

**SECTION-BY-SECTION  
OF  
NATIONAL INSURANCE ACT OF 2006**

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

This section designates the bill as the “National Insurance Act of 2006,” and sets forth the table of contents for the seven titles of the bill.

Title I of the bill is designated as the “Office of National Insurance,” and includes four subtitles. Subtitle A of Title I provides for the establishment of the Office of National Insurance. Subtitle B of Title I provides for the supervision of National Insurers and National Agencies. Subtitle C of Title I provides for the enforcement of Federal insurance laws. Subtitle D of Title I addresses insurance fraud.

Title II of the bill is designated “National Insurance Companies and National Insurance Agencies,” and includes six subtitles. Subtitle A of Title II provides for the organization, licensing, and operations of National Insurance Companies and National Insurance Agencies. Subtitle B of Title II provides for the financial, product and market regulation of National Insurers, and where applicable, National Agencies. Subtitle C of Title II addresses reinsurance. Subtitle D of Title II addresses acquisitions of control, mergers, bulk transfers and domestication involving National Insurers and National Agencies. Subtitle E of Title II addresses mutual-to-stock and stock-to-mutual conversions involving National Insurers. Subtitle F of Title II addresses State taxation of National Insurers and National Agencies.

Title III of the bill is designated “Insurance Producers and Other Insurance Servicing Persons.” This title provides for the Federal licensing of insurance producers.

Title IV of the bill is designated “Holding Companies,” and provides for the regulation of companies that control National Insurers.

Title V of the bill is designated “Receivership,” and provides for the appointment of the Office of National Insurance as a receiver for a National Insurer if grounds exist for such an appointment.

Title VI of the bill is designated “Insolvency Protection,” and requires National Insurers to participate in qualified State life and health guaranty associations. This title also provides that National Insurers and State insurers operating in non-qualified States must be members of a National Insurance Guaranty Corporation, which is established in the title.

Title VII of the bill is designated “Conforming Amendments and Miscellaneous Provisions,” and includes various conforming and technical amendments to other Federal laws.

## **SECTION 2. PURPOSE.**

This section sets forth the basic purpose of the bill. The purpose of the bill is to provide for the establishment of a comprehensive system of Federal chartering, licensing, regulation and supervision for insurers and insurance producers that is independent of the State system of insurance licensing, regulation and supervision; the creation of an Office of National Insurance within the Department of the Treasury; the appointment of a Commissioner of National Insurance to exclusively regulate and supervise the operations of federally chartered and licensed insurers and producers on a uniform, national basis; and the establishment of a scheme for the receivership of federally chartered insurers.

## **SECTION 3. DEFINITIONS.**

This section defines terms that are used in the bill, including the terms “business of insurance” and “insurance operations.” The term “insurance operations” is defined to include: the “business of insurance;” all acts and transactions relating to the sale, solicitation, negotiation, and underwriting of insurance; all transactions relating to claims adjustments and settlement; and all acts and transactions related to the establishment of rates, rules, rating classifications, rating territories and forms of insurance. The “business of insurance” is defined by reference to 18 USC 1033(f), which defines the term to mean “the writing of insurance or the reinsuring of insurance risks by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.” The term “insurance operations” appears in Section 1125, which states that the “insurance operations” of federally chartered insurers and producers are not subject to State regulation or supervision. The combination of the broad definition of “insurance operations” and the restrictions on regulation contained in Section 1125 ensure that federally chartered insurers and producers are subject to the exclusive regulation and supervision of the Office of National Insurance. The term “insurance operations” also appears in Section 1207, which provides that federally chartered insurers may engage in “insurance operations.”

## **TITLE I – OFFICE OF NATIONAL INSURANCE.**

### **Subtitle A – Establishment of Office of National Insurance.**

#### *Sec. 1101. Establishment.*

Subsection (a) provides for the establishment of an Office of National Insurance within the Department of the Treasury to be headed by the Commissioner of National Insurance.

Subsection (b) directs the Commissioner to establish a main office in Washington, D.C., not fewer than six regional offices, and such additional offices, within or outside the United States, as the Commissioner determines to be necessary.

Subsection (c) provides that funding for the Office, including employee salaries, is paid from fees and assessments imposed upon regulated firms.

Subsection (d) designates the Office as an agency of the United States, subject to Subchapter II of chapter 5, and chapter 6 of title 5 of the U.S. Code. Subchapter II of chapter 5 of title 5 requires the Office to hold open meetings, to issue regulations for public comment, and to use administrative law judges to address contested matters. Chapter 6 of title 5 requires the Office to publish a regulatory agenda, periodically review its regulations, and include regulatory impact statements in proposed rules.

Subsection (e) requires the Commissioner to submit an annual report to Congress on the activities of the Office.

*Sec. 1102. Commissioner of National Insurance.*

Subsection (a) addresses the appointment and service of the Commissioner of National Insurance. The Commissioner of the Office of National Insurance shall be appointed by the President to a five-year term, subject to the advice and consent of the Senate. A vacancy in the position of Commissioner shall be filled in the same manner, except that anyone appointed to fill a vacancy shall be appointed only for the remainder of the term of the preceding Commissioner. An individual may serve as the Commissioner after the expiration of the individual's term until the earlier of the appointment of a successor or one year after the expiration of the term. While in office, the Commissioner may not have any direct or indirect financial interest in a regulated insurance firm, other than a beneficial interest in an insurance policy written or sold by a regulated firm. The Commissioner is subject to the general oversight of the Secretary of the Treasury, but the Secretary may not intervene in matters before the Commissioner. The Commissioner is to be paid at the same rate as the Comptroller of the Currency and the Director of the Office of Thrift Supervision, which also are bureaus within the Treasury Department.

Subsection (b) addresses the general powers of the Commissioner. The Commissioner is authorized to oversee the "organization, incorporation, operation, regulation and supervision" of National Insurers and National Insurance Agencies, and to issue charters and licenses for these entities. The Commissioner also is authorized to provide for the licensing of insurance producers, other than National Agencies. The Commissioner is given exclusive authority to determine whether National Insurers, National Agencies, federally licensed insurance producers, and other persons subject to the bill have complied with the bill or the application of any State law to matters regulated under the bill. The power to oversee the "organization, incorporation, operation, regulation and supervision" of these entities is patterned after the authority Congress has given the Director of the Office of Thrift Supervision in the Home Owners' Loan Act, which has been interpreted by the U.S. Supreme Court to be a grant of comprehensive supervisory power. The Commissioner is authorized to issue such rules, regulations, orders, and interpretations as deemed necessary to carry out the purposes of the bill. The Secretary of the Treasury is prohibited from delaying or preventing the issuance of any such rule, regulation, order or interpretation. This provision is designed to prevent undue political influence over the Commissioner, and is identical to provisions currently applicable to the Office of the Comptroller of the Currency and the Office of Thrift Supervision, which also are within the Department of the Treasury. The Commissioner is prohibited from delegating rulemaking and interpretative authority to a self-regulatory organization. The Commissioner is given independent litigation authority before all courts, other than the U.S. Supreme Court, before

which the Commissioner is to be represented by the Solicitor General of the United States. The Commissioner is required, as appropriate, to consult with State insurance regulators. The Commissioner is authorized to secure bilateral and multilateral agreements with foreign insurance regulators and to provide assistance to such regulators, as appropriate. Congressional testimony by the Commissioner is not subject to review by the Office of Management and Budget.

Subsection (c) directs the Commissioner to make all books and records of the Office available to the Comptroller General of the United States in connection with an audit of the Office.

*Sec. 1103. Office Personnel Matters.*

Subsection (a) authorizes the Commissioner to employ examiners, lawyers, accountants, actuaries, and other employees as necessary to carry out the purposes of the bill.

Subsection (b) provides that the employees of the Office may be compensated without regard to civil service classifications and pay scales.

Subsection (c) permits the Commissioner to provide compensation and benefits to employees of the Office comparable to the compensation and benefits provided to employees of the Federal banking agencies.

