Federal or State civil procedure applicable to class actions.

(Pub. L. 106–37, § 15, July 20, 1999, 113 Stat. 201.)

Editorial Notes

REFERENCES IN TEXT

Rules of Federal civil procedure, referred to in subsecs. (a)(1), (c)(3)(A)(ii), and (d), are contained in the Federal Rules of Civil Procedure which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6615. Applicability of State law

Nothing in this chapter shall be construed to affect the applicability of any State law that provides stricter limits on damages and liabilities, affording greater protection to defendants in Y2K actions, than are provided in this chapter.

(Pub. L. 106–37, § 16, July 20, 1999, 113 Stat. 202.)

§ 6616. Admissible evidence ultimate issue in State courts

Any party to a Y2K action in a State court in a State that has not adopted a rule of evidence substantially similar to Rule 704 of the Federal Rules of Evidence may introduce in such action evidence that would be admissible if Rule 704 applied in that jurisdiction.

(Pub. L. 106–37, § 17, July 20, 1999, 113 Stat. 202.)

Editorial Notes

REFERENCES IN TEXT

Rule 704 of the Federal Rules of Evidence, referred to in text, is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6617. Suspension of penalties for certain year 2000 failures by small business concerns

(a) Definitions

In this section—

(1) the term ''agency'' means any executive agency, as defined in section 105 of title 5, that has the authority to impose civil penalties on small business concerns;

(2) the term ''first-time violation'' means a violation by a small business concern of a federally enforceable rule or regulation (other than a Federal rule or regulation that relates to the safety and soundness of the banking or monetary system or for the integrity of the National Securities markets, including protection of depositors and investors) caused by a Y2K failure if that Federal rule or regulation had not been violated by that small business concern within the preceding 3 years; and

(3) the term ''small business concern'' has the same meaning as a defendant described in section 6604(b)(2)(B) of this title.

(b) Establishment of liaisons

Not later than 30 days after July 20, 1999, each agency shall—

(1) establish a point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations; and

(2) publish the name and phone number of the point of contact for the agency in the Federal Register.

(c) General rule

Subject to subsections (d) and (e), no agency shall impose any civil money penalty on a small business concern for a first-time violation.

(d) Standards for waiver

An agency shall provide a waiver of civil money penalties for a first-time violation, provided that a small business concern demonstrates, and the agency determines, that—

(1) the small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(2) a first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

(3) the first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

(5) the small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

(e) Exceptions

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if—

(1) the small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) the small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

(f) Expiration

This section shall not apply to first-time violations caused by a Y2K failure occurring after December 31, 2000.

(Pub. L. 106–37, § 18, July 20, 1999, 113 Stat. 202.)

CHAPTER 93—INSURANCE

§6701. Operation of State law

(a) State regulation of the business of insurance

The Act entitled ''An Act to express the intent of Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the ''McCarran-Ferguson Act'') remains the law of the United States.

(b) Mandatory insurance licensing requirements

No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e).

(c) Affiliations

(1) In general

Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

(2) Insurance

With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit—

(A) any State from—

(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition of, or a change or continuation of control of, an insurer domiciled in that State; and

(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State;

during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or

(C) any State from restricting a change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

(d) Activities

(1) In general

Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

(2) Insurance sales

(A) In general

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.

(B) Certain State laws preserved

Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by a depository institution, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that—

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term ''services as an insurance agent or broker'' does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.], as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) Limitations

(i) OCC deference

Section 6714(e) of this title does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) Nondiscrimination

Subsection (e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) Construction

Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

(3) Insurance activities other than sales

State statutes, regulations, interpretations, orders, and other actions shall not be preempted under paragraph (1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled ‘‘An Act to express the intent of Congress with reference to the regulation of the business of insurance’’ and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the ‘‘McCarran-Ferguson Act’’);

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsection (e).

(4) Financial activities other than insurance

No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f); and

(D) it—

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(e) Nondiscrimination

Except as provided in any restrictions described in subsection (d)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

(f) Limitation

Subsections (c) and (d) shall not be construed to affect—

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(A) to investigate and bring enforcement actions, consistent with section 77r(c) of this title, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 80b–3a of this title), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 80b–3a of this title); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

(g) Definitions

For purposes of this section, the following definitions shall apply:

(1) Affiliate

The term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

(2) Antitrust laws

The term ''antitrust laws'' has the meaning given the term in subsection (a) of section 12 of this title, and includes section 45 of this title (to the extent that such section 45 relates to unfair methods of competition).

(3) Depository institution

The term ''depository institution''—

(A) has the meaning given the term in section 1813 of title 12; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(4) Insurer

The term ''insurer'' means any person engaged in the business of insurance.

(5) State

The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title I, § 104, Nov. 12, 1999, 113 Stat. 1352.)

Editorial Notes

References in Text

The McCarran-Ferguson Act, referred to in subsecs. (a) and (d)(3)(A), is act Mar. 9, 1945, ch. 20, 59 Stat. 33, which is classified generally to chapter 20 (§ 1011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1011 of this title and Tables.

This Act, referred to in subsecs. (c)(1), (d)(1), (4)(D)(iii), (iv), (e), and (f)(2), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsec.

(d)(2)(B)(viii)(I), is Pub. L. 91–607, title I, §106, Dec. 31, 1970, 84 Stat. 1766, which is classified generally to chapter 22 (§1971 et seq.) of Title 12, Banks and Banking.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 116–94, div. I, title V, §501, Dec. 20, 2019, 133 Stat. 3026, provided that: ''This title [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2019'.''

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–1, §1(a), Jan. 12, 2015, 129 Stat. 3, provided that: ''This Act [enacting subchapter III of this chapter, amending section 78*o*–10 of this title, section 6s of Title 7, Agriculture, and section 241 of Title 12, Banks and Banking, enacting provisions set out as notes under this section, sections 1 and 6s of Title 7, and section 241 of Title 12, and amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2015'.''

Pub. L. 114–1, title II, §201, Jan. 12, 2015, 129 Stat. 12, provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'National Association of Registered Agents and Brokers Reform Act of 2015'.''

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–160, §1(a), Dec. 26, 2007, 121 Stat. 1839, provided that: ''This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2007'.''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–144, §1, Dec. 22, 2005, 119 Stat. 2660, provided that: ''This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Extension Act of 2005'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–297, §1(a), Nov. 26, 2002, 116 Stat. 2322, provided that: ''This Act [amending section 248 of Title 12, Banks and Banking, and sections 1606 and 1610 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and section 1610 of Title 28, and amending provisions set out as a note under section 1610 of Title 28] may be cited as the 'Terrorism Risk Insurance Act of 2002'.''

ADVISORY COMMITTEE ON RISK-SHARING MECHANISMS

Pub. L. 114–1, title I, §110, Jan. 12, 2015, 129 Stat. 9, provided that:

''(a) FINDING; RULE OF CONSTRUCTION.—

''(1) FINDING.—Congress finds that it is desirable to encourage the growth of nongovernmental, private market reinsurance capacity for protection against losses arising from acts of terrorism.

''(2) RULE OF CONSTRUCTION.—Nothing in this Act [see section 1(a) of Pub. L. 114–1, set out as a Short Title of 2015 Amendment note above], any amendment made by this Act, or the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) [see Short Title of 2002 Amendment note above] shall prohibit insurers from developing risk-sharing mechanisms to voluntarily reinsure terrorism losses between and among themselves.

''(b) ADVISORY COMMITTEE ON RISK-SHARING MECHANISMS.—

''(1) ESTABLISHMENT.—The Secretary of the Treasury shall establish and appoint an advisory committee to be known as the 'Advisory Committee on Risk-Sharing Mechanisms' (referred to in this subsection as the 'Advisory Committee').

''(2) DUTIES.—The Advisory Committee shall provide advice, recommendations, and encouragement with respect to the creation and development of the nongovernmental risk-sharing mechanisms described under subsection (a).

''(3) MEMBERSHIP.—The Advisory Committee shall be composed of 9 members who are directors, officers, or other employees of insurers, reinsurers, or capital market participants that are participating or that desire to participate in the nongovernmental risk-sharing mechanisms described under subsection (a), and who are representative of the affected sectors of the insurance industry, including commercial property insurance, commercial casualty insurance, reinsurance, and alternative risk transfer industries.''

