

NATIONAL INSURANCE ACT OF 2007

Section-By-Section Overview May 24, 2007

1. TITLE I -- OFFICE OF NATIONAL INSURANCE

Subtitle A. Establishment of an Office of National Insurance

The Sununu/Johnson bill would create the Office of National Insurance (ONI), a new federal agency to be housed within the Department of the Treasury. Similar to a state insurance department, the ONI would license and oversee insurers, agencies and producers; issue regulations covering the breadth of insurance regulatory issues from market conduct to solvency to conversions to receivership; and enforce the federal insurance laws and regulations.

In addition to a main office in Washington, D.C., the ONI would be required to have at least 6 regional offices, and would be funded by fees it collects from federal licensees.

Commissioner of National Insurance. The ONI would be headed by a Commissioner of National Insurance (the "Commissioner"), appointed by the President and subject to Senate confirmation. The Commissioner's term would last for 5 years.

To be qualified for this position, an appointee would need to be free from any direct or indirect financial interests in any national insurer, agency, or other federally licensed insurance producer. The appointee could, however, own or have an interest in a policy written or produced by a national insurer or agency.

Once appointed and confirmed, the Commissioner would have the authority to:

- oversee the organization, incorporation, operation, regulation, and supervision of national insurers and national agencies;
- issue charters and licenses for national insurers and national agencies;
- license, regulate, and supervise federally-licensed insurance producers;
- issue regulations and supervise national insurers, national agencies and federally-licensed producers;
- place a national insurer into receivership for the purposes of rehabilitation or liquidation provided certain grounds are met; and
- revoke or restrict the federal license of national insurers if the Commissioner determines that the national insurer has engaged in hazardous conduct, is in poor financial condition, or has violated any laws;
- consult with state insurance regulators on matters of common interest;
- collaborate with foreign insurance regulators as appropriate to secure bilateral and multilateral cooperation and promote open and fair competition in global markets.

The bill would allow the Commissioner to delegate these authorities to any ONI employee or insurance self-regulatory organization. The Commissioner would not be permitted to delegate certain, specified authorities, including the authority to suspend, restrict, or revoke a federal license, make rules, or issue or convert federal charters.

ONI Divisions. The ONI would include a Division of Insurance Fraud and a Division of Consumer Affairs. The fraud division would be responsible for investigating suspected fraudulent insurance acts by insurance professionals or other persons. The bill's fraud provisions would require that each national insurer place a fraud warning on policy applications and claims forms. Moreover, national insurers that know or reasonably believe that a fraudulent insurance act is being, will be, or has been committed, would be required to report such activity to the Commissioner.

The Division of Consumer Affairs would be responsible for enforcing market conduct regulations concerning the advertising, sale, issuance, distribution, and administration of insurance policies and other products of national insurers and claims under insurance policies and other products of national insurers.

Insurance Self-Regulatory Organizations. The bill would permit the Commissioner to register insurance self-regulatory organizations (SROs) for national insurers, national agencies and federally-licensed insurance producers. The Commissioner would have authority to regulate such SROs by:

- reviewing, approving, abrogating, modifying, or adding to the operating rules of a SRO;
- reviewing, approving, abrogating, or modifying any disciplinary action taken by a SRO
- removing, suspending, or barring an individual from serving as an officer or director of a SRO;
- removing or suspending a member of a SRO;
- suspending or revoking the registration of a SRO.

The SROs would have authority to enforce their members' compliance with federal insurance law, any regulations issued by the Commissioner, and the rules of the organization itself. As discussed above, the authority of SROs to take some actions is limited in the bill.