Subsection (d) provides for the appointment of an acting Commissioner during the absence or disability of the Commissioner.

Subsection (e) permits the Commissioner to delegate any power to employees, representatives or agents of the Office. This subsection also allows the Commissioner to issue regulations delegating powers to self-regulatory organizations, unless the bill otherwise prohibits such an action.

*Sec. 1104. Division of Insurance Fraud.*

Subsection (a) provides for the establishment of a Division of Insurance Fraud within the Office.

Subsection (b) authorizes the Division of Insurance Fraud to exercise all powers necessary to investigate insurance fraud, other than the power to execute search and arrest warrants. Section 1713 of the bill makes it a Federal crime to engage in insurance fraud, and Section 3 of the bill defines insurance fraud to include an act or omission by any person who knowingly, and with intent to defraud, conceals information in connection with an application or a claim, solicits insurance on behalf of an insolvent insurer, or removes or alters records of a National Insurer.

*Sec. 1105. Division of Consumer Affairs.*

This section provides for the establishment of a Division of Consumer Affairs within the Office, and directs the Division to support the implementation of the market conduct regulations issued pursuant to Section 1215 of the bill.

*Sec. 1106. Insurance Self-Regulatory Organizations.*

Subsection (a) gives the Commissioner the authority to provide for the registration, supervision and regulation of insurance self-regulatory organizations.

Subsection (b) provides that a registered self-regulatory organization has the authority to carry out the purposes of the bill and to enforce compliance by its members with the provisions of the bill and regulations issued by the Commissioner.

Subsection (c) provides that self-regulatory organizations may be formed by National Insurers, National Agencies, and/or federally licensed insurance producers.

Subsection (d) authorizes the Commissioner to issue regulations related to the registration and operations of self-regulatory organizations within 2 years of the date of enactment of the bill.

*Sec. 1107. Office of the Ombudsman*

This section provides for the establishment of an Office of the Ombudsman within the Office. The Ombudsman is to act as a liaison between the Office and any person adversely affected by the Office's supervisory or regulatory activities. This provision is patterned after the authority granted to the Office of the Ombudsman within the Office of the Comptroller of the Currency.

**Subtitle B – Supervision of National Insurers and National Agencies.**

*Sec. 1121. Examination of National Insurers and National Agencies.*

Subsection (a) provides that National Insurers must be examined at least once every three years, and may be subject to special examinations whenever the Commissioner deems a special examination necessary. National Agencies are subject to examinations only in response to a complaint or evidence that the Agency has violated, or is about to violate, any law or regulation, any condition imposed in connection with the issuance of a federal producer license, or any written agreement with the Commissioner. This subsection gives the Commissioner the authority to obtain information from an affiliate of a National Insurer or National Agency or to conduct examinations of such an affiliate, if the activities of the affiliate may have a "material adverse effect on the operations, management or financial condition" of a National Insurer or National Agency. In exercising this authority over affiliates, the Commissioner must accept reports and examinations prepared by other regulators.

Subsection (b) provides that, upon request, the Commissioner shall be given prompt and reasonable access to the officers, employees, agents, books, and records of National Insurers and National Agencies, and authorizes the Commissioner to apply to the Federal district court to obtain such access if it is not promptly and reasonably provided. The Commissioner and any other person who receives documents and materials pursuant to such a court order may not testify in any private civil action regarding such documents and materials, and the delivery of any such documents and materials does not constitute a waiver of legal protection or exemption from public disclosure. This subsection also allows the Commissioner to subpoena documents and testimony in connection with examinations.

*Sec. 1122. Examination Fees and Other Assessments.*

Subsection (a) provides that the cost of examinations on National Insurers, National Agencies, and federally licensed insurance producers and their affiliates is to be assessed against such entities.

Subsection (b) permits the Commissioner to assess filing fees and other processing fees against persons who submit applications or other requests to the Office.

Subsection (c) permits the Commissioner to assess additional fees against National Insurers, National Agencies, and federally licensed insurance producers as necessary to fund the expenses of the Office.

Subsection (d) provides that the Commissioner shall notify National Insurers, National Agencies and federally licensed insurance producers of all applicable fees.

Subsection (e) provides that all fees and assessments collected by the Commissioner may be deposited in a Federal depository or a State or national bank. This subsection also provides that assessments and fees are not government funds and are not subject to apportionment. Apportionment is the process used by the Office of Management and Budget (“OMB”) to control the timing and amount of funds that an agency may use.

Subsection (f) permits the Commissioner to impose additional fees and assessments in excess of actual expenses in order to establish a working capital fund. This fund would operate as a reserve against future expenses. Should the working capital fund exceed what the Commissioner deems necessary, the Commissioner is required to remit the excess.

Subsection (g) provides that the fees and assessments collected by the Commissioner may be used to pay all direct and indirect costs of operating the Office.

Subsection (h) authorizes the Commissioner to borrow start-up funds for the operations of the Office from the Treasury Department. The Commissioner may determine the amount of money necessary, and the Secretary of the Treasury shall determine the applicable interest rate on the loan. All such funds, plus interest, must be repaid within 30 years of the date of enactment of the bill.

Subsection (i) directs the Commissioner to issue regulations governing the computation, assessment and collection of applicable fees and assessments.

*Sec. 1123. Disclosure of Public Information.*

Subsection (a) directs the Commissioner to establish, by regulation, standards governing the public disclosure of supervisory materials prepared by or submitted to the Commissioner, such as examination reports and applications.

Subsection (b) provides that the regulation issued by the Commissioner must define what supervisory materials prepared by or submitted to the Commissioner constitute “confidential supervisory information,” and must prohibit the public disclosure of such materials.

Subsection (c) provides that the submission of any information to the Commissioner shall not constitute a waiver of any other privilege a person may have with respect to such information.

*Sec. 1124. Reporting Requirement.*

Subsection (a) authorizes the Commissioner to require National Insurers and National Agencies to make such reports as the Commissioner may prescribe by regulation.

Subsection (b) requires each National Insurer to submit annual and quarterly financial statements to the Commissioner in accordance with the accounting rules specified in Section 1211 of the bill.

Subsection (c) requires the Commissioner to issue regulations that specify the information to be disclosed in the financial statements required by subsection (b), and to specify any additional financial schedules that a National Insurer must make available to the Commissioner upon request.

*Sec. 1125. Relationship to State Law.*

Subsection (a) provides that, as a general rule, National Insurers, National Agencies and federally licensed insurance producers are not subject to State licensing, examination, reporting, regulation or supervision related to the sale and underwriting of insurance or any other insurance operations.

Subsection (b) provides that, notwithstanding subsection (a), National Insurers, National Agencies and federally licensed insurance producers shall be subject to the following categories of State law: (1) State unclaimed property and escheat laws; (2) State tax laws; (3) State laws related to assigned risk plans and other mandatory residual market mechanisms that make insurance policies available to individuals unable to obtain policies in the marketplace; (4) State insurance laws that prescribe compulsory coverage requirements for workers’ compensation or motor vehicle insurance (except to the extent that such laws require the use of any particular rate or form); (5) State laws mandating participation in advisory or statistical organizations (except to

the extent that such laws require the use of any particular rate or form); and (6) State workers' compensation administration mechanisms.

### **Subtitle C – Enforcement of Federal Insurance Laws.**

#### *Sec. 1141. National Insurer License Suspension, Restriction, or Revocation.*

Subsection (a) authorizes the Commissioner to revoke or restrict the license of a National Insurer in three instances: (1) the Insurer is engaged in conduct that is hazardous to the Insurer and involves an undue risk to policyholders; (2) the Insurer is in a financial condition that is not consistent with continued operation; or (3) the Insurer has violated any applicable law or regulation, order or written agreement.

Subsection (b) requires the Commissioner to give a National Insurer prior notice of a revocation or restriction order.

Subsection (c) requires the Commissioner to conduct a hearing before revoking or restricting a license.

Subsection (d) requires a National Insurer that is subject to a revocation or restriction order to notify affected policyholders. This subsection also permits the Commissioner to publish such a notice if the Commissioner determines that the Insurer has not done so.