TERRORISM INSURANCE PROGRAM

Pub. L. 107–297, title I, Nov. 26, 2002, 116 Stat. 2322, as amended by Pub. L. 109–144, §§2–8, Dec. 22, 2005, 119 Stat. 2660–2662; Pub. L. 110–160, §§2–5, Dec. 26, 2007, 121 Stat. 1839–1841, Pub. L. 114–1, title I, §§101–106, 107(e), 111, 112, Jan. 12, 2015, 129 Stat. 3–5, 8, 10, 12; Pub. L. 116–94, div. I, title V, §502(a)–(c), Dec. 20, 2019, 133 Stat. 3026, 3027, provided that:

''SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

''(a) FINDINGS.—The Congress finds that—

''(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

''(2) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

''(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

''(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

''(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

''(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

''(b) PURPOSE.—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

''(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

''(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

''SEC. 102. DEFINITIONS.

''In this title, the following definitions shall apply:

''(1) ACT OF TERRORISM.—

''(A) CERTIFICATION.—The term 'act of terrorism' means any act that is certified by the Secretary, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—

''(i) to be an act of terrorism;

''(ii) to be a violent act or an act that is dangerous to—

''(I) human life;

''(II) property; or

''(III) infrastructure;

''(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

''(I) an air carrier or vessel described in paragraph (5)(B); or

''(II) the premises of a United States mission; and

''(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

''(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if—

''(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

''(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

''(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

''(D) TIMING OF CERTIFICATION.—Not later than 9 months after the report required under section 107 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [see section 107 of Pub. L. 114–1; 129 Stat. 7] is submitted to the appropriate committees of Congress, the Secretary shall issue final rules governing the certification process, including establishing a timeline for which an act is eligible for certification by the Secretary on whether an act is an act of terrorism under this paragraph.

''(E) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

''(2) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

''(3) CONTROL.—

''(A) IN GENERAL.—An entity has 'control' over another entity, if—

''(i) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

''(ii) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

''(iii) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

''(B) RULE OF CONSTRUCTION.—An entity, including any affiliate thereof, does not have 'control' over another entity, if, as of the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [Jan. 12, 2015], the entity is acting as an attorney-in-fact, as defined by the Secretary, for the other entity and such other entity is a reciprocal insurer, provided that the entity is not, for reasons other than the attorney-in-fact relationship, defined as having 'control' under subparagraph (A).

''(4) DIRECT EARNED PREMIUM.—The term 'direct earned premium' means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (5).

''(5) INSURED LOSS.—The term 'insured loss' means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—

''(A) occurs within the United States; or

''(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

''(6) INSURER.—The term 'insurer' means any entity, including any affiliate thereof—

''(A) that is—

''(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

''(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

''(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

''(iv) a State residual market insurance entity or State workers' compensation fund; or

''(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

''(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

''(C) that meets any other criteria that the Secretary may reasonably prescribe.

''(7) INSURER DEDUCTIBLE.—The term 'insurer deductible' means—

''(A) the value of an insurer's direct earned premiums during the immediately preceding calendar year, multiplied by 20 percent; and

''(B) notwithstanding subparagraph (A), for any calendar year, if an insurer has not had a full year of operations during the calendar year immediately preceding such calendar year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

''(8) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

''(9) PERSON.—The term 'person' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

''(10) PROGRAM.—The term 'Program' means the Terrorism Insurance Program established by this title.

''(11) PROPERTY AND CASUALTY INSURANCE.—The term 'property and casualty insurance'—

''(A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance; and

''(B) does not include—

''(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

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

''(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

''(iv) insurance for medical malpractice;

''(v) health or life insurance, including group life insurance;

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

''(vii) reinsurance or retrocessional reinsurance;

''(viii) commercial automobile insurance;

''(ix) burglary and theft insurance;

''(x) surety insurance;

''(xi) professional liability insurance; or

''(xii) farm owners multiple peril insurance.

''(12) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(13) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

''(14) UNITED STATES.—The term 'United States' means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

''(15) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date in this title, such day shall be construed—

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

''(B) to end at midnight on that date.

''SEC. 103. TERRORISM INSURANCE PROGRAM.

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

''(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

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

''(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

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

''(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

''(A) in the case of any policy that is issued before the date of enactment of this Act [Nov. 26, 2002], not later than 90 days after that date of enactment;

''(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer and renewal of the policy; and

''(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer and renewal of the policy;

''(3) in the case of any policy that is issued after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the insurer provides clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under subsection (e)(2), at the time of offer, purchase, and renewal of the policy;

''(4) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

''(5) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

''(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

''(B) written certification—

''(i) of the underlying claim; and

''(ii) of all payments made for insured losses; and

''(C) certification of its compliance with the provisions of this subsection.

''(c) MANDATORY AVAILABILITY.—During each calendar year, each entity that meets the definition of an insurer under section 102—

''(1) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

''(2) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

''(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

''(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act [Nov. 26, 2002], that apply the provisions of this title to State residual market insurance entities and State workers' compensation funds.

''(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

''(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

''(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

''(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

''(e) INSURED LOSS SHARED COMPENSATION.—

''(1) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during each calendar year shall be equal to 85 percent and beginning on January 1, 2016, shall decrease by 1 percentage point per calendar year until equal to 80 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such calendar year.

''(B) PROGRAM TRIGGER.—In the case of certified acts of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified acts of terrorism exceed—

''(i) $100,000,000, with respect to such insured losses occurring in calendar year 2015;

''(ii) $120,000,000, with respect to such insured losses occurring in calendar year 2016;

''(iii) $140,000,000, with respect to such insured losses occurring in calendar year 2017;

''(iv) $160,000,000, with respect to such insured losses occurring in calendar year 2018;

''(v) $180,000,000, with respect to such insured losses occurring in calendar year 2019; and

''(vi) $200,000,000, with respect to such insured losses occurring in calendar year 2020 and any calendar year thereafter.

''(C) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

''(2) CAP ON ANNUAL LIABILITY.—

''(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000, during a calendar year—

''(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds $100,000,000,000; and

''(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

''(B) INSURER SHARE.—

''(i) IN GENERAL.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program, except that, notwithstanding paragraph (1) or any other provision of Federal or State law, no insurer may be required to make any payment for insured losses in excess of its deductible under section 102(7) combined with its share of insured losses under paragraph (1)(A) of this subsection.

''(ii) REGULATIONS.—Not later than 240 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Secretary shall issue final regulations for determining the pro rata share of insured losses under the Program when insured losses exceed $100,000,000,000, in accordance with clause (i).

''(iii) REPORT TO CONGRESS.—Not later than 120 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007, the Secretary shall provide a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the process to be used by the Secretary for determining the allocation of pro rata payments for insured losses under the Program when such losses exceed $100,000,000,000.

''(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any calendar year. The Secretary shall provide an initial notice to Congress not later than 15 days after the date of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000.

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

''(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

''(6) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—

''(A) IN GENERAL.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be the lesser of—

''(i) $27,500,000,000, as such amount is revised pursuant to this paragraph; and

''(ii) the aggregate amount, for all insurers, of insured losses during such calendar year.

''(B) REVISION OF INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—

''(i) PHASE-IN.—Beginning in the calendar year of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [2015], the amount set forth under subparagraph (A)(i) shall increase by $2,000,000,000 per calendar year until equal to $37,500,000,000.

''(ii) FURTHER REVISION.—Beginning in the calendar year that follows the calendar year in which the amount set forth under subparagraph (A)(i) is equal to $37,500,000,000, the amount under subparagraph (A)(i) shall be revised to be the amount equal to the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years, as such sum is determined by the Secretary under subparagraph (C).

''(C) RULEMAKING.—Not later than 3 years after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [Jan. 12, 2015], the Secretary shall—

''(i) issue final rules for determining the amount of the sum described under subparagraph (B)(ii); and

''(ii) provide a timeline for public notification of such determination.

''(7) RECOUPMENT OF FEDERAL SHARE.—

''(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount shall be the difference between—

''(i) the insurance marketplace aggregate retention amount under paragraph (6); and

''(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

''(I) are within the insurer deductible for the insurer subject to the losses; or

''(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

''(B) [Reserved.]

''(C) MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation), terrorism loss risk-spreading premiums in an amount equal to 140 percent of any mandatory recoupment amount as calculated under subparagraph (A) for such period.