Office of the Ombudsman. The bill would also create, within the ONI, an Office of the Ombudsman (the "Ombudsman") that would handle complaints from persons adversely affected by actions of the ONI and serve as a liaison between such complainants and the Commissioner. The Ombudsman would be appointed by and report directly to the Commissioner, and would have the power to (1) stay, with the consent of the Commissioner, certain appealable decisions or actions; and (2) review and report any weaknesses in policies or procedures to the Commissioner along with recommendations for changing such policies or procedures. The following decisions/actions would not be appealable:

- appointments of receiver or conservators
- preliminary examination conclusions communicated to the regulated entity before a final examination report is issued
- formal enforcement-related actions or decisions, including the issuance of a formal supervisory agreement, a cease-and-desist order, a civil money penalty, or to take prompt corrective action, issue a safety and soundness order, or commence a formal investigation
- formal and informal rulemakings
- decisions or recommended decisions following formal adjudications
- Freedom of Information Act (FOIA) requests.

The ONI would be prohibited from retaliating against persons who complain or appeal any decision to the Ombudsman.

Subtitle B. Supervision of National Insurers and National Agencies

Examinations. The Commissioner would have the power to conduct investigations of national insurers, national agencies, and, in some circumstances, the affiliates of such entities.

National insurers would be subject to periodic on-site examinations every 3 years, and special examinations when and if the commissioner determines that such an examination is necessary.

National agencies would be subject to examinations only where there has been a complaint or other evidence that the agency has or is about to commit a violation of an insurance law or written agreement with the Commissioner.

Affiliates of national insurers or agencies would be subject to examination when, in the course of an examination of the insurer or agency, the Commissioner determines it necessary to discover information from an affiliate that may have a materially adverse effect on the operations, management, or financial condition of the insurer or agency.

Parties under examination would be required to produce people and documents as requested by the Commissioner.

Reporting. The bill would authorize the Commissioner to impose a reporting requirement on national insurers and agencies. The Commissioner could promulgate rules detailing the information that must be contained in such reports and the frequency with which they must be submitted. The bill would require national insurers to submit annual and quarterly financial statements to the Commissioner.

Disclosure of Information. The bill would require the Commissioner to issue regulations establishing standards for the disclosure of examination reports, applications, filings, correspondence, records, and other information prepared or received by the Commissioner. Confidential supervisory information and information otherwise privileged under state or federal law would be protected.

Examination Fees and Assessments/Appropriations. The bill would allow the Commissioner to charge regulated parties examination fees, processing fees (for processing applications, filings, statements, notices, or requests for approval filed with the office), and other assessments that the Commissioner deems necessary and appropriate to fund the operations of the ONI.

While the funds collected could be used only to cover the operating costs of the ONI, the Commissioner would be able to collect fees and assessments in excess of the amount necessary to cover such costs in order to establish a working capital fund. Any amounts collected in excess of the amount necessary to establish an appropriate working capital fund would be returned to regulated parties.

Amounts necessary to establish and begin operating the ONI would be loaned to ONI by the Secretary of the Treasury. The ONI would need to repay the loan, with interest, within 30 years of the bill's effective date.

Preemption. National Insurers, National Agencies, and federally-licensed insurance producers would be exempt from state licensing, examination, or reporting regulations or other supervision relating to:

- the sale, solicitation, or negotiation of insurance;
- the underwriting of insurance; or
- any other insurance operations, including all products, marketing and sales practices, claims adjustment and settlement, financial condition and solvency, and holding company transactions.

Although state insurance laws would be preempted generally, certain insurance laws would still apply, including laws related to participation in an assigned risk plan, mandatory joint underwriting association, or any other mandatory residual market mechanism. Compulsory state insurance laws that prescribe the mandatory coverage for workers' compensation, motor vehicle insurance, or both would also still apply. In addition, federally-licensed insurers and producers would remain subject to general state laws state including unclaimed property and escheat laws and applicable state tax laws.

Office Records Retention. The Commissioner could require office records to be kept in various electronic or photographic mediums, and could set standards for retention of those records.

Anti-Money Laundering Compliance. The Commissioner would be required to issue regulations requiring national insurers to comply with federal anti-money laundering provisions. Compliance would be monitored during routine examinations of the national insurers. This section would permit the Commissioner to issue cease and desist orders if the national insurer fails in this regard and does not correct such failure.