Subsection (e) permits the Commissioner to issue a temporary suspension or restriction order if a National Insurer poses an immediate threat to the interest of policyholders or the public. Such an order may not be effective until 10 days after service, and during that 10-day period, a National Insurer may apply to a Federal district court to enjoin, set aside or otherwise limit the order.

Subsection (f) provides that the Commissioner may not delegate the authority to suspend, restrict or revoke a license, unless the Commissioner is not able to act as a result of a recusal or is otherwise disqualified from acting.

Subsection (g) provides that a National Insurer whose license has been revoked or restricted may seek judicial review of the order in a Federal court of appeals.

This section and the other enforcement provisions in Subtitle C are based upon provisions in the Federal Deposit Insurance Act, as well as provisions in the New York Insurance Code and the NAIC model laws.

#### *Sec. 1142. Suspension, Restriction, or Revocation of Federal License of National Agencies and Federally Licensed Insurance Producers.*

Subsection (a) authorizes the Commissioner to revoke or restrict the license of a federally licensed insurance producer or National Agency based upon any of the following grounds: (1) a violation of applicable law, regulation, order or condition; (2) incorrect, misleading, incomplete

or materially untrue information in an application; (3) use of fraudulent, coercive or dishonest practices; or (4) demonstrated incompetence, untrustworthiness or financial irresponsibility.

Subsections (b) through (f) provide federally licensed insurance producers and National Agencies with procedural safeguards identical to those available to National Insurers facing a revocation or restriction of a license (see Section 1141 above), and permit the Commissioner to issue a temporary suspension or restriction order based upon an immediate threat to policyholders or the public.

*Sec. 1143. Cease and Desist Proceedings.*

Subsection (a) authorizes the Commissioner to issue a notice of charges against a National Insurer, federally licensed insurance producer, or insurer-affiliated party if the institution or party (1) is engaging in, or is about to engage in, hazardous conduct to an Insurer that involves undue risk to policyholders as a whole, or (2) has violated, or is about to violate, any law, rule, regulation or condition imposed in writing. The notice of charges must set a time and place for a hearing on the charges.

Subsection (b) provides for a hearing on a notice of charges not earlier than 30 days or not later than 60 days after the service of the notice. Failure to appear at a hearing constitutes consent to the charges.

Subsection (c) provides for the issuance of a cease and desist order based upon the hearing record or consent of an institution or party. Such order may require the institution or party to cease and desist from the alleged violation or conduct, and may require the institution or party to take affirmative actions to correct conditions resulting from the violation or conduct.

Subsection (d) provides for the imposition of a temporary cease and desist order if the Commissioner finds that a violation, threatened violation or conduct (1) is likely to cause insolvency or significant dissipation of assets or earnings of an insurer; (2) is likely to weaken the condition of an insurer; or (3) otherwise prejudice the interests of policyholders. A temporary order also may be issued if the Commissioner finds that the books and records of a National Insurer are so incomplete or inaccurate that the Commissioner is unable to determine the financial condition of the Insurer.

For purposes of this and other enforcement provisions, an insurer-affiliated party is defined in Section 3 of the bill to include (1) a director, officer, employee or controlling shareholder of a National Insurer or National Agency; (2) an agent for a National Insurer or National Agency; and (3) an independent contractor for a National Insurer or National Agency (e.g., attorney or accountant) who knowingly or recklessly participates in any violation of law or regulation, breach of fiduciary duty or conduct that involves an undue risk of loss to a National Insurer's policyholders as a whole.

*Sec. 1144. Affirmative Action to Correct Conditions Resulting From Violations or Conduct.*

This section provides that a cease and desist order that requires a National Insurer, National Agency, federally licensed insurance producer or insurer-affiliated party to take an affirmative action to correct a condition resulting from a violation or conduct may require the institution or party to (1) restrict the growth of the National Insurer; (2) dispose of assets; (3) void contracts; (4) hire qualified officers and employees; and (5) take other actions under certain conditions.

*Section 1145. Suspension, Removal, and Prohibition Authority.*

Subsection (a) authorizes the Commissioner to issue suspension or removal notices to insurer-affiliated parties if the Commissioner determines that (1) the party has violated a law, regulation, order, or written condition, engaged in conduct that is hazardous to a National Insurer or National Agency and involves an undue risk for policyholders, or breached a fiduciary duty; (2) as a result of such violation, conduct or breach, a National Insurer or National Agency has suffered or will probably suffer a financial loss, the interests of policyholders have been harmed or the party has received some financial gain; and (3) the violation, conduct or breach involves personal dishonesty or demonstrates a willful or continuing disregard for a National Insurer, National Agency or policyholders.

Subsection (b) authorizes the Commissioner to issue temporary suspension or prohibition orders. Such orders are effective upon service unless stayed by a court under the terms of subsection (e).

Subsection (c) describes the content of a suspension or removal notice and the hearing procedures related to such notices.

Subsection (d) provides that individuals who have been removed or suspended from an office with a National Insurer or National Agency may not (1) continue to hold any office in or participate in the affairs of such Insurer or Agency; (2) exercise voting rights related to such Insurer or Agency; (3) act as an insurer-affiliated party; or (4) act as a federally licensed insurance producer.

Subsection (e) provides that a party subject to a temporary suspension or prohibition order may seek a stay of such order in a Federal district court.

*Sec. 1146. Suspension or Prohibition Based Upon Criminal Activity.*

Subsection (a) authorizes the Commissioner to suspend an insurer-affiliated party from office, or prohibit such party from participating with a National Insurer or National Agency, if such party is indicted for dishonesty or money laundering and the party's continued service poses a threat to a National Insurer or its policyholders.

Subsection (b) authorizes the Commissioner to remove an insurer-affiliated party from office, or prohibit such party from participating with a National Insurer or National Agency, if

such party is convicted of a crime involving dishonesty, the conviction is not subject to appellate review, and the continued service of the party may pose a threat to a National Insurer or its policyholders. This subsection also requires the Commissioner to remove an insurer-affiliated party from office if that party is convicted of a money laundering offense.

Subsection (c) establishes the procedures for administrative hearings regarding suspension and removal orders.

*Sec. 1147. Ancillary Provisions.*

Subsections (a) through (e) give the Commissioner the power to: conduct hearings in connection with enforcement actions; issue subpoenas for witnesses and documents; pay fees for witnesses; issue regulations related to enforcement proceedings, examinations and investigations; and appoint temporary directors of a National Insurer or National Agency if all of the directors of such Insurer or Agency are suspended.

Subsection (f) permits the Commissioner to pursue enforcement actions against insurer-affiliated parties within six years after their separation from service with a National Insurer or National Agency.

*Sec. 1148. Hearings and Judicial Review of Removal, Suspension, or Prohibition Order.*

This section provides that hearings conducted by the Commissioner must conform to the Administrative Procedures Act, and that final orders of the Commissioner are subject to review by a Federal court of appeals.

*Sec. 1149. Civil and Criminal Penalties.*

Subsection (a) authorizes the Commissioner to impose civil money penalties on National Insurers, National Agencies, federally licensed insurance producers and insurer-affiliated parties. Three levels of penalties are authorized. A fine of up to \$5,000 a day may be imposed for violation of any law, regulation, order or written agreement. A fine of up to \$25,000 a day may be imposed for a reckless – (1) violation of any law, regulation, order or written agreement; (2) conduct that involves undue risk to policyholders; or (3) breach of fiduciary duty – that is part of a pattern of misconduct, that causes, or is likely to cause, more than a minimal loss to an insurer, or that results in financial gain to a producer or party. A fine of up to a \$1 million a day may be imposed for a knowing – (1) violation of law, regulation, order or written agreement; (2) conduct that is hazardous to an Insurer or Agency and that involves an undue risk to policyholders; or (3) breach of fiduciary duty – that knowingly or recklessly causes a substantial loss to an insurer or a financial gain to a producer or party. Subsection (a) also lists various mitigating factors that the Commissioner must consider in imposing a civil money penalty. These factors include the financial resources of the institution or party, the gravity of the violation, and the history of previous violations.