''(D) DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE.—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

''(i) the ultimate costs to taxpayers of no additional recoupment;

''(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

''(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

''(iv) such other factors as the Secretary considers appropriate.

''(E) TIMING OF MANDATORY RECOUPMENT.—

''(i) IN GENERAL.—If the Secretary is required to collect terrorism loss risk-spreading premiums under subparagraph (C)—

''(I) for any act of terrorism that occurs on or before December 31, 2022, the Secretary shall collect all required premiums by September 30, 2024;

''(II) for any act of terrorism that occurs between January 1 and December 31, 2023, the Secretary shall collect 35 percent of any required premiums by September 30, 2024, and the remainder by September 30, 2029; and

''(III) for any act of terrorism that occurs on or after January 1, 2024, the Secretary shall collect all required premiums by September 30, 2029.

''(ii) REGULATIONS REQUIRED.—Not later than 180 days after the date of enactment of this subparagraph [Dec. 26, 2007], the Secretary shall issue regulations describing the procedures to be used for collecting the required premiums in the time periods referred to in clause (i).

''(F) NOTICE OF ESTIMATED LOSSES.—Not later than 90 days after the date of an act of terrorism, the Secretary shall publish an estimate of aggregate insured losses, which shall be used as the basis for determining whether mandatory recoupment will be required under this paragraph. Such estimate shall be updated as appropriate, and at least annually.

''(8) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

''(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

''(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

''(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

''(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

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

''(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium collected on a discretionary basis pursuant to paragraph (7)(D) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

''(D) Adjustment for urban and smaller commercial and rural areas and different lines of insurance.—

''(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

''(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

''(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

''(III) the various exposures to terrorism risk for different lines of insurance.

''(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums, in accordance with the timing requirements of paragraph (7)(E).

''(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

''(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

''(g) REINSURANCE TO COVER EXPOSURE.—

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

''(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the calendar year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for the calendar year. If such recoveries and financial assistance for the calendar year exceed such aggregate amount of insured losses for the calendar year and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

''(h) GROUP LIFE INSURANCE STUDY.—

''(1) STUDY.—The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

''(2) CONDITIONAL COVERAGE.—To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC—

''(A) apply the provisions of this title, as appropriate, to providers of group life insurance; and

''(B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

''(i) STUDY AND REPORT.—

''(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

''(2) REPORT.—Not later than 9 months after the date of enactment of this Act [Nov. 26, 2002], the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

''SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

''(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

''(1) to investigate and audit all claims under the Program; and

''(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

''(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

''(1) insurers may file and certify claims under the Program;

''(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

''(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

''(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

''(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

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

''(e) CIVIL PENALTIES.—

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

''(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

''(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

''(C) submits to the Secretary fraudulent claims under the Program for insured losses;

''(D) has failed to provide the disclosures required under subsection (f); or

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

''(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

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

''(f) SUBMISSION OF PREMIUM INFORMATION.—

''(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

''(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

''(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

''(g) FUNDING.—

''(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

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

''(h) REPORTING OF TERRORISM INSURANCE DATA.—

''(1) AUTHORITY.—During the calendar year beginning on January 1, 2016, and in each calendar year thereafter, the Secretary shall require insurers participating in the Program to submit to the Secretary such information regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program, which shall include information regarding—

''(A) lines of insurance with exposure to such losses;

''(B) premiums earned on such coverage;

''(C) geographical location of exposures;

''(D) pricing of such coverage;

''(E) the take-up rate for such coverage;

''(F) the amount of private reinsurance for acts of terrorism purchased; and

''(G) such other matters as the Secretary considers appropriate.

''(2) REPORTS.—Not later than June 30, 2016, and every other June 30 thereafter, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

''(A) an analysis of the overall effectiveness of the Program;

''(B) an evaluation of the availability and affordability of terrorism risk insurance, which shall include an analysis of such availability and affordability specifically for places of worship;

''(C) an evaluation of any changes or trends in the data collected under paragraph (1);

''(D) an evaluation of whether any aspects of the Program have the effect of discouraging or impeding insurers from providing commercial property casualty insurance coverage or coverage for acts of terrorism;

''(E) an evaluation of the impact of the Program on workers' compensation insurers; and

''(F) in the case of the data reported in paragraph (1)(B), an updated estimate of the total amount earned since January 1, 2003.

''(3) PROTECTION OF DATA.—To the extent possible, the Secretary shall contract with an insurance statistical aggregator to collect the information described in paragraph (1), which shall keep any nonpublic information confidential and provide it to the Secretary in an aggregate form or in such other form or manner that does not permit identification of the insurer submitting such information.

''(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (1) from an insurer, or affiliate of an insurer, the Secretary shall coordinate with the appropriate State insurance regulatory authorities and any relevant government agency or publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, individually or collectively, such entities. If the Secretary determines that such data or information is available, and may be obtained in a timely matter, from such entities, the Secretary shall obtain the data or information from such entities. If the Secretary determines that such data or information is not so available, the Secretary may collect such data or information from an insurer and affiliates.

''(5) CONFIDENTIALITY.—

''(A) RETENTION OF PRIVILEGE.—The submission of any non-publicly available data and information to the Secretary and the sharing of any non-publicly available data with or by the Secretary among other Federal agencies, the State insurance regulatory authorities, or any other entities under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or

State court) to which the data or information is otherwise subject.

''(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Secretary, regarding the privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection.

''(C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by the Secretary under this subsection may be made available to State insurance regulatory authorities, individually or collectively through an information-sharing agreement that—

''(i) shall comply with applicable Federal law; and

''(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including any privilege referred to in subparagraph (A) and the rules of any Federal or State court) to which the data or information is otherwise subject.

''(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this subsection to the Secretary by an insurer or affiliate of an insurer.

''SEC. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

''(a) GENERAL NULLIFICATION.—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] shall be void to the extent that it excludes losses that would otherwise be insured losses.

''(b) GENERAL PREEMPTION.—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

''(c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] and that excludes coverage for an act of terrorism only—

''(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

''(2) if—

''(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

''(B) the insurer provided notice, at least 30 days before any such reinstatement, of—

''(i) the increased premium for such terrorism coverage; and

''(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

''SEC. 106. PRESERVATION PROVISIONS.

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

''(1) except as specifically provided in this title; and

''(2) except that—

''(A) the definition of the term 'act of terrorism' in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

''(B) during the period beginning on the date of enactment of this Act [Nov. 26, 2002] and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

''(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

''(b) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act [Nov. 26, 2002]. The terms and conditions of such an agreement shall be determined by the language of that agreement.

''SEC. 107. LITIGATION MANAGEMENT.

''(a) PROCEDURES AND DAMAGES.—

''(1) IN GENERAL.—If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in subsection (b).

''(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

''(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

''(4) JURISDICTION.—For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

''(5) PUNITIVE DAMAGES.—Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

''(6) AUTHORITY OF THE SECRETARY.—Procedures and requirements established by the Secretary under section 50.82 of part 50 of title 31 of the Code of Federal Regulations (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in paragraph (1) of this subsection.

''(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

''(c) RIGHT OF SUBROGATION.—The United States shall have the right of subrogation with respect to any payment or claim paid by the United States under this title.

''(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

''(1) any party's contractual right to arbitrate a dispute; or

''(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107–42; 49 U.S.C. 40101 note.).

''(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

''SEC. 108. TERMINATION OF PROGRAM.

''(a) TERMINATION OF PROGRAM.—The Program shall terminate on December 31, 2027.

''(b) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

''(c) REPEAL; SAVINGS CLAUSE.—This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

''(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4), (5), (6), (7), or (8) of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

''(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

''(d) STUDY AND REPORT ON THE PROGRAM.—

''(1) STUDY.—The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

''(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

''(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.—

''(1) IN GENERAL.—The President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an ongoing analysis regarding the long-term availability and affordability of insurance for terrorism risk.

''(2) REPORT.—Not later than September 30, 2006, and thereafter in 2010 and 2013, the President's Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under paragraph (1).

''(f) INSURANCE FOR NUCLEAR, BIOLOGICAL, CHEMICAL, AND RADIOLOGICAL TERRORIST EVENTS.—

''(1) STUDY.—The Comptroller General of the United States shall examine—

''(A) the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials;

''(B) the outlook for such coverage in the future; and

''(C) the capacity of private insurers and State workers compensation funds to manage risk associated with nuclear, biological, chemical, and radiological terrorist events.