Subtitle C. Enforcement of Federal Insurance Laws

Suspension, Restriction, or Revocation of Federal Licenses. The Commissioner would have the power to suspend, restrict, or revoke the federal license of a national insurer or producer after

providing the affected party with notice and an administrative hearing. Where the Commissioner believes that the insurer/producer poses an immediate threat to the interests of policyholders or the public, he could move for a temporary order immediately suspending or restricting the affected party's license. Such an order could be appealed to a federal district court within 10 days.

The Commissioner could take such action for the following reasons:

- A producer/insurer violates any applicable law, regulation, order, or condition imposed by the Commissioner in connection with the approval of an application, filing, statement, notice or other request by the producer, or written agreement entered into between the insurer/producer and the Commissioner;
- A producer provides incorrect, misleading, or materially untrue information in a federal charter or license application;
- A producer uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility;
- An insurer engages in conduct that is hazardous to the insurer and involves undue risk to its policyholders;
- An insurer's financial condition is inconsistent with continuation of its operations.

A national insurer whose license is revoked or restricted must send notice to each policyholder that would be affected. Any national agency or producer whose license is revoked or restricted must send notice to each insurer for which it acts as a producer.

Cease-and-Desist Orders. The Commissioner would have authority to issue a cease-and-desist order, after providing notice and a hearing, against a federally licensed insurer, agency, producer, or insurer-affiliated party¹ that has or is about to engage in hazardous conduct placing policyholders at risk, or has or is about to violate an applicable law, condition imposed by the Commissioner, or agreement with the Commissioner. The Commissioner could also issue an immediate, temporary cease-and-desist order against the licensee if necessary, and the licensee would have the opportunity to seek an injunction from a federal court to set aside the temporary order until the completion of the licensee's hearing.

Corrective Action. The Commissioner could also issue orders requiring a national insurer, agency, producer, or insurer affiliated-party to take affirmative action to correct improper conduct or violations, including orders to (1) restrict the growth of a national insurer; (2) dispose of any asset or insurance contract, including any insurance policy; (3) rescind other agreements or contracts, other than insurance contracts, to which the national insurer is the issuer; (4)

¹ "Insurer-Affiliated Party" is defined as (1) any director, officer, employee, or controlling shareholder of, or agent for a national insurer or agency; a person seeking the Commissioner's approval to acquire control of a national insurer or agency; (2) any shareholder (other than a holding company), consultant, joint venture partner, and any other person who, as determined by the Commissioner, participates in the conduct of the affairs of a national insurer or agency; and (3) any independent contractor who knowingly or recklessly participates in a legal violation, breach of fiduciary duty, or any conduct that creates undue risk to policy holders, and which is likely to cause more than minimal financial loss to, or significant adverse effect on, a national insurer or agency or its policyholders.

employ qualified officers or employees, subject to approval by the Commissioner, and (5) other actions the commissioner determines are appropriate.

Suspension, Removal, and Prohibition of Insurer Affiliated Parties. The Commissioner would also have the authority, after providing notice and a hearing, to suspend, remove, or prohibit an insurer-affiliated party from participating in the insurer/agency's activities if:

- The insurer or agency has violated any law, cease-and-desist order, condition imposed by the Commissioner, or agreement with the Commissioner; engaged in conduct hazardous to the national insurer or agency and posing undue risk to policyholders; or breached a fiduciary duty;
- Such conduct has or will cause financial loss or other harm to the agency or insurer; has or could prejudice the interests of policyholders; or allowed the insurer or agency to realize financial gain; and
- The conduct involves dishonesty or demonstrates willful or continuing disregard for the insurer or agency's condition or the interests of policyholders.

The order would be industry-wide, and the party would not be able to participate in the affairs of any other insurer or agency, or act as a producer, unless the Commissioner specifically consents to the activity.

The Commissioner could issue an immediate, temporary suspension/prohibition order against the party, and the party would have the opportunity to seek a stay of this order from a federal court.