Subsection (b) authorizes the Commissioner to ask a court to issue a prejudgment attachment order that prohibits a person, who is subject to a civil action for money damages or

civil money penalty brought by the Commissioner, from withdrawing, transferring, removing, dissipating or disposing of any funds, assets or property.

Subsection (c) amends the Federal criminal code to establish a criminal penalty of 5 years in prison and/or a fine of \$1 million for any person who violates a suspension, removal or prohibition order.

*Sec. 1150. Public Disclosures of Final Orders and Agreements.*

This section requires the Commissioner to disclose to the public, on a monthly basis, written agreements and final orders, unless the Commissioner determines that such disclosure would be contrary to the public interest. This section also provides that enforcement hearings will be open to the public, unless contrary to the public interest.

*Sec. 1151. Foreign Investigations.*

This section provides that the Commissioner may seek the assistance of foreign governments in conducting investigations, examinations and enforcement actions. This section also permits the Commissioner to assist foreign governments conducting investigations related to the violation of any insurance laws or regulations that are enforced by the foreign government.

*Sec. 1152. Action or Proceeding Against Non-United States Insurers.*

This section prohibits the Commissioner from taking an enforcement action against a non-United States insurer unless the Commissioner believes that the insurer (or officer, director, employee or agent thereof) is engaged in an act or practice in the United States that is the basis for an enforcement action. This section also permits the Commissioner to order a non-United States insurer to cease operations in the United States should an officer or director of the insurer fail to respond to a suspension or removal order. A non-United States insurer is defined in Section 3 of the bill to mean a business entity chartered or licensed by a foreign country to sell, solicit, negotiate, and underwrite insurance.

*Sec. 1153. Cooperation Between Commissioner and State Commissioners.*

This section requires the Commissioner to notify relevant State insurance commissioners whenever a National Insurer or National Agency has its license revoked or suspended, and whenever a National Insurer enters into a formal order restricting premium underwriting or is placed into receivership.

**Subtitle D – Insurance Fraud.**

*Sec. 1161. Investigation of Insurance Fraud.*

This section authorizes the Commissioner to investigate insurance fraud, requires each National Insurer to place a fraud warning on applications and claim forms, and requires each National Insurer to report acts of fraud to the Commissioner. National Insurers are granted

immunity from civil lawsuits for reporting fraud. This section should be read in conjunction with Section 1104 of the bill, which requires the establishment of a Division of Insurance Fraud within the Office, and Section 1713, which makes a fraudulent insurance act a Federal crime. Section 1713 defines a fraudulent insurance act to include an act or omission by any person who knowingly and with intent to defraud (1) conceals information in connection with an application or a claim; (2) solicits insurance on behalf of an insolvent insurer; or (3) removes or alters records of a National Insurer. These provisions are based upon the NAIC's Model Insurance Fraud Prevention Act.

*Sec. 1162. Penalties.*

This section provides that if a National Insurer, National Agency, federally licensed insurance producer or insurer-affiliated party commits a fraudulent insurance act, the Commissioner can revoke, suspend or restrict the license of such entity or person and order restitution to aggrieved parties.

**TITLE II – NATIONAL INSURANCE COMPANIES AND NATIONAL INSURANCE AGENCIES.**

**Subtitle A – Organization, Licensing, and Operations.**

*Sec. 1201. Organization, Operation, and Regulation of National Insurance Companies and National Insurance Agencies.*

Subsection (a) authorizes the Commissioner to provide for the “organization, incorporation, operation and regulation” of National Insurance Companies (otherwise referred to as National Insurers), and National Insurance Agencies (otherwise referred to as National Agencies), and to issue Federal charters for such companies. The Commissioner is directed to issue regulations implementing this authority, and those regulations must permit National Insurers to be organized in stock, mutual, reciprocal or fraternal form. National Agencies are required to be organized in stock form.

Subsection (b) sets forth criteria the Commissioner must consider in issuing a charter for a National Insurer or National Agency. The criteria are (1) the character and competency of the parties seeking the charter, and (2) the financial resources and future prospects of the proposed Insurer or Agency. This section also requires a National Insurer to use the words National Insurer or the initials “N.I.” or a National Agency to use the words “National Insurance Agency” or the initials “NIA” in its name. A savings clause protects State insurers and State insurance agencies that used the words “national” or “Federal” prior to enactment of the bill.

Subsection (c) requires the Commissioner to act on charter applications within 60 days of receipt of the proposed articles of incorporation, and sets grounds for the denial of an application. Those grounds include failure to comply with applicable application formalities, a lack of financial resources, and the lack of character or competence. This section also provides that upon the issuance of a charter certificate for a National Agency, the Commissioner shall issue a Federal producer license to such Agency, and that a National Agency may not sell,

solicit, or negotiate insurance without such a license. The Commissioner is prohibited from delegating this authority to any self-regulatory organization.

Subsection (d) authorizes the Commissioner to issue regulations related to charter amendments.

Subsection (e) prohibits the Commissioner from delegating chartering authority to a self-regulatory organization.

Subsection (f) permits a National Insurer or National Agency to designate an office as its main office, and provides that, for purposes of legal jurisdiction, the Insurer or Agency will be a citizen of the State in which its main office is located.

*Sec. 1202. United States Branches of Non-United States Insurers.*

This section permits non-United States insurers to engage in insurance activities in the United States through branches qualified and licensed by the Commissioner. The Commissioner is prohibited from issuing a license for a U.S. branch of a non-U.S. insurer unless the non-U.S. insurer establishes a trust account in a U.S. bank that holds assets for the benefit of the policyholders and creditors of the U.S. branch. These so-called “trustee assets” are subject to any requirements the Commissioner may impose, and must be maintained as long as the U.S. branch has any liability outstanding in the United States based upon its U.S. insurance transactions. The surplus in the trust account (assets plus investment income minus reserves and other liabilities) is subject to the same solvency and risk-based capital standards that are applicable to a National Insurer. A U.S. branch of a non-United States insurer is treated as a National Insurer for purposes of the bill and all applicable laws. This provision is based upon the NAIC’s State of Entry Model Act.

*Sec. 1203. Federal Licensing of National Insurers.*

Subsection (a) prohibits a National Insurer from selling and underwriting insurance unless the Insurer holds a license issued by the Commissioner.

Subsection (b) authorizes the Commissioner to issue regulations related to licensing. Such regulations must provide for two basic licenses: (1) a license to underwrite and sell property and casualty insurance, and (2) a license to underwrite and sell life insurance, disability income insurance, long-term care insurance, annuities and funding agreements. Such regulations may not permit a National Insurer to obtain both types of licenses. In other words, a National Insurer may not obtain a license to underwrite and sell property and casualty insurance and a license to underwrite and sell life insurance, annuities or funding agreements. This separation of the underwriting of life insurance and property and casualty insurance is consistent with existing State insurance licensing laws. This subsection does not prevent a parent holding company from owning one or more subsidiary National Insurers that are licensed to underwrite and sell life insurance and one or more subsidiary National Insurers that are licensed to underwrite and sell property and casualty insurance.

Subsection (c) provides that a National Insurer may reinsure the lines of insurance for which it is licensed, and may confine its business to reinsurance.

Subsection (d) provides that in issuing Federal licenses, the Commissioner, as a general rule, must treat non-United States persons and non-United States insurers the same as U.S. insurers. The Commissioner may make exceptions to this general rule and impose conditions on the issuance of a Federal license if (1) the conditions relate to the legal form in which the National Insurer operates, or (2) the Commissioner makes a written finding that the conditions protect policyholders and are the minimum necessary to achieve the purposes of the bill.

*Sec. 1204. Corporate Governance.*

Subsections (a) and (b) provide that, for corporate governance purposes, a National Insurer or National Agency is subject to the laws of the State in which its main office is located or the State in which one of its U.S. holding companies is located. This section also provides that if the Commissioner determines that any provision of State corporate governance law is discriminatory as it applies to a National Insurer or National Agency, the Insurer or Agency is not obligated to follow that State law and may follow other provisions of law as the Commissioner determines to be appropriate.