''(2) REPORT.—Not later than 1 year after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing a detailed statement of the findings under paragraph (1), and recommendations for any legislative, regulatory, administrative, or other actions at the Federal, State, or local levels that the Comptroller General considers appropriate to expand the availability and affordability of insurance for nuclear, biological, chemical, or radiological terrorist events.

''(g) AVAILABILITY AND AFFORDABILITY OF TERRORISM INSURANCE IN SPECIFIC MARKETS.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

''(2) ELEMENTS OF STUDY.—The study required by paragraph (1) shall contain—

''(A) an analysis of both insurance and reinsurance capacity in specific markets, including pricing and coverage limits in existing policies;

''(B) an assessment of the factors contributing to any capacity constraints that are identified; and

''(C) recommendations for addressing those capacity constraints.

''(3) REPORT.—Not later than 180 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit a report on the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

''(h) STUDY OF SMALL INSURER MARKET COMPETITIVENESS.—

''(1) IN GENERAL.—Not later than June 30, 2017, and every other June 30 thereafter, the Secretary shall conduct a study of small insurers (as such term is defined by regulation by the Secretary) participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace, including—

''(A) changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

''(B) how the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

''(C) the impact of the Program's mandatory availability requirement under section 103(c) on small insurers;

''(D) the effect of increasing the trigger amount for the Program under section 103(e)(1)(B) on small insurers;

''(E) the availability and cost of private reinsurance for small insurers; and

''(F) the impact that State workers compensation laws have on small insurers and workers compensation carriers in the terrorism risk insurance marketplace.

''(2) REPORT.—The Secretary shall submit a report to the Congress setting forth the findings and conclusions of each study required under paragraph (1).''

[Pub. L. 114–1, title I, §§ 103, 105, 111, 112, Jan. 12, 2015, 129 Stat. 4, 5, 10, 12, which directed amendment of ''subparagraph (B) of section 103(e)(1)'', ''paragraph (1)(A) of section 102'', ''section 104'', and ''section 108'', respectively, without specifying the name of the Act being amended, were executed to those sections of the Terrorism Risk Insurance Act of 2002 (title I of Pub. L. 107–297, set out above), to reflect the probable intent of Congress.]

[Pub. L. 110–160, § 4(b)(2), Dec. 26, 2007, 121 Stat. 1840, which directed amendment of section 103(e)(3) of Pub. L. 107–297, set out above, by substituting period for '' 'and the Congress shall' and all that follows through the end of the paragraph'', was executed by substituting period for ''and the Congress shall'' and all that followed through end of first sentence, to reflect the probable intent of Congress, in light of insertion of last sentence of par. (3) by Pub. L. 110–160, § 4(b)(1).]

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—STATE REGULATION OF INSURANCE

§ 6711. Functional regulation of insurance

The insurance activities of any person (including a national bank exercising its power to act as agent under section 92 of title 12) shall be functionally regulated by the States, subject to section 6701 of this title.

(Pub. L. 106–102, title III, § 301, Nov. 12, 1999, 113 Stat. 1407.)

§ 6712. Insurance underwriting in national banks

(a) In general

Except as provided in section 6713 of this title, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) Authorized products

For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of title 26.

(c) Definition

For purposes of this section, the term ''insurance'' means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 1821(e)(8)(D)(i) of title 12); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of title 26; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of title 26, if the bank were subject to tax as an insurance company under section 831 of that title; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of title 26.

(d) Rule of construction

For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

(Pub. L. 106–102, title III, § 302, Nov. 12, 1999, 113 Stat. 1407.)

§ 6713. Title insurance activities of national banks and their affiliates

(a) General prohibition

No national bank may engage in any activity involving the underwriting or sale of title insurance.

(b) Nondiscrimination parity exception

(1) In general

Notwithstanding any other provision of law (including section 6701 of this title), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) Coordination with "wildcard" provision

A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) Grandfathering with consistent regulation

(1) In general

Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before November 12, 1999.

(2) Insurance affiliate

In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) Insurance subsidiary

In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) "Affiliate" and "subsidiary" defined

For purposes of this section, the terms ''affiliate'' and ''subsidiary'' have the same meanings as in section 1841 of title 12.

(e) Rule of construction

No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before November 12, 1999, and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

(Pub. L. 106–102, title III, § 303, Nov. 12, 1999, 113 Stat. 1408.)

Editorial Notes

References in Text

This Act, referred to in subsec. (e), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§ 6714. Expedited and equalized dispute resolution for Federal regulators

(a) Filing in Court of Appeals

In the case of a regulatory conflict between a State insurance regulator and a Federal regulator regarding insurance issues, including whether a State law, rule, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, the Federal or State regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) Expedited review

The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) Supreme Court review

Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) Statute of limitation

No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) Standard of review

The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

(Pub. L. 106–102, title III, § 304, Nov. 12, 1999, 113 Stat. 1409.)

§ 6715. Certain State affiliation laws preempted for insurance companies and affiliates

Except as provided in section 6701(c)(2) of this title, no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized

as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

(Pub. L. 106–102, title III, §306, Nov. 12, 1999, 113 Stat. 1415.)

§6716. Interagency consultation

(a) Purpose

It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) Examination results and other information

(1) Information of the Board

Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) Banking agency information

Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) State insurance regulator information

Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

(c) Consultation

Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) Effect on other authority

Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

(e) Confidentiality and privilege

(1) Confidentiality

The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) Privilege

The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) Definitions

For purposes of this section, the following definitions shall apply:

(1) Appropriate Federal banking agency; depository institution

The terms ''appropriate Federal banking agency'' and ''depository institution'' have the same meanings as in section 1813 of title 12.

(2) Board and financial holding company

The terms ''Board'' and ''financial holding company'' have the same meanings as in section 1841 of title 12.

(Pub. L. 106–102, title III, §307, Nov. 12, 1999, 113 Stat. 1415.)

§ 6717. Definition of State

For purposes of this subchapter, the term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title III, §308, Nov. 12, 1999, 113 Stat. 1417.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in original ''this subtitle'', meaning subtitle A (§301 et seq.) of title III of Pub. L. 106–102, which enacted this subchapter and section 1831x of Title 12, Banks and Banking. For complete classification of this subtitle to the Code, see Tables.

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER II—REDOMESTICATION OF MUTUAL INSURERS

§ 6731. General application

This subchapter shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

(Pub. L. 106–102, title III, §311, Nov. 12, 1999, 113 Stat. 1417.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 106–102, title III, §316, Nov. 12, 1999, 113 Stat. 1422, provided that: ''This subtitle [subtitle B (§§311–316) of title III of Pub. L. 106–102, enacting this subchapter] shall take effect on the date of the enactment of this Act [Nov. 12, 1999].''

§ 6732. Redomestication of mutual insurers

(a) Redomestication

A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) Resulting domicile

Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) Licenses preserved

The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subchapter shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) Effectiveness of outstanding policies and contracts

(1) In general

All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) Forms

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) Notice

A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) Procedural requirements

No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) Approval by board of directors and policyholders

The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) Continued voting control by policyholders; review of public stock offering

After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) Award of stock or grant of options to officers and directors

During the applicable period provided for under the State law of the transferee domicile following completion of an initial public offering, or for a period of six months if no such applicable period is provided, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) Policyholder rights

Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) Fair and equitable treatment of policyholders

The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

(Pub. L. 106–102, title III, §312, Nov. 12, 1999, 113 Stat. 1417.)

§6733. Effect on State laws restricting redomestication

(a) In general

Unless otherwise permitted by this subchapter, State laws of any transferor domicile that conflict with the purposes and intent of this subchapter are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subchapter;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subchapter, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated; and

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subchapter, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) Differential treatment prohibited

No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) Laws prohibiting operations

If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer promptly following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed State in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 6734(a) of this title;

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

(Pub. L. 106–102, title III, § 313, Nov. 12, 1999, 113 Stat. 1419.)

§ 6734. Other provisions

(a) Judicial review

The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section[1] involving any redomesticating or redomesticated insurer.

(b) Severability

If any provision of this section,[1] or the application thereof to any person or circumstances, is held invalid, the remainder of the section,[1] and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Pub. L. 106–102, title III, § 314, Nov. 12, 1999, 113 Stat. 1420.)

[1] See References in Text note below.