Suspension, Removal, or Prohibition Based on Criminal Activity. The Commissioner could also suspend or restrict an affiliated party's activities if the party has committed a criminal violation involving dishonesty or breach of trust, or certain federal financial crimes, including anti-money laundering and Bank Secrecy Act violations. The Commissioner would be required to provide notice of the suspension or order of removal, after which the party may request a hearing.

Hearings and Judicial Review. All hearings provided under the Act, other than hearings provided to affiliated parties charged with criminal violations, would be required to be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, and in the federal judicial district in which the main office of the national insurer, agency, or affiliated-party is located.

The Commissioner's final decisions would be appealable to the U.S. Court of Appeals in for the circuit in which the licensee or affiliated party is located, or the U.S. Court of Appeals for the D.C. Circuit.

Civil and Criminal Penalties. National insurers, agencies, producers, or affiliated-parties would be subject to civil penalties for conduct prohibited by the Act. There are three "tiers" of civil penalty liability:

- i. **Tier 1 -- Up to \$5,000 per day.**
Tier 1 penalties would be imposed for (1) violations of any law or regulation; (2) violations of a temporary restraining order; (3) violations of any condition imposed in writing by the Commissioner in connection with the grant of an application or other request by the insurer, agency, producer or party; or (4) violations of a written agreement with the Commissioner.
- ii. **Tier 2 -- Up to \$25,000 per day.**
Tier 2 penalties would be imposed for (1) any Tier 1 violations; (2) reckless conduct that is hazardous to a national or state insurer, or a U.S. branch of a foreign insurer and involves an undue risk to policy holders; or (2) breach of fiduciary duty; *and* where such conduct either (1) is part of a pattern of misconduct; (2) causes more than minimal loss to an insurer; or (3) results in pecuniary gain or other benefit to the responsible party.
- iii. **Tier 3 -- Up to \$1,000,000 per day.**
Tier 3 would be imposed for any of the above violations, where such violations are made knowingly, and the party knowingly or recklessly causes a substantial loss to an insurer, or results in a substantial pecuniary gain or other benefit to the responsible party.

Any party subject to a civil penalty would be given notice and an opportunity to request a hearing.

Any insurer-affiliated party that violates a suspension, removal, or prohibition order issued by the Commissioner would be subject to a fine of not more than \$1,000,000, and/or 5 years imprisonment.

Public Disclosure of Final Orders and Agreements. Final orders and agreements would be published monthly, unless the Commissioner determines that public disclosure would be contrary to the public interest. Hearings would be open to the public, and transcripts of such hearings would be available upon request.

Foreign Investigations/Insurers. The Commissioner would have authority to participate in investigations by foreign governments into activities by regulated parties that are potentially violative of the laws of such foreign governments. The Commissioner would also have authority to take action against a foreign insurer or agent of a foreign insurer if the Commissioner believes that such party is responsible for conduct within the U.S. that would be grounds for action against a U.S. insurer or agent thereof.

Cooperation Between Commissioner and State Commissioners. The Commissioner would be required to report, within 30 days, any action taken against a national insurer or agency to the insurance commissioner in each state that the affected insurer/agency does business.

Subtitle D. Insurance Fraud

Investigation of Insurance Fraud. The bill would provide the Commissioner the power to investigate suspected insurance fraud, and encourages the reporting of fraud by requiring insurers and those involved in the insurance industry to report fraud of which they are aware, and providing immunity to those who make good faith reports. The bill would require national insurers to place fraud warnings on claim forms and policy applications.

Penalties. The bill would also allow the Commissioner to penalize national insurers or agencies who commit fraud by electronic mail by revoking, suspending, or restricting their charters and ordering restitution.

Civil Remedy. Any national insurer, national agent or federally-licensed producer injured by a fraudulent insurance act would be able to recover in damages the amount lost plus attorneys fees and expenses, with the caveat that no class actions could be maintained. This would be the sole private remedy against fraudulent insurance acts.