Subsection (c) requires each National Insurer to establish an independent audit committee. This requirement may be satisfied at a holding company level, if the holding company has an independent audit committee that reviews the financial statements of the National Insurer. This provision is based upon provisions in New York insurance law.

*Sec. 1205. Conversion of State Insurer to National Insurer or State Insurance Agency to National Agency.*

This section authorizes a State insurer to convert into a National Insurer and a State insurance agency to convert into a National Agency, subject to the approval of the Commissioner. As part of a conversion, a State insurer could either retain or change its organization structure. The Commissioner is authorized to issue regulations governing conversions, and such regulations must be consistent with the provisions in the bill that address mutual-to-stock and stock-to-mutual conversions. The Commissioner may permit a State insurer that converts into a National Insurer and a State insurance agency that converts into a National Agency to continue to hold assets and exercise powers that do not conform with the rules applicable to National Insurers or National Agencies, to the extent the Commissioner determines appropriate. The Commissioner's authority to review and approve conversions may not be delegated to any self-regulatory organization.

*Sec. 1206. Conversion of National Insurer to State Insurer or National Agency to State Agency.*

This section provides that a National Insurer may convert into a State insurer and a National Agency may convert into a State insurance agency, subject to applicable State law.

*Sec. 1207. Powers.*

Subsection (a) sets forth the basic powers of National Insurers and National Agencies. This subsection is based upon the general corporate powers provisions in the Delaware State Code and the Model Business Corporation Act. The Commissioner is authorized to issue regulations related to these powers. The subsection includes several powers specifically related to the business of insurance. For example, it provides that National Insurers may engage in the underwriting and sale of insurance, allows National Life Insurers to establish separate accounts linked to products such as variable annuities, and permits National Insurers to establish and maintain protected cells for securitization purposes. National Agencies are authorized to engage in the sale, solicitation, and negotiation of insurance. Additionally, it authorizes National Insurers and National Agencies to engage in incidental operations and activities.

Subsection (b) provides that no State may take an action that prevents or restricts a National Insurer or National Agency from exercising any of the powers conferred by the section. This provision is intended to ensure that federally chartered insurers and agencies can exercise the powers authorized by this bill, without interference from the States. The provision is based upon Section 104(d) of the Gramm-Leach-Bliley Act, which generally provides that a State may not “prevent or restrict” a depository institution or any affiliate of a depository institution from engaging in any activity authorized or permitted by the Act.

Subsection (c) authorizes National Insurers and National Agencies to establish or acquire subsidiaries. Subsidiaries of National Insurers may engage in any lawful activity. However, a National Insurer may not invest more than 20 percent of its assets in any one subsidiary or more than 40 percent in two or more subsidiaries, without the prior approval of the Commissioner. A subsidiary of a National Agency may engage only in activities that are permissible for the Agency itself.

Subsection (d) permits a National Insurer to pay dividends out of surplus funds as long as the National Insurer’s assets remain greater than its capital following the payment. This subsection also prohibits the payment of dividends if a National Insurer is insolvent or would be made insolvent by such payment.

*Sec. 1208. Separate Accounts of National Life Insurer.*

This section allows National Insurers that are licensed to engage in the underwriting and sale of life insurance to establish “separate accounts.” A separate account is defined in Section 3 of the bill to mean an account into which the income, gains or losses are credited or charged in accordance with a particular contract without regard to other income, gains or losses of the Insurer. This section insulates such accounts from the general liabilities of the National Insurer. This permits the Insurer to issue variable life insurance policies and variable annuities and to base the return on such products on the return in the separate account.

*Sec. 1209. Protected Cells.*

This section allows National Insurers to establish one or more “protected cells.” A protected cell is defined in Section 3 of the bill to mean an identified pool of assets and liabilities of a National Insurer that is segregated and insulated from the remainder of the Insurer’s assets and liabilities. A National Insurer may allow a security interest to attach to the assets in a protected cell. This allows the Insurer to sell interests in the assets to investors (i.e., securitize the assets). The operative provisions of this section are from the NAIC Protected Cell Company Model Act.

*Sec. 1210. Chartering and Licensing Commencement Date.*

This section provides that the Commissioner may charter or license a National Insurer or a National Agency after the Commissioner has issued, in interim final form, financial, product and market regulations applicable to such entities. Furthermore, it directs the Commissioner to issue such regulations within two years after the initial appointment and confirmation of the Commissioner.

**Subtitle B – Financial, Product, and Market Regulation.**

*Sec. 1211. Transitional Financial Regulations.*

This section requires the Commissioner to issue financial regulations for National Insurers that are based on NAIC model laws and regulations. Such regulations would address accounting standards for National Insurers, investment standards for National Insurers, risk-based capital standards for National Insurers, valuation standards for assets and liabilities of National Life Insurers, continuing and alternative benefit standards for National Life Insurers, and standards for the preparation and filing of actuarial opinions by National Insurers. These regulations must be issued in final form no later than 2 years following the initial appointment and confirmation of the Commissioner, and must remain in effect for 5 years. During the 5-year period, the Commissioner may not modify or revise these regulations, unless the Commissioner determines that a modification or revision to a regulation is necessary to protect policyholders or prevent hazardous conduct by a National Insurer. After the 5-year period ends, the Commissioner, by regulation, may revise or modify any of the financial regulations.

*Sec. 1212. Other Financial Regulations.*

In addition to regulations issued under Section 1211, the Commissioner may issue other financial regulations as the Commissioner determines necessary.

*Sec. 1213. Product Regulation for National Life Insurers.*

Subsection (a) provides that this section applies only to National Life Insurers.

Subsection (b) permits a National Life Insurer to classify or underwrite risks based upon sound actuarial principles or actual or reasonably anticipated experience.

Subsection (c) provides that the parties to an insurance policy or product may specify the State law that applies to the policy or product. If, however, no specification is made, the policy or product will be governed by the law of the jurisdiction in which the policy or product is delivered.

Subsection (d) directs the Commissioner to establish, by regulation, standards for life insurance policies, disability income insurance, long-term care insurance and annuities issued by National Life Insurers.

Subsection (e) provides that a National Life Insurer may issue such policies and contracts after filing a form of the policy or the contract with the Commissioner, along with a certificate that affirms that the policy or contract complies with applicable standards. A false certification would constitute a violation of a regulation, and could subject a National Life Insurer to an enforcement action.

Subsection (f) directs the Commissioner to establish procedures for issuing interpretive rulings regarding the standards issued pursuant to this section, and requires that summaries of such rulings, which do not identify a specific National Life Insurer, be made available to the public.

Subsection (g) authorizes National Life Insurers to issue group, blanket and franchise insurance policies. It also directs the Commissioner to establish, by regulation, standards for the kinds and qualifications of permissible groups for such policies.

Subsection (h) directs the Commissioner to define, by regulation, the term “insurable interest.”

Subsection (i) specifies when a new life insurance policy may exceed the value of the policy being replaced.

Subsection (j) provides that a State may not impose any standard on a National Life Insurer or a person who purchases insurance from a National Life Insurer that is related to the matters addressed in this section.

#### *Sec. 1214. Product Regulation for National Property/Casualty Insurers.*

This section requires each National Property/Casualty Insurer to provide a list of its policy forms to the Commissioner, on an annual basis, and to maintain a copy of each form for inspection by the Commissioner. It also provides that this Act does not authorize the Commissioner to require a National Property/Casualty Insurer to use any particular rate, rating element, price or form.

#### *Sec. 1215. Regulation of Sales and Marketing.*

This section directs the Commissioner to promulgate market conduct regulations for National Insurers, National Agencies and federally licensed insurance producers. Such

regulations must prevent unfair methods of competition and unfair and deceptive acts and practices in the advertising, sale, issuance, distribution and administration of insurance products, including claims.