Editorial Notes

References in Text

This section, referred to in text, probably should be a reference to this subtitle, meaning subtitle B (§§ 311–316) of title III of Pub. L. 106–102, which is classified generally to this subchapter.

§ 6735. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Court of competent jurisdiction

The term ''court of competent jurisdiction'' means a court authorized pursuant to section 6734(a) of this title to adjudicate litigation arising under this subchapter.

(2) Domicile

The term ''domicile'' means the State in which an insurer is incorporated, chartered, or organized.

(3) Insurance licensee

The term ''insurance licensee'' means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) Institution

The term ''institution'' means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) Licensed State

The term ''licensed State'' means any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) Mutual insurer

The term ''mutual insurer'' means a mutual insurer organized under the laws of any State.

(7) Person

The term ''person'' means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) Policyholder

The term ''policyholder'' means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) Redomesticated insurer

The term ''redomesticated insurer'' means a mutual insurer that has redomesticated pursuant to this subchapter.

(10) Redomesticating insurer

The term ''redomesticating insurer'' means a mutual insurer that is redomesticating pursuant to this subchapter.

(11) Redomestication or transfer

The term ''redomestication'' or ''transfer'' means the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subchapter.

(12) State insurance regulator

The term ''State insurance regulator'' means the principal insurance regulatory authority of a State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(13) State law

The term ''State law'' means the statutes of any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) Transferee domicile

The term ''transferee domicile'' means the State to which a mutual insurer is redomesticating pursuant to this subchapter.

(15) Transferor domicile

The term ''transferor domicile'' means the State from which a mutual insurer is redomesticating pursuant to this subchapter.

(Pub. L. 106–102, title III, § 315, Nov. 12, 1999, 113 Stat. 1420.)

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER III—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS

Editorial Notes

CODIFICATION

Subtitle C of title III of the Gramm-Leach-Bliley Act, comprising this subchapter, was originally enacted by Pub. L. 106–102, title III, Nov. 12, 1999, 113 Stat. 1422. Such subtitle is shown herein, however, as having been added by Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 12, because of the extensive revision of subtitle C by Pub. L. 114–1.

§ 6751. National Association of Registered Agents and Brokers

(a) Establishment

There is established the National Association of Registered Agents and Brokers (referred to in this subchapter as the ''Association'').

(b) Status

The Association shall—

(1) be a nonprofit corporation;

(2) not be an agent or instrumentality of the Federal Government;

(3) be an independent organization that may not be merged with or into any other private or public entity; and

(4) except as otherwise provided in this subchapter, be subject to, and have all the powers conferred upon, a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–301.01 et seq.) or any successor thereto.

(Pub. L. 106–102, title III, § 321, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 13.)

Editorial Notes

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b)(4), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, which is not classified to the Code.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6752 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6751, Pub. L. 106–102, title III, § 321, Nov. 12, 1999, 113 Stat. 1422, related to State flexibility in multistate licensing reforms, prior to the general amendment of this subchapter by Pub. L. 114–1.

§ 6752. Purpose

The purpose of the Association shall be to provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulations, and preserving the rights of a State, pertaining to—

(1) licensing, continuing education, and other qualification requirements of insurance producers that are not members of the Association;

(2) resident or nonresident insurance producer appointment requirements;

(3) supervising and disciplining resident and nonresident insurance producers;

(4) establishing licensing fees for resident and nonresident insurance producers so that there is no loss of insurance producer licensing revenue to the State; and

(5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers.

(Pub. L. 106–102, title III, § 322, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 13.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6753 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6752, Pub. L. 106–102, title III, § 322, Nov. 12, 1999, 113 Stat. 1424, related to National Association of Registered Agents and Brokers, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6751 of this title.

§ 6753. Membership

(a) Eligibility

(1) In general

Any insurance producer licensed in its home State shall, subject to paragraphs (2) and (4), be eligible to become a member of the Association.

(2) Ineligibility for suspension or revocation of license

Subject to paragraph (3), an insurance producer is not eligible to become a member of the Association if a State insurance regulator has suspended or revoked the insurance license of the insurance producer in that State.

(3) Resumption of eligibility

Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator reissues or renews the license of the insurance producer in the State in which the license was suspended or revoked, or otherwise terminates or vacates the suspension or revocation; or

(B) the suspension or revocation expires or is subsequently overturned by a court of competent jurisdiction.

(4) Criminal history record check required

(A) In general

An insurance producer who is an individual shall not be eligible to become a member of the Association unless the insurance producer has undergone a criminal history record check that complies with regulations prescribed by the Attorney General of the United States under subparagraph (K).

(B) Criminal history record check requested by home State

An insurance producer who is licensed in a State and who has undergone a criminal history record check during the 2-year period preceding the date of submission of an application to become a member of the Association, in compliance with a requirement to undergo such criminal history record check as a condition for such licensure in the State, shall be deemed to have undergone a criminal history record check for purposes of subparagraph (A).

(C) Criminal history record check requested by Association

(i) In general

The Association shall, upon request by an insurance producer licensed in a State, submit fingerprints or other identification information obtained from the insurance producer, and a request for a criminal history record check of the insurance producer, to the Federal Bureau of Investigation.

(ii) Procedures

The board of directors of the Association (referred to in this subchapter as the ''Board'') shall prescribe procedures for obtaining and utilizing fingerprints or other identification information and criminal history record information, including the establishment of reasonable fees to defray the expenses of the Association in connection with the performance of a criminal history record check and appropriate safeguards for maintaining confidentiality and security of the information. Any fees charged pursuant to this clause shall be separate and distinct from those charged by the Attorney General pursuant to subparagraph (I).

(D) Form of request

A submission under subparagraph (C)(i) shall include such fingerprints or other identification information as is required by the Attorney General concerning the person about whom the criminal history record check is requested, and a statement signed by the person authorizing the Attorney General to provide the information to the Association and for the Association to receive the information.

(E) Provision of information by Attorney General

Upon receiving a submission under subparagraph (C)(i) from the Association, the Attorney General shall search all criminal history records of the Federal Bureau of Investigation, including records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, that the Attorney General determines appropriate for criminal history records corresponding to the fingerprints or other identification information provided under subparagraph (D) and provide all criminal history record information included in the request to the Association.

(F) Limitation on permissible uses of information

Any information provided to the Association under subparagraph (E) may only—

(i) be used for purposes of determining compliance with membership criteria established by the Association;

(ii) be disclosed to State insurance regulators, or Federal or State law enforcement agencies, in conformance with applicable law; or

(iii) be disclosed, upon request, to the insurance producer to whom the criminal history record information relates.

(G) Penalty for improper use or disclosure

Whoever knowingly uses any information provided under subparagraph (E) for a purpose not authorized in subparagraph (F), or discloses any such information to anyone not authorized to receive it, shall be fined not more than $50,000 per violation as determined by a court of competent jurisdiction.

(H) Reliance on information

Neither the Association nor any of its Board members, officers, or employees shall be liable in any action for using information provided under subparagraph (E) as permitted under subparagraph (F) in good faith and in reasonable reliance on its accuracy.

(I) Fees

The Attorney General may charge a reasonable fee for conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association to the Attorney General.

(J) Rule of construction

Nothing in this paragraph shall be construed as—

(i) requiring a State insurance regulator to perform criminal history record checks under this section; or

(ii) limiting any other authority that allows access to criminal history records.

(K) Regulations

The Attorney General shall prescribe regulations to carry out this paragraph, which shall include—

(i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and

(ii) procedures providing a reasonable opportunity for an insurance producer to contest the accuracy of information regarding the insurance producer provided under subparagraph (E).

(L) Ineligibility for membership

(i) In general

The Association may, under reasonably consistently applied standards, deny membership to an insurance producer on the basis of criminal history record information provided under subparagraph (E), or where the insurance producer has been subject to disciplinary action, as described in paragraph (2).

(ii) Rights of applicants denied membership

The Association shall notify any insurance producer who is denied membership on the basis of criminal history record information provided under subparagraph (E) of the right of the insurance producer to—

(I) obtain a copy of all criminal history record information provided to the Association under subparagraph (E) with respect to the insurance producer; and

(II) challenge the denial of membership based on the accuracy and completeness of the information.

(M) Definition

For purposes of this paragraph, the term ''criminal history record check'' means a national background check of criminal history records of the Federal Bureau of Investigation.