2. Title II -- National Insurance Companies and National Insurance Agencies

Subtitle A. Organization, Licensing, and Operations.

National Insurance Companies and Agencies. The bill would give the Commissioner the power to issue regulations providing for the organization, incorporation, operation, and regulation of national insurers and producers. In determining whether to charter an insurer or agency, the Commissioner would need to consider the character and competency of the parties seeking the charter, and the financial resources and prospects of the proposed national insurer or agency. Federally chartered insurers and agencies would be required to identify themselves as such by including "National Insurer" ("N.I.") or "National Insurance Agency" ("N.I.A.") at the end of their corporate names. State chartered companies could continue to use the words "federal" or "national" if these words were included in their names on or before the date that the bill is passed.

National agencies would be permitted to be organized as corporations, partnerships, limited liability companies or another other recognized form.

National agencies would be required hold producer licenses (as detailed in Title III) for every line of insurance sold by the agency.

Policy Procedures. National life insurers in mutual form would elect, at the time of initial chartering and licensing, to either be subject to state policy procedures (using the procedures in the state of its main office) or to the Commissioner's policy procedures. The Commissioner would be required by this section to adopt policy procedures, except that no life insurer may be subject to any limitation on the amount of surplus it may retain.

Conversion to/from Federal Charters. The bill would provide that state insurers/agencies, pursuant to procedures to be prescribed by the Commissioner, could convert to national insurers/agencies, and that national insurers/agencies could convert to state insurers/agencies.

Any charter granted to a national insurer in fraternal form in connection with a conversion from a state insurer would have to include provisions that allow the national insurer to operate as a fraternal form consistent with its former state charter.

United States Branches of Foreign Insurers. U.S. branches of foreign insurers would be eligible for a federal charter, provided the foreign insurer establishes a trust account with a U.S. bank in accordance with rules prescribed by the Commissioner.

Powers. A federal charter provides the insurer/agency with a full range of corporate powers, and prevents states from restricting any power conferred by a federal charter.

National life insurers would be specifically permitted to:

- establish and maintain 1 or more separate accounts and allocate amounts to such accounts;
- provide life insurance, annuities, disability income insurance, long-term care insurance, or funding agreements (and incidental benefits), payable in fixed or variable amounts from the accounts described above;
- hold and accumulate funds pursuant to funding agreements; and
- provide investment advice and investment management services.

Other national insurers would be specifically permitted to:

- engage in the sale, solicitation, negotiation, and underwriting of insurance;
- establish and maintain 1 or more protected cells in connection with an insurance securitization and attribute to such cells insurance and reinsurance obligations with respect to its general account, obligations relating to the insurance securitization and assets to fund such obligations; and
- engage in all other insurance operations and incidental powers necessary to carry out such operations.

National agencies would be specifically permitted to:

- engage in the placement of insurance policies issued by national and state insurers and surplus lines and non-admitted insurers; and
- engage in incidental powers necessary to carry out placement activities, including claims adjustment and settlement, risk management, employee benefits advice, retirement planning, and any other insurance related consulting activities.

National insurers and agencies could acquire subsidiaries, but national insurers could not invest more than 20 percent of their assets in any one subsidiary, or more than 40 percent of their assets in any two subsidiaries, without prior written approval of the Commissioner.

Separate Accounts of a National Life Insurer/Protected Cells. The bill would provide that any amounts allocated to a separate account by a national life insurer - or a protected cell by any other insurer - shall be owned and controlled by the insurer, the assets therein shall be the property of the national life insurer, and that the insurer shall not hold itself out as a trustee with respect to such accounts. Amounts placed in such accounts could not be used to satisfy liabilities arising out of any other business of the insurer, but the insurer could allow security interests to attach to the account assets so long as the security interest is in favor of a creditor of the separate account and otherwise allowed under applicable law.

The bill would preempt any state law that would regulate an investor, underwriter, or selling agent of any an insurance securitization as an insurer, reinsurer, reinsurance agent, or other insurance professional simply by reason of its investment or its activities in connection with the securitization.