### **Subtitle C – Reinsurance.**

#### *Sec. 1221. Federal Licensing of Reinsurers.*

This section authorizes the Commissioner to issue a Federal reinsurance license to an insurer that is not a National Insurer. Before the Commissioner may issue such a license to an insurer that is not a State insurer or a United States branch of a non-United States insurer, the insurer must agree to provide financial statements to the Commissioner, subject to the jurisdiction of U.S. courts, and demonstrate that any judgment by a U.S. court could be enforced.

#### *Section 1222. Credit for Reinsurance.*

This section permits National Insurers and federally licensed reinsurers to receive “credit” for insurance that is ceded (i.e., transferred) to another National Insurer or Federal reinsurer. This “credit” can take the form of an asset or a reduction in liabilities on the books of the National Insurer or Federal reinsurer. This section also permits a National Insurer and a Federal reinsurer to establish an asset or reduce its liabilities for insurance ceded to a State insurer, a U.S. branch entered through a State, or a non-U.S. insurer if the reinsurance satisfies security regulations issued by the Commissioner.

#### *Sec. 1223. Relationship to State Law.*

This section provides that a State may not prevent a State insurer from engaging in reinsurance activities with a National Insurer or a federally licensed reinsurer.

### **Subtitle D – Acquisitions of Control; Mergers; Bulk Transfers; Domestication.**

#### *Sec. 1231. Acquisition of Control of National Insurers and National Agencies.*

This section requires that the Commissioner approve any transaction in which a person acquires control of a National Insurer or National Agency. For purposes of this section, control is defined to include the acquisition of 10 percent of voting securities. The section establishes a presumption for the approval of transactions, unless the Commissioner finds that the transaction would (1) prevent the Insurer or Agency from satisfying applicable regulatory requirements for the lines of insurance that it is licensed to issue; (2) jeopardize the financial stability of the Insurer or Agency or be hazardous to policyholders; (3) involve a liquidation or asset sale that is unfair or unreasonable to policyholders and not in the public interest; (4) involve persons who lack the competence to protect the interests of policyholders; or (5) be hazardous to the insurance-buying public.

*Sec. 1232. Mergers, Consolidations, and Acquisitions of National Insurers.*

This section permits a National Insurer, subject to the prior approval of the Commissioner, to merge or consolidate with, or acquire, another National Insurer or a State insurer in a transaction in which a National Insurer is the resulting Insurer. It also permits, subject to applicable State law, a State insurer to acquire a National Insurer in a transaction in which a State insurer is the resulting insurer. The Commissioner is directed to issue regulations governing such transactions. In cases in which the resulting insurer is a National Insurer, the Commissioner is given the authority to permit the Insurer to hold assets and liabilities and exercise powers not otherwise permissible for National Insurers.

*Sec. 1233. Bulk Transfers.*

This section provides for the Commissioner to review and approve “bulk transfers” of assets involving National Insurers. A “bulk transfer” is defined for purposes of this section to mean the transfer of all or substantially all of an insurer’s policies in one or more lines of business to another insurer. The section provides that the Commissioner shall approve such transactions unless it is determined that the transaction is likely to be hazardous to the policyholders of the transferred policies, the policyholders of the transferring insurer, or the policyholders of the assuming insurer. No policyholder approval of the transfer is required.

*Sec. 1234. Domestication of United States Branch of a Non-United States Insurer.*

This section allows a non-U.S. insurer that operates a branch in the United States and owns all of the shares of a National Insurer to have the National Insurer assume the assets and liabilities of the branch, subject to the approval of the Commissioner. This provision is based upon New York insurance law.

*Sec. 1235. Mergers, Consolidations, and Acquisitions of National Agencies.*

This section authorizes the Commissioner to review and approve mergers, consolidations and acquisitions involving National Agencies in which a National Agency is the resulting Agency. It also permits National Agencies to be acquired by State insurance agencies, subject to applicable State law.

**Subtitle E – Conversions.**

*Sec. 1241. Definitions.*

This section defines terms used in the subtitle.

*Sec. 1242. Conversion of Stock Life Insurer to National Life Insurer in Mutual Form.*

This section permits a National Life Insurer or State Life Insurer to become a National Life Insurer in mutual form following submission of a conversion plan, approval by the Commissioner, and approval by a majority of voting shareholders.

*Sec. 1243. Conversion of Mutual Insurer to National Insurer in Stock Form.*

This section permits a National Life Insurer or State Life Insurer in mutual form to become a National Life Insurer in stock form following submission of a conversion plan, approval of the Commissioner, and approval by a majority of the voting policyholders (members).

**Subtitle F – State Taxation.**

*Sec. 1251. State Taxation of National Insurers.*

This section provides that a National Insurer doing business in a State shall be subject to taxation by that State to the same extent as an insurer licensed by such State. Under this section, however, a State may not impose a “retaliatory” tax on a National Insurer unless the State determines the domicile of the National Insurer and the tax imposed on the National Insurer is the same as the tax imposed on State insurers from the domicile of the National Insurer. The section permits a National Insurer to select its State of domicile as the place where it maintains its principal place of business or, in the case of a State insurer that has converted into a National Insurer, the State in which it was domiciled prior to the conversion.

*Sec. 1252. State Taxation of National Agencies.*

This section provides that a National Agency shall be subject to all taxes imposed by the State in which the Agency is domiciled. For purposes of this section, an Agency is deemed to be domiciled in the State in which it maintains its principal place of business.

**TITLE III – INSURANCE PRODUCERS AND OTHER INSURANCE SERVICING PERSONS.**

*Sec. 1301. Federal Licensing of Insurance Producers.*

This section authorizes the Commissioner to license Federal insurance producers. In connection with this authority, the Commissioner is required to establish, by regulation, educational and examination requirements for producers (other than National Agencies). National Insurance Agencies would be granted a Federal insurance producer license upon the issuance of a charter certificate under the terms of Section 1201 of the bill. A Federally licensed insurance producer would be authorized to sell, solicit, or negotiate insurance in any State for any line or lines of insurance specified in the license. Examinations of a federally licensed insurance producer could be conducted only in response to a complaint or other evidence that the producer has violated any law or regulation, any condition issued in connection with the issuance of a license, or any agreement with the Commissioner. The Commissioner may require federally licensed insurance producers to submit such reports as the Commissioner deems appropriate.

*Sec. 1302. Producer Database.*

Subsection (a) directs the Commissioner to adopt regulations for the development of an electronic database that consists of information on federally licensed insurance producers, and to establish an electronic communications network that links the Commissioner with State insurance regulators to share such information.

Subsection (b) permits the Commissioner to delegate the maintenance of the database to a self-regulatory organization.

*Sec. 1303. Supervision and Oversight of Federally Licensed Insurance Producers.*

This section addresses when a National Insurer, National Agency, or federally licensed insurance producer that is an entity has a duty to supervise a federally licensed insurance producer. It provides that a National Insurer is responsible for supervising the sales activities of federally licensed insurance producers that are employees of such Insurer or are agents of such Insurer and whose entire or principal insurance business is devoted to a National Insurer. National Agencies and other federally licensed insurance producers that are entities are responsible for supervising the sales activities of federally licensed insurance producers who are employees of the Agency or entity and for agents who are acting under the terms of a contract with the Agency or entity. A National Insurer, National Agency or federally licensed insurance producer has no duty to supervise any federally licensed insurance producer who is not an employee or agent of such Insurer, Agency or entity. Such individuals are subject to supervision by the Commissioner.

*Sec. 1304. Relationship to State Law.*

This section prohibits the States from preventing or restricting National Insurers from engaging in certain acts associated with the business of insurance or from engaging third parties to perform such acts for the Insurer. The acts covered by this section include investigating claims and placing reinsurance. This section prohibits the States from preventing or restricting a federally licensed insurance producer from selling insurance in a State, and preventing or restricting a State licensed producer from acting on behalf of a National Insurer.

*Sec. 1305. Licensing Commencement Date.*

This provision provides that Commissioner may not license a Federal producer until after regulations applicable to the operations of producers have been put into effect. These regulations are required to be in effect within two years of after the confirmation of the Commissioner.