(b) Authority to establish membership criteria

The Association may establish membership criteria that bear a reasonable relationship to the purposes for which the Association was established.

(c) Establishment of classes and categories of membership

(1) Classes of membership

The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, experience, or other qualifications.

(2) Business entities

The Association shall establish a class of membership and membership criteria for business entities. A business entity that applies for membership shall be required to designate an individual Association member responsible for the compliance of the business entity with Association standards and the insurance laws, standards, and regulations of any State in which the business entity seeks to do business on the basis of Association membership.

(3) Categories

(A) Separate categories for insurance producers permitted

The Association may establish separate categories of membership for insurance producers and for other persons or entities within each class, based on the types of licensing categories that exist under State laws.

(B) Separate treatment for depository institutions prohibited

No special categories of membership, and no distinct membership criteria, shall be established for members that are depository institutions or for employees, agents, or affiliates of depository institutions.

(d) Membership criteria

(1) In general

The Association may establish criteria for membership which shall include standards for personal qualifications, education, training, and experience. The Association shall not establish criteria that unfairly limit the ability of a small insurance producer to become a member of the Association, including imposing discriminatory membership fees.

(2) Qualifications

In establishing criteria under paragraph (1), the Association shall not adopt any qualification less protective to the public than that contained in the National Association of Insurance Commissioners (referred to in this subchapter as the ''NAIC'') Producer Licensing Model Act in effect as of January 12, 2015, and shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(3) Assistance from States

(A) In general

The Association may request a State to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

(B) Authorization of information sharing

A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing—

(i) the State to share information with the Association; and

(ii) the Association to receive the information.

(C) Rule of construction

Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

(4) Denial of membership

The Association may, based on reasonably consistently applied standards, deny membership to any State-licensed insurance producer for failure to meet the membership criteria established by the Association.

(e) Effect of membership

(1) Authority of Association members

Membership in the Association shall—

(A) authorize an insurance producer to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

(B) be the equivalent of a nonresident insurance producer license for purposes of authorizing the insurance producer to engage in the activities described in subparagraph (A) in any State where the member pays the licensing fee; and

(C) be the equivalent of a nonresident insurance producer license for the purpose of subjecting an insurance producer to all laws, regulations, provisions or other action of any State concerning revocation, suspension, or other enforcement action related to the ability of a member to engage in any activity within the scope of authority granted under this subsection and to all State laws, regulations, provisions, and actions preserved under paragraph (5).

(2) Violent Crime Control and Law Enforcement Act of 1994

Nothing in this subchapter shall be construed to alter, modify, or supercede any requirement established by section 1033 of title 18.

(3) Agent for remitting fees

The Association shall act as an agent for any member for purposes of remitting licensing fees to any State pursuant to paragraph (1).

(4) Notification of action

(A) In general

The Association shall notify the States (including State insurance regulators) and the NAIC when an insurance producer has satisfied the membership criteria of this section. The States (including State insurance regulators) shall have 10 business days after the date of the notification in order to provide the Association with evidence that the insurance producer does not satisfy the criteria for membership in the Association.

(B) Ongoing disclosures required

On an ongoing basis, the Association shall disclose to the States (including State insurance regulators) and the NAIC a list of the States in which each member is authorized to operate. The Association shall immediately notify the States (including State insurance regulators) and the NAIC when a member is newly authorized to operate in one or more States, or is no longer authorized to operate in one or more States on the basis of Association membership.

(5) Preservation of consumer protection and market conduct regulation

(A) In general

No provision of this section shall be construed as altering or affecting the applicability or continuing effectiveness of any law, regulation, provision, or other action of any State, including those described in subparagraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subchapter related to market entry for nonresident insurance producers, and then only to the extent of the inconsistency.

(B) Preserved regulations

The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that—

(i) regulate market conduct, insurance producer conduct, or unfair trade practices;

(ii) establish consumer protections; or

(iii) require insurance producers to be appointed by a licensed or authorized insurer.

(f) Biennial renewal

Membership in the Association shall be renewed on a biennial basis.

(g) Continuing education

(1) In general

The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to the continuing education requirements under the licensing laws of a majority of the States.

(2) State continuing education requirements

A member may not be required to satisfy continuing education requirements imposed under the laws, regulations, provisions, or actions of any State other than the home State of the member.

(3) Reciprocity

The Association shall not require a member to satisfy continuing education requirements that are equivalent to any continuing education requirements of the home State of the member that have been satisfied by the member during the applicable licensing period.

(4) Limitation on the Association

The Association shall not directly or indirectly offer any continuing education courses for insurance producers.

(h) Probation, suspension and revocation

(1) Disciplinary action

The Association may place an insurance producer that is a member of the Association on probation or suspend or revoke the membership of the insurance producer in the Association, or assess monetary fines or penalties, as the Association determines to be appropriate, if—

(A) the insurance producer fails to meet the applicable membership criteria or other standards established by the Association;

(B) the insurance producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator;

(C) an insurance license held by the insurance producer has been suspended or revoked by a State insurance regulator; or

(D) the insurance producer has been convicted of a crime that would have resulted in the denial of membership pursuant to subsection (a)(4)(L)(i) at the time of application, and the Association has received a copy of the final disposition from a court of competent jurisdiction.

(2) Violations of Association standards

The Association shall have the power to investigate alleged violations of Association standards.

(3) Reporting

The Association shall immediately notify the States (including State insurance regulators) and the NAIC when the membership of an insurance producer has been placed on probation or has been suspended, revoked, or otherwise terminated, or when the Association has assessed monetary fines or penalties.

(i) Consumer complaints

(1) In general

The Association shall—

(A) refer any complaint against a member of the Association from a consumer relating to alleged misconduct or violations of State insurance laws to the State insurance regulator where the consumer resides and, when appropriate, to any additional State insurance regulator, as determined by standards adopted by the Association; and

(B) make any related records and information available to each State insurance regulator to whom the complaint is forwarded.

(2) Telephone and other access

The Association shall maintain a toll-free number for purposes of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet webpage.

(3) Final disposition of investigation

State insurance regulators shall provide the Association with information regarding the final disposition of a complaint referred pursuant to paragraph (1)(A), but nothing shall be construed to compel a State to release confidential investigation reports or other information protected by State law to the Association.

(j) Information sharing

The Association may—

(1) share documents, materials, or other information, including confidential and privileged documents, with a State, Federal, or international governmental entity or with the NAIC or other appropriate entity referred to[1] paragraphs (3) and (4), provided that the recipient has the authority and agrees to maintain the confidentiality or privileged status of the document, material, or other information;

(2) limit the sharing of information as required under this subchapter with the NAIC or any other non-governmental entity, in circumstances under which the Association determines that the sharing of such information is unnecessary to further the purposes of this subchapter;

(3) establish a central clearinghouse, or utilize the NAIC or another appropriate entity, as determined by the Association, as a central clearinghouse, for use by the Association and the States (including State insurance regulators), through which members of the Association may disclose their intent to operate in 1 or more States and pay the licensing fees to the appropriate States; and

(4) establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.

(k) Effective date

The provisions of this section shall take effect on the later of—

(1) the expiration of the 2-year period beginning on January 12, 2015; and

(2) the date of incorporation of the Association.

(Pub. L. 106–102, title III, § 323, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 13.)

Editorial Notes

REFERENCES IN TEXT

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (e)(2), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796. For complete classification of this Act to the Code, see Short Title of 1994 Act note set out under section 10101 of Title 34, Crime Control and Law Enforcement, and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6755 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6753, Pub. L. 106–102, title III, § 323, Nov. 12, 1999, 113 Stat. 1424, related to purpose of the Association, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6752 of this title.

§ 6754. Board of directors

(a) Establishment

There is established a board of directors of the Association, which shall have authority to govern and supervise all activities of the Association.

(b) Powers

The Board shall have such of the powers and authority of the Association as may be specified in the bylaws of the Association.[1]

[1] So in original. Probably should be followed by "in".

[1] So in original. Probably should be "such powers and authority as may be specified in the bylaws of the Association."

(c) Composition

(1) In general

The Board shall consist of 13 members who shall be appointed by the President, by and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, of whom—

(A) 8 shall be State insurance commissioners appointed in the manner provided in paragraph (2), 1 of whom shall be designated by the President to serve as the chairperson of the Board until the Board elects one such State insurance commissioner Board member to serve as the chairperson of the Board;

(B) 3 shall have demonstrated expertise and experience with property and casualty insurance producer licensing; and

(C) 2 shall have demonstrated expertise and experience with life or health insurance producer licensing.