Chartering and Licensing Commencement Date. The Commissioner could issue national insurer and agency licenses only after certain specified regulations, such as licensing and market conduct regulations, are adopted in final form.

Subtitle B. Financial, Product, and Market Regulation.

Transitional Financial Regulations. The bill would require the Commissioner, within two years of his confirmation, to publish financial regulations applicable to national insurers that are consistent with NAIC models and standards. The financial regulations would be in effect for five years, and any amendments to the NAIC models and standards upon which the regulations are based during that five years could, by order of the Commissioner, apply to national insurers.

The NAIC models and standards that the Commissioner would need to adopt are:

- Accounting principles from the Accounting Practices and Procedures Manual;
- Auditing standards from the Model Regulation Requiring Annual Audited Financial Reports;
- Investment standards from the Investment of Insurers Model Act (Defined Standards Version);
- Risk-based capital standards for a national insurer consistent with the Risk-Based Capital for Insurers Model Act;
- Valuation standards for obligations and liabilities of a national life insurer consistent with the Accounting Practices and Procedures Manual;
- Continuing and alternative benefits standards from the Standard Nonforfeiture Law for Life Insurance; Variable Life Insurance Model Regulation; Standard Nonforfeiture Law for Individual Deferred Annuities; Long-Term Care Insurance Model Act; and Long-Term Care Insurance Model Regulation;
- Standards from the Actuarial Opinion and Memorandum Regulation;
- Standards from the Property and Casualty Actuarial Opinion Model Law and Property and Casualty Annual Statement Instructions.

The Commissioner would be permitted to issue other financial regulations that he views as necessary.

Product Regulation for National Life Insurers. The bill would impose the following requirements on national life insurers:

- Underwriting standards requiring any decisions to refuse to insure, continue to insure, or to limit the amount, extent, or kind of coverage, or to charge a different rate for the same coverage to be (1) based on sound actuarial principles, or (2) related to actual or reasonably anticipated experience;
- Standards for policies, which would be established by regulation; and
- A product filing requirement requiring insurers to file policies with a certificate of compliance prior to issuance.

The bill would authorize national life insurers to issue group, blanket, and franchise insurance policies, and would permit new life insurance to exceed insurance being replaced if certain criteria are met.

Product Regulation for National Property/Casualty Insurers. National property and casualty insurers would be required to maintain all insurance policies and to annually provide the Commissioner with a list of all standard policy forms it uses to insure risks. This section of the bill would specifically provide that it does not authorize the Commissioner to require property and casualty insurers to use any particular rate, rating element, price, or form.

Regulation of Sales and Marketing. The section states that there should be appropriate federal regulation of sales and marketing practices of national insurers, national agencies and federally licensed insurance producers to prevent unfair methods of competition and deceptive acts in the advertising, sale and administration of insurance policies.

Corrective Action. The Government Accountability Office (“GAO”) would be instructed to study and report within 6 months to the House Financial Services Committee and the Senate Banking Committee on appropriate structure and procedures for corrective actions to ensure hazardous conditions of national insurers are resolved efficiently. Within 6 months of the report, the Commissioner would be required to promulgate regulations applicable to national insurers that may include capital measures, capital standards, restrictions on permissive actions, procedures and receivership provisions, and other relevant standards. The GAO should consider corrective action requirements under the Federal Deposit Insurance Act and the NAIC’s model regulations in compiling its report.

Subtitle C. Reinsurance

Federal Licensing of Reinsurers. The Commissioner would have authority to issue federal reinsurer licenses to state insurers and U.S. branches of foreign insurers. The Commissioner would be required to conduct examinations of applicants for a federal reinsurance license and to publish the findings of such examinations. Foreign insurers would be able to obtain federal reinsurance licenses provided they agree to (1) report financial statements on a basis

substantially similar to that required of national insurers; (2) submit to the jurisdiction of U.S. courts; and (3) demonstrate that all judgments of U.S. courts would be enforceable and collectible.