**TITLE IV – HOLDING COMPANIES.**

*Sec. 1401. Definitions.*

This section defines the terms “extraordinary dividends,” and “insurance holding company system” for purposes of this title. An extraordinary dividend is a dividend that exceeds

the greater of (1) 10 percent of a National Insurer's surplus, or (2) its net income, measured over a calendar year. An "insurance holding company system" exists whenever a National Insurer is affiliated with any other person.

*Sec. 1402. Registration.*

This section requires National Insurers that are part of holding company systems to register with the Commissioner. The Commissioner is authorized to prescribe the form, content and timing of this registration requirement. Any person may file a disclaimer of affiliation with the Commissioner.

*Sec. 1403. Standards and Management of a National Insurer within an Insurance Holding Company System.*

Subsection (a) requires that transactions between a National Insurer and affiliates within an insurance holding company system must be on terms that are fair, reasonable, and are at least as favorable to the National Insurer as terms that would be offered to non-affiliates. This same standard applies to charges and fees for services performed for National Insurers by affiliates of such Insurers. Income and expenses related to such transactions must be allocated in conformance with applicable accounting standards and must be recorded on the books of both parties. The Commissioner may require, by regulation, that certain transactions be subject to prior approval.

Subsection (b) prohibits a National Insurer that is part of insurance holding company systems from issuing an extraordinary dividend without prior notice to the Commissioner, and the Commissioner must either approve or disapprove the dividend after such notice.

*Sec. 1404. Relationship to State Law.*

Subsection (a) provides that a National Insurer may be affiliated with a State insurer or State agency.

Subsection (b) provides that the Commissioner shall have exclusive regulatory authority over reinsurance pooling arrangements between National Property/Casualty Insurers and affiliated State Property/Casualty insurers.

*Sec. 1405. Conflict with Other Federal Laws.*

This section provides that this title should not be interpreted to conflict with other Federal laws, including the Federal Bank Holding Company Act, which applies to financial holding companies. Under the terms of the Federal Bank Holding Company Act, it would be possible for a holding company that controls a National Insurer to qualify as a financial holding company if the company also controls a depository institution.

*Sec. 1406. No Delegation Permitted.*

This section provides that the Commissioner may not delegate any authority conferred under this title to an insurance self-regulatory organization.

**TITLE V – RECEIVERSHIP**

*Sec. 1501. Appointment of Office as Receiver.*

Subsection (a) authorizes the Commissioner to appoint a receiver for a National Insurer for the purpose of rehabilitating or liquidating the Insurer.

Subsection (b) provides that when the Commissioner appoints a receiver for a National Insurer, the Commissioner shall appoint the Office of National Insurance.

Subsection (c) lists the various grounds for the appointment of a receiver. The grounds for appointing a receiver include: the insolvency of a National Insurer; substantial dissipation of assets or earnings due to a violation of law or a hazardous practice; the existence of a condition that is hazardous, financially or otherwise, to policyholders, creditors, or the public; the willful violation of a final cease and desist order; concealment of books or records; the inability to meet obligations; the existence of losses that will deplete all or substantially all of the Insurer's capital; violations of law or regulations that are likely to cause insolvency, substantial dissipation of assets or earnings, or otherwise weaken the condition of the Insurer; consent; or a conviction based upon money laundering.

Subsection (d) provides that the directors of a National Insurer may not be held liable to shareholders (or members), policyholders or creditors if they consent, in good faith, to the appointment of a receiver.

Subsection (e) provides that, when acting as a receiver, the Office is not subject to supervision by any other Federal agency or State.

*Sec. 1502. Automatic Stay.*

This section provides that the commencement of a receivership will stay most, but not all, legal and administrative proceedings involving the National Insurer that is placed into receivership. Proceedings not subject to this automatic stay include criminal actions, actions to perfect property rights, the presentment of negotiable instruments, and actions by guaranty associations. Affected parties also may ask the Commissioner for relief from a stay.

*Sec. 1503. Power and Duties.*

This section gives the receiver of a National Insurer all the powers of the directors, officers and managers of the National Insurer.

*Sec. 1504. Rulemaking.*

This section directs the Commissioner to issue regulations governing standards and procedures applicable to receiverships, including priorities for the allowance or disallowance of claims, and standards for the treatment of reinsurance. Such regulations are to be based upon the Uniform Receivership Law adopted by the Interstate Insurance Receivership Compact Commission in September 1998.

*Sec. 1505. Judicial Review.*

Subsection (a) guarantees National Insurers the right to challenge the appointment of a receiver in a Federal district court.

Subsection (b) guarantees claimants a right to challenge, in a Federal district court, the disallowance of a claim by the receiver.

**TITLE VI – INSOLVENCY PROTECTION.**

*Sec. 1601. Participation in Guaranty Associations.*

Subsection (a) requires National Insurers to become members of the guaranty associations in each “qualified” State in which the Insurer is doing business. The terms “qualified” and “nonqualified” State are defined in Section 1602 of the bill.

Subsection (b) provides that if a National Insurer does business in a State that is not “qualified,” the Insurer must become a member of the National Insurance Guaranty Corporation, which is established in Section 1603 of the bill.

*Sec. 1602. Qualified and Non-Qualified State.*

Subsection (a) defines a “qualified State” as a State in which the guarantee associations: admit both State Insurers and National Insurers; provide benefits or coverage to the policyholders of National Insurers that is no less than the benefits or coverage provided to policyholders of State Insurers; and meets certain corporate governance requirements.

Subsection (b) provides that the Commissioner shall, by regulation, establish a procedure for determining which States are qualified States. It also provides that the Commissioner shall find a State to be a qualified State upon a written request that is jointly filed by the State’s guaranty associations, and the State insurance regulator for such State certifies that the State and such associations satisfy the terms of the definition of a qualified State.

Subsection (c) permits the Commissioner to revoke a determination that a State is a qualified State.

Subsection (d) requires the Commissioner to publish a list of qualified and nonqualified States six months after the initial appointment and confirmation of the Commissioner.

Subsection (e) provides that if a State ceases to satisfy the conditions for being a qualified State, the State may continue to be treated as a qualified State for a period of 24 months.

Subsection (f) defines a nonqualified State as any State that is not a qualified State.

*Sec. 1603. Establishment of the National Insurance Guaranty Corporation.*

Subsection (a) provides for the establishment of the National Insurance Guaranty Corporation as a non-profit corporation that has the same powers as a non-profit corporation organized in the District of Columbia.

Subsection (b) provides that the members of the Corporation are National Insurers and State Insurers doing business in States that are not qualified States.

Subsection (c) provides that the Corporation shall be governed by its members.

Subsection (d) makes the Corporation subject to the supervision and oversight of the Commissioner, and provides that: the Corporation is not an agency or instrumentality of the United States government; the obligations of the Corporation are not backed by the United States government; and that funds held by or due to the Corporation are not included in the budget of the United States.

Subsection (e) permits the Corporation, with the approval of the Commissioner, to contract with third parties to administer the benefits provided by the Corporation.

Subsection (f) provides that the Corporation must establish 5 separate accounts for purposes of administration and assessments. The 5 accounts are: a life insurance account; an annuity account; a workers' compensation account; an automobile insurance account; and an account for all other lines of property/casualty insurance.

*Sec. 1604. Benefits for Policyholders of National Life Insurers.*

This section provides that, in the event a National Life Insurer is placed into receivership by the Commissioner, the Corporation shall provide benefits to individuals who reside in non-qualified States and own life and health policies and annuity contracts issued by the National Life Insurer. It also provides that the benefit levels must be consistent with the benefits specified in the NAIC Life and Health Insurance Guaranty Association Model Act in effect on the date of enactment of the bill. Currently, that Model Act provides for the payment of up to \$300,000 on life insurance policies, and up to \$100,000 on annuity contracts.

