PROPERTY AND CASUALTY IN-  
15 SURANCE.—

16           (A) IN GENERAL.—The term “commercial  
17 property and casualty insurance” means insur-  
18 ance or reinsurance, or retrocessional reinsur-  
19 ance, for persons or properties in the United  
20 States against—

21                   (i) loss of or damage to property;

22                   (ii) loss of income or extra expense in-  
23 curred because of loss of or damage to  
24 property;



1 (iii) third party liability claims caused  
2 by negligence or imposed by statute or con-  
3 tract, including workers compensation; or

4 (iv) loss resulting from debt or default  
5 of another.

6 (B) EXCLUSIONS.—Such term does not  
7 include—

8 (i) insurance for homeowners, tenants,  
9 private passenger nonfleet automobiles,  
10 mobile homes, or other insurance for per-  
11 sonal, family, or household needs;

12 (ii) insurance for professional liability,  
13 including medical malpractice, errors and  
14 omissions, or directors' and officers' liabil-  
15 ity; or

16 (iii) health or life insurance.

17 (6) CONTROL.—A company has control over an-  
18 other company if—

19 (A) the company directly or indirectly or  
20 acting through one or more other persons owns,  
21 controls, or has power to vote 25 percent or  
22 more of any class of voting securities of the  
23 other company;



1 (B) the company controls in any manner  
2 the election of a majority of the directors or  
3 trustees of the other company; or

4 (C) the Secretary determines, after notice  
5 and opportunity for hearing, that the company  
6 directly or indirectly exercises a controlling in-  
7 fluence over the management or policies of the  
8 other company.

9 (7) COVERED PERIOD.—The term “covered pe-  
10 riod” has the meaning given such term in section  
11 19.

12 (8) INDUSTRY-WIDE LOSSES.—The term “in-  
13 dustry-wide losses” means the aggregate insured  
14 losses sustained by all insurers from coverage writ-  
15 ten under all lines of commercial property and cas-  
16 ualty insurance.

17 (9) INSURED LOSS.—The term “insured loss”  
18 means any loss, net of reinsurance and  
19 retrocessional reinsurance, covered by commercial  
20 property and casualty insurance.

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

23 (11) NET PREMIUM.—The term “net premium”  
24 means, with respect a commercial insurer and a  
25 year, the aggregate premium amount collected by



1 such commercial insurer for all commercial property  
2 and casualty insurance coverage written during such  
3 year under all lines of commercial property and cas-  
4 ualty insurance by such commercial insurer, less any  
5 premium paid by such commercial insurer to other  
6 commercial insurers to insure or reinsure those  
7 risks.

8 (12) SECRETARY.—The term “Secretary”  
9 means the Secretary of the Treasury.

10 (13) STATE.—The term “State” means the  
11 States of the United States, the District of Colum-  
12 bia, the Commonwealth of Puerto Rico, the Com-  
13 monwealth of the Northern Mariana Islands, Guam,  
14 the Virgin Islands, American Samoa, and any other  
15 territory or possession of the United States.

16 (14) STATE INSURANCE REGULATOR.—The  
17 term “State insurance regulator” means, with re-  
18 spect to a State, the principal insurance regulatory  
19 authority of the State.

20 (15) TRIGGERING DETERMINATION.—The term  
21 “triggering determination” has the meaning given  
22 such term in section 5(a).

23 (16) TRIGGERING EVENT.—The term “trig-  
24 gering event” means, with respect to a triggering de-  
25 termination, the occurrence of an act of terrorism,



1 or the occurrence of such acts, that caused the in-  
2 sured losses resulting in such triggering determina-  
3 tion.

4 (17) UNITED STATES.—The term “United  
5 States” means, collectively, the States (as such term  
6 is defined in this section).

7 **SEC. 19. COVERED PERIOD AND EXTENSION OF PROGRAM.**

8 (a) COVERED PERIOD.—Except to the extent pro-  
9 vided otherwise under subsection (b), for purposes of this  
10 Act, the term “covered period” means the period begin-  
11 ning on the date of the enactment of this Act and ending  
12 on January 1, 2003.

13 (b) EXTENSION OF PROGRAM.—If the Secretary de-  
14 termines that extending the covered period is necessary  
15 to ensure the adequate availability in the United States  
16 of commercial property and casualty insurance coverage  
17 for acts of terrorism, the Secretary may, subject to sub-  
18 section (c), extend the covered period by not more than  
19 two years.

20 (c) REPORT.—The Secretary may exercise the au-  
21 thority under subsection (b) to extend the covered period  
22 only if the Secretary submits a report to the Congress pro-  
23 viding notice of and setting forth the reasons for such ex-  
24 tension.



1 **SEC. 20. REGULATIONS.**

2       The Secretary shall issue any regulations necessary

3 to carry out this Act.