(2) State insurance regulator representatives

(A) Recommendations

Before making any appointments pursuant to paragraph (1)(A), the President shall request a list of recommended candidates from the States through the NAIC, which shall not be binding on the President. If the NAIC fails to submit a list of recommendations not later than 15 business days after the date of the request, the President may make the requisite appointments without considering the views of the NAIC.

(B) Political affiliation

Not more than 4 Board members appointed under paragraph (1)(A) shall belong to the same political party.

(C) Former State insurance commissioners

(i) In general

If, after offering each currently serving State insurance commissioner an appointment to the Board, fewer than 8 State insurance commissioners have accepted appointment to the Board, the President may appoint the remaining State insurance commissioner Board members, as required under paragraph (1)(A), of the appropriate political party as required under subparagraph (B), from among individuals who are former State insurance commissioners.

(ii) Limitation

A former State insurance commissioner appointed as described in clause (i) may not be employed by or have any present direct or indirect financial interest in any insurer, insurance producer, or other entity in the insurance industry, other than direct or indirect ownership of, or beneficial interest in, an insurance policy or annuity contract written or sold by an insurer.

(D) Service through term

If a Board member appointed under paragraph (1)(A) ceases to be a State insurance commissioner during the term of the Board member, the Board member shall cease to be a Board member.

(3) Private sector representatives

In making any appointment pursuant to subparagraph (B) or (C) of paragraph (1), the President may seek recommendations for candidates from groups representing the category of individuals described, which shall not be binding on the President.

(4) State insurance commissioner defined

For purposes of this subsection, the term ''State insurance commissioner'' means a person who serves in the position in State government, or on the board, commission, or other body that is the primary insurance regulatory authority for the State.

(d) Terms

(1) In general

Except as provided under paragraph (2), the term of service for each Board member shall be 2 years.

(2) Exceptions

(A) 1-year terms

The term of service shall be 1 year, as designated by the President at the time of the nomination of the subject Board members for—

(i) 4 of the State insurance commissioner Board members initially appointed under paragraph (1)(A),[2] of whom not more than 2 shall belong to the same political party;

(ii) 1 of the Board members initially appointed under paragraph (1)(B);[3] and

(iii) 1 of the Board members initially appointed under paragraph (1)(C).[4]

(B) Expiration of term

A Board member may continue to serve after the expiration of the term to which the Board member was appointed for the earlier of 2 years or until a successor is appointed.

(C) Mid-term appointments

A Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the Board member was appointed shall be appointed only for the remainder of that term.

(3) Successive terms

Board members may be reappointed to successive terms.

(e) Initial appointments

The appointment of initial Board members shall be made no later than 90 days after January 12, 2015.

(f) Meetings

(1) In general

The Board shall meet—

(A) at the call of the chairperson;

(B) as requested in writing to the chairperson by not fewer than 5 Board members; or

[2] So in original. Probably should be ''paragraph (1)(A) of subsection (c),''.

[3] So in original. Probably should be ''paragraph (1)(B) of subsection (c);''.

[4] So in original. Probably should be ''paragraph (1)(C) of subsection (c).''

(C) as otherwise provided by the bylaws of the Association.

(2) Quorum required

A majority of all Board members shall constitute a quorum.

(3) Voting

Decisions of the Board shall require the approval of a majority of all Board members present at a meeting, a quorum being present.

(4) Initial meeting

The Board shall hold its first meeting not later than 45 days after the date on which all initial Board members have been appointed.

(g) Restriction on confidential information

Board members appointed pursuant to subparagraphs (B) and (C) of subsection (c)(1) shall not have access to confidential information received by the Association in connection with complaints, investigations, or disciplinary proceedings involving insurance producers.

(h) Ethics and conflicts of interest

The Board shall issue and enforce an ethical conduct code to address permissible and prohibited activities of Board members and Association officers, employees, agents, or consultants. The code shall, at a minimum, include provisions that prohibit any Board member or Association officer, employee, agent or consultant from—

(1) engaging in unethical conduct in the course of performing Association duties;

(2) participating in the making or influencing the making of any Association decision, the outcome of which the Board member, officer, employee, agent, or consultant knows or had reason to know would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the person or a member of the immediate family of the person;

(3) accepting any gift from any person or entity other than the Association that is given because of the position held by the person in the Association;

(4) making political contributions to any person or entity on behalf of the Association; and

(5) lobbying or paying a person to lobby on behalf of the Association.

(i) Compensation

(1) In general

Except as provided in paragraph (2), no Board member may receive any compensation from the Association or any other person or entity on account of Board membership.

(2) Travel expenses and per diem

Board members may be reimbursed only by the Association for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter I of chapter 57 of title 5, while away from home or regular places of business in performance of services for the Association.

(Pub. L. 106–102, title III, § 324, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 20.)

Editorial Notes

REFERENCES IN TEXT

Senate Resolution 116 of the 112th Congress, referred to in subsec. (c)(1), which was agreed to June 29, 2011, provided for expedited Senate consideration of certain nominations subject to advice and consent.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6756 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6754, Pub. L. 106–102, title III, § 324, Nov. 12, 1999, 113 Stat. 1424, related to relationship to the Federal Government, prior to the general amendment of this subchapter by Pub. L. 114–1.

§ 6755. Bylaws, standards, and disciplinary actions

(a) Adoption and amendment of bylaws and standards

(1) Procedures

The Association shall adopt procedures for the adoption of bylaws and standards that are similar to procedures under subchapter II of chapter 5 of title 5 (commonly known as the ‘‘Administrative Procedure Act’’).

(2) Copy required to be filed

The Board shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, all proposed bylaws and standards of the Association, or any proposed amendment to the bylaws or standards of the Association, accompanied by a concise general statement of the basis and purpose of such proposal.

(3) Effective date

Any proposed bylaw or standard of the Association, and any proposed amendment to the bylaws or standards of the Association, shall take effect, after notice under paragraph (2) and opportunity for public comment, on such date as the Association may designate, unless suspended under section 6759(c) of this title.

(4) Rule of construction

Nothing in this section shall be construed to subject the Board or the Association to the requirements of subchapter II of chapter 5 of title 5 (commonly known as the ‘‘Administrative Procedure Act’’).

(b) Disciplinary action by the Association

(1) Specification of charges

In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed, or to determine whether a member of the Association should be placed on probation (referred to in this section as a ‘‘disciplinary action’’) or whether to assess fines or monetary penalties, the Association shall bring specific charges, notify the member of the charges, give the member an opportunity to defend against the charges, and keep a record.

(2) Supporting statement

A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which the member has been found to have been engaged;

(B) the specific provision of this subchapter or standard of the Association that any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for the sanction.

(3) Ineligibility of private sector representatives

Board members appointed pursuant to section 6754(c)(3) of this title may not—

(A) participate in any disciplinary action or be counted toward establishing a quorum during a disciplinary action; and

(B) have access to confidential information concerning any disciplinary action.

(Pub. L. 106–102, title III, § 325, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 23.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6758 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6755, Pub. L. 106–102, title III, § 325, Nov. 12, 1999, 113 Stat. 1424, related to membership in the Association, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6753 of this title.

§ 6756. Powers

In addition to all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, the Association shall have the power to—

(1) establish and collect such membership fees as the Association finds necessary to impose to cover the costs of its operations;

(2) adopt, amend, and repeal bylaws, procedures, or standards governing the conduct of Association business and performance of its duties;

(3) establish procedures for providing notice and opportunity for comment pursuant to section 6755(a) of this title;

(4) enter into and perform such agreements as necessary to carry out the duties of the Association;

(5) hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of this subchapter, and determine their qualification;

(6) establish personnel policies of the Association and programs relating to, among other things, conflicts of interest, rates of compensation, where applicable, and qualifications of personnel;

(7) borrow money; and

(8) secure funding for such amounts as the Association determines to be necessary and appropriate to organize and begin operations of the Association, which shall be treated as loans to be repaid by the Association with interest at market rate.

(Pub. L. 106–102, title III, § 326, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 24.)

Editorial Notes

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in text, is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 6756, Pub. L. 106–102, title III, § 326, Nov. 12, 1999, 113 Stat. 1426, related to board of directors, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6754 of this title.