*Sec. 1605. Claims Covered for Policyholders of National Property/Casualty Insurers.*

This section provides that, in the event a National Property/Casualty Insurer is placed into receivership for purposes of liquidation, the Corporation shall provide coverage for claims on insurance policies issued by the National Property/Casualty Life Insurer. This section also provides that the coverage limits must be consistent with the limits specified in the NAIC

Property/Casualty Insurance Guaranty Association Model Act in effect on the date of enactment of the bill. Currently, that Model Act provides for the payment of the full amount of workers' compensation claims, up to \$10,000 per policy for the return of unearned premiums, and up to \$300,000 for all other covered claims.

*Sec. 1606. Powers and Duties of the Corporation.*

This section sets forth the basic powers and duties of the Corporation over National Insurers that are placed into receivership status by the Commissioner. Subsection (a) provides that, in those cases in which a National Life Insurer is placed into a receivership for purposes of rehabilitation, the Corporation may (1) guarantee, assume or reinsure the policies of the Insurer, or (2) provide funds to assure payment of the Insurer's contractual obligations. In those cases in which a National Life Insurer is placed into a receivership for purposes of liquidation, the Corporation shall (1) guarantee, assume or reinsure the policies of the Insurer and provide funds to assure payment of the Insurer's contractual obligations, or (2) provide for the payment of benefits for premiums, termination notice, or substitute coverage consistent with the terms of Section 1604.

Subsection (b) provides that, in those cases in which a National Property/Casualty Insurer is placed into receivership for purposes of liquidation, the Corporation assumes the obligations of the Insurer, and investigates and pays claims consistent with the terms of Section 1605. The subsection also provides that the non-payment of premiums by a policyholder will terminate benefits provided by the Corporation.

Subsection (c) lists other general corporate powers of the Corporation.

*Sec. 1607. Subrogation.*

This section provides that when the Corporation provides benefits to or covers claims for a policyholder, the rights of the policyholder against the National Insurer will be transferred to the Corporation.

*Sec. 1608. Assessments.*

This section authorizes the Corporation to assess National Insurers that are members of the Corporation for the funds necessary to cover the administrative costs of the Corporation and the costs of providing benefits to policyholders. Assessments for administrative costs shall be equally divided among the members. Assessments for policyholder benefits and claims paid are based upon the ratio of premiums received on covered policies issued in the non-qualified State by the insolvent Insurer to premiums received on such policies in such State by all other member Insurers. This section also provides that assessments will not be imposed until needed, and sets a maximum annual assessment equal to 2 percent of the Insurer's average annual premiums on covered policies during the year prior to the commencement of the receivership. Finally, this section addresses assessments of different subaccounts in the event that a given subaccount has insufficient funds, deferred assessments, refunds, and protests related to assessments.

*Sec. 1609. Regulation.*

This section authorizes the Commissioner to issue regulations to implement the terms of the subtitle.

*Sec. 1610. State Taxation.*

This section prohibits a State from imposing a tax on a National Insurer unless the Insurer can deduct assessments paid to the Corporation or the applicable State guaranty association to the same extent as a State insurer.

*Sec. 1611. Examination of the Corporation; Annual Report..*

This section provides that the Corporation is subject to examination by the Commissioner, and must submit an annual report to the Commissioner and State commissioners in non-qualifying States.

**TITLE VII – CONFORMING AMENDMENTS AND MISCELLANEOUS PROVISIONS.**

*Sec. 1701. Nondiscrimination.*

This section prohibits the States from discriminating against any (1) State insurer or State producer that seeks to become federally chartered or licensed; (2) affiliate of a National Insurer, National Agency, or federally licensed insurance producer; (3) policyholder, insured claimant, State licensed insurance producer or other person because of any dealing with a National Insurer, National Agency, federally licensed insurance producer, or affiliate of such entities; and (4) State-licensed insurance producer that sells insurance policies for a National Insurer.

*Sec. 1702. Application of the Federal Antitrust Laws to National Insurers, National Agencies, and Federally Licensed Insurance Producers.*

Subsection (a) subjects National Insurers, National Agencies, and federally licensed insurance producers to the Sherman and Clayton antitrust acts. The Sherman Antitrust Act prohibits any contract, business combination, or conspiracy that would improperly restrain interstate or foreign trade. The Clayton Antitrust Act prohibits price discrimination, exclusive dealing contracts, tying agreements, and other corporate arrangements that create unlawful monopolies or restrain trade and competition. The subsection gives National Insurers, National Agencies, and federally licensed insurance producers exemptions from these Federal antitrust laws only to the extent necessary to develop and use standard policy forms, and to the extent that such entities are subject to State law.

Subsection (b) provides that Section 5 of the Federal Trade Commission Act, which prohibits unfair and deceptive practices, shall not apply to National Insurers, National Agencies, and federally licensed insurance producers. Such practices by National Insurers, National Agencies, and federally licensed insurance producers are prohibited by Section 1215 of the bill.

*Sec. 1703. Application of State Law and Regulation to National Insurers, National Agencies, and Federally Licensed Insurance Producers.*

This section provides that National Insurers, National Agencies, and federally licensed insurance producers shall not be subject to State licensing, examination, reporting, regulation, or other supervision regarding their insurance activities, except to the extent expressly permitted by this bill.

*Sec. 1704. Federal Court Jurisdiction.*

This section provides that Federal district courts shall have jurisdiction over any civil action brought by the United States against any National Insurer, National Agency, or federally licensed insurance producer, and any civil action to enjoin the Commissioner as the head of the Office or in the Commissioner's capacity as a receiver for a National Insurer.

*Sec. 1705. Federal Court Venue.*

This section establishes a Federal court venue for civil actions by a National Insurer or National Agency against the Commissioner.

*Sec. 1706. Judicial Review.*

This section provides that any party who claims to be harmed by an order of the Commissioner may ask a Federal court of appeals to set aside, modify or terminate the order.

*Sec. 1707. Amendment to Freedom of Information Act.*

This section provides that examinations and other supervisory reports related to National Insurers and National Agencies are exempt from disclosure under FOIA.

*Sec. 1708. Amendments to the Federal Securities Laws.*

This section amends Federal securities laws to ensure that National Insurers and State insurers are treated equally for purposes of such laws.

*Sec. 1709. Amendments to the Employee Retirement Income Security Act of 1974.*

This section amends the Federal Employee Retirement Income Security Act ("ERISA") to apply to National Insurers.

*Sec. 1710. Amendments to the Gramm-Leach-Bliley Act.*

This section makes various conforming amendments to the Gramm-Leach-Bliley Act ("GLBA"). Most notably, it subjects National Insurers and National Agencies to GLBA privacy provisions.

*Sec. 1711. Amendments to the Federal Deposit Insurance Act.*

This section makes conforming amendments to the Federal Deposit Insurance Act to recognize the creation of the Commissioner of National Insurance as the regulator of National Insurers.

*Sec. 1712. Amendments to the Bank Holding Company Act of 1956.*

This section makes conforming amendments to the Bank Holding Company Act to recognize the creation of the Commissioner of National Insurance as the regulator of National Insurers.

*Sec. 1713. Amendments to Title 18 (Crimes and Criminal Procedure).*

This section makes it a Federal crime to willfully alter, remove, destroy or conceal the assets of National or State insurers. This section also makes the commission of a “fraudulent insurance act” a Federal crime. A fraudulent insurance act is defined to include an act or omission by any person who knowingly and with intent to defraud conceals information in connection with an application or a claim, solicits insurance on behalf of an insolvent insurer, or removes or alters records of a National Insurer.

*Sec. 1714. Amendments to Americans with Disabilities Act of 1990.*

This section gives National Insurers the same treatment as State insurers under the Americans with Disabilities Act (“ADA”). Under that Act, State insurers may underwrite risks without violating ADA.

*Sec. 1715. Amendment to Age Discrimination in Employment Act.*

This section amends the Age Discrimination in Employment Act to require the Equal Employment Opportunity Commission to consult with the Commissioner in matters related to retirement benefits tests.

*Sec. 1716. Amendments to the Fair Credit Reporting Act.*

This section gives the Commissioner the authority to enforce the Fair Credit Reporting Act as it applies to National Insurers, National Agencies and federally licensed insurance producers.