§ 6757. Report by the Association

(a) In general

As soon as practicable after the close of each fiscal year, the Association shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subchapter, during such fiscal year.

(b) Financial statements

Each report submitted under subsection (a) with respect to any fiscal year shall include audited financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

(Pub. L. 106–102, title III, § 327, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 24.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6762(c) of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6757, Pub. L. 106–102, title III, § 327, Nov. 12, 1999, 113 Stat. 1427, related to officers of the Association, prior to the general amendment of this subchapter by Pub. L. 114–1.

§ 6758. Liability of the Association and the Board members, officers, and employees of the Association

(a) In general

The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) Liability of Board members, officers, and employees

No Board member, officer, or employee of the Association shall be personally liable to any person for any action taken or omitted in good faith in any matter within the scope of their responsibilities in connection with the Association.

(Pub. L. 106–102, title III, § 328, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 25.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6761 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6758, Pub. L. 106–102, title III, § 328, Nov. 12, 1999, 113 Stat. 1427, related to bylaws, rules, and disciplinary action, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6755 of this title.

§ 6759. Presidential oversight

(a) Removal of Board

If the President determines that the Association is acting in a manner contrary to the interests of the public or the purposes of this subchapter or has failed to perform its duties under this subchapter, the President may remove the entire existing Board for the remainder of the term to which the Board members were appointed and appoint, in accordance with section 6754 of this title and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, new Board members to fill the vacancies on the Board for the remainder of the terms.

(b) Removal of Board member

The President may remove a Board member only for neglect of duty or malfeasance in office.

(c) Suspension of bylaws and standards and prohibition of actions

Following notice to the Board, the President, or a person designated by the President for such purpose, may suspend the effectiveness of any bylaw or standard, or prohibit any action, of the Association that the President or the designee determines is contrary to the purposes of this subchapter.

(Pub. L. 106–102, title III, § 329, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 25.)

Editorial Notes

REFERENCES IN TEXT

Senate Resolution 116 of the 112th Congress, referred to in subsec. (a), which was agreed to June 29, 2011, provided for expedited Senate consideration of certain nominations subject to advice and consent.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6762(b)(2)(C) of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6759, Pub. L. 106–102, title III, § 329, Nov. 12, 1999, 113 Stat. 1430, related to assessments, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6756(1) of this title.

§ 6760. Relationship to State law

(a) Preemption of State laws

State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted to the extent provided in subsection (b).

(b) Prohibited actions

(1) In general

No State shall—

(A) impede the activities of, take any action against, or apply any provision of law or regulation arbitrarily or discriminatorily to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(B) impose any requirement upon a member of the Association that it pay fees different from those required to be paid to that State were it not a member of the Association; or

(C) impose any continuing education requirements on any nonresident insurance producer that is a member of the Association.

(2) States other than a home State

No State, other than the home State of a member of the Association, shall—

(A) impose any licensing, personal or corporate qualifications, education, training, experience, residency, continuing education, or bonding requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership;

(B) impose any requirement upon a member of the Association that it be licensed, registered, or otherwise qualified to do business or remain in good standing in the State, including any requirement that the insurance producer register as a foreign company with the secretary of state or equivalent State official;

(C) require that a member of the Association submit to a criminal history record check as a condition of doing business in the State; or

(D) impose any licensing, registration, or appointment requirements upon a member of the Association, or require a member of the Association to be authorized to operate as an insurance producer, in order to sell, solicit, or negotiate insurance for commercial property and casualty risks to an insured with risks located in more than one State, if the member is licensed or otherwise authorized to operate in the State where the insured maintains its principal place of business and the contract of insurance insures risks located in that State.

(3) Preservation of State disciplinary authority

Nothing in this section may be construed to prohibit a State from investigating and taking appropriate disciplinary action, including suspension or revocation of authority of an insurance producer to do business in a State, in accordance with State law and that is not inconsistent with the provisions of this section, against a member of the Association as a result of a complaint or for any alleged activity, regardless of whether the activity occurred before or after the insurance producer commenced doing business in the State pursuant to Association membership.

(Pub. L. 106–102, title III, § 330, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 25.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6763 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6760, Pub. L. 106–102, title III, § 330, Nov. 12, 1999, 113 Stat. 1430, related to functions of the NAIC, prior to the general amendment of this subchapter by Pub. L. 114–1.

§ 6761. Coordination with Financial Industry Regulatory Authority

The Association shall coordinate with the Financial Industry Regulatory Authority in order to ease any administrative burdens that fall on members of the Association that are subject to regulation by the Financial Industry Regulatory Authority, consistent with the requirements of this subchapter and the Federal securities laws.

(Pub. L. 106–102, title III, § 331, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 26.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6764(b) of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6761, Pub. L. 106–102, title III, § 331, Nov. 12, 1999, 113 Stat. 1430, related to liability of the Association and the directors, officers, and employees of the Association, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6758 of this title.

§ 6762. Right of action

(a) Right of action

Any person aggrieved by a decision or action of the Association may, after reasonably exhausting available avenues for resolution within the Association, commence a civil action in an appropriate United States district court, and obtain all appropriate relief.

(b) Association interpretations

In any action under subsection (a), the court shall give appropriate weight to the interpretation of the Association of its bylaws and standards and this subchapter.

(Pub. L. 106–102, title III, § 332, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 26.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6765 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6762, Pub. L. 106–102, title III, § 332, Nov. 12, 1999, 113 Stat. 1431, related to elimination of NAIC oversight, prior to the general amendment of this subchapter by Pub. L. 114–1. See sections 6757 and 6759 of this title.

§ 6763. Federal funding prohibited

The Association may not receive, accept, or borrow any amounts from the Federal Government to pay for, or reimburse,[1] the Association for, the costs of establishing or operating the Association.

(Pub. L. 106–102, title III, § 333, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 27.)

Editorial Notes

PRIOR PROVISIONS

A prior section 6763, Pub. L. 106–102, title III, § 333, Nov. 12, 1999, 113 Stat. 1432, related to relationship to State law, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6760 of this title.

§ 6764. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Business entity

The term ''business entity'' means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(2) Depository institution

The term ''depository institution'' has the meaning as in section 1813 of title 12.

(3) Home State

The term ''home State'' means the State in which the insurance producer maintains its principal place of residence or business and is licensed to act as an insurance producer.

(4) Insurance

The term ''insurance'' means any product, other than title insurance or bail bonds, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(5) Insurance producer

The term ''insurance producer'' means any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance.

(6) Insurer

The term ''insurer'' has the meaning as in section 313(e)(2)(B) of title 31.

(7) Principal place of business

The term ''principal place of business'' means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

(8) Principal place of residence

The term ''principal place of residence'' means the State in which an insurance producer resides for the greatest number of days during a calendar year.

(9) State

The term ''State'' includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

[1] So in original. The comma probably should not appear.

(10) State law

(A) In general

The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(B) Laws applicable in the District of Columbia

A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.

(Pub. L. 106–102, title III, § 334, as added Pub. L. 114–1, title II, § 202(a), Jan. 12, 2015, 129 Stat. 27.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6766 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6764, Pub. L. 106–102, title III, § 334, Nov. 12, 1999, 113 Stat. 1433, related to coordination with other regulators, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6761 of this title.

A prior section 6765, Pub. L. 106–102, title III, § 335, Nov. 12, 1999, 113 Stat. 1433, which related to judicial review, was omitted in the general amendment of this subchapter by Pub. L. 114–1. See section 6762 of this title.

A prior section 6766, Pub. L. 106–102, title III, § 336, Nov. 12, 1999, 113 Stat. 1433, which related to definitions, was omitted in the general amendment of this subchapter by Pub. L. 114–1.

SUBCHAPTER IV—RENTAL CAR AGENCY INSURANCE ACTIVITIES

§ 6781. Standard of regulation for motor vehicle rentals

(a) Protection against retroactive application of regulatory and legal action

Except as provided in subsection (b), during the 3-year period beginning on November 12, 1999, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) Preeminence of State insurance law

No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) Scope of application

This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) Motor vehicle defined

For purposes of this section, the term ''motor vehicle'' has the same meaning as in section 13102 of title 49.

(Pub. L. 106–102, title III, § 341, Nov. 12, 1999, 113 Stat. 1434.)

CHAPTER 94—PRIVACY

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

§ 6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.