Federal reinsurers would be required to submit annual reports regarding their financial status and trusts.

Credit for Reinsurance. National insurers would be able to establish an asset or reduce liabilities for reinsurance ceded to another national insurer or reinsurer. The Commissioner would issue regulations governing the establishment of an asset or reduction of liabilities for the ceding of insurance by a national insurer to a state insurer, a United States branch issued through a state, or a foreign insurer.

Preemption. The bill would preempt any state law that would prevent a state insurer from ceding insurance to a national insurer or reinsurer, or establishing an asset or reducing its liabilities as a result of such reinsurance to the same extent permitted of a state insurer.

Freedom of Commercial Contract. The state could not deny a state insurer any part of an asset or require any increase in liability for insurance ceded to a national insurer because its reinsurance contract contains specific terms, and the state may not require specific terms in reinsurance contracts, except as provided by the Commissioner by regulation.

Review by the Commissioner. A state could, however, require a state insurer to use contract terms substantially equivalent to those required under the “Credit for Reinsurance” section above. The Commissioner would be required to review any such state action to determine if it serves a legitimate state interest.

Subtitle D. Acquisitions of Control; Mergers; Bulk Transfers; Domestication

The bill would require prior approval of any attempt by a person to merge with or otherwise acquire a national insurer. Such an agreement could, however, be entered into if conditioned on the Commissioner's approval. The Commissioner would have the discretion to hold a hearing on the merger or acquisition.

The Commissioner would approve the merger or other acquisition of control unless he finds that (1) the acquisition would cause the national insurer to lose its ability to satisfy requirements for its federal license; (2) the person acquiring the entity may cause it to become financially unstable or be hazardous to policyholders; (3) the plan is unfair and unreasonable to policyholders and not in the public interest; (4) the persons who would control the entity lack competence, experience, or integrity required to protect the interests of policyholders; (5) the acquisition would likely be hazardous to the insurance-buying public.

Mergers, Consolidations, and Acquisitions of National Insurers. National insurers would be permitted, in accordance with regulations to be established by the Commissioner, to merge with, acquire, or assume the liabilities of another national insurer or a state insurer. State insurers would be able merge with, acquire, or assume the liabilities of national insurers. The state

insurer would be subject to any applicable state laws and would need to comply with notification procedures prescribed by the Commissioner.

Bulk Transfers. The bill would allow bulk transfers, or transfers from one insurer to another of all or substantially all of one or more of its lines of business or blocks of business. Such transfers could take any of the following four forms:

- A state insurer transferring to a permitted national insurer²;
- A permitted national insurer transferring to a state insurer;
- A national insurer transferring to a national insurer;
- A state insurer transferring to a national insurer; or
- A national insurer transferring to a state insurer.

A bulk transfer involving a national insurer (other than a transfer from a state insurer to a non-permitted national insurer) would need approval from the Commissioner.

Depending on which form the transfer takes, the prior consent of policyholders may be required. The following bulk transfers would not require policyholder consent: (1) transfers from state insurers to permitted national insurers, and (2) transfers from permitted national insurers to state insurers. The Commissioner may, by rule, require policyholder consent for the following bulk transfers: (1) transfers between national insurers, and (2) transfers from a national insurer to a state insurer.

The bill would prohibit states from imposing, on national insurers, permitted national insurers, *or state insurers*, any requirement to obtain policyholder consent, any requirement that transfers be submitted to the state for review or other action, or any other requirement that would prevent or interfere with a bulk transfer under the Act. However, states would retain the right to (1) require policyholder consent for transfers from a state insurer to a national insurer and from a national insurer to a state insurer, and (2) collect, review, or take action (including approval or disapproval) on bulk transfers involving state insurers that are not permitted national insurers.

Any state review or action authorized under the bill would need to:

- Be based on standards that are not more onerous than those imposed by the ONI;
- Occur within a reasonable timeframe;
- Be made after consultation with the Commissioner;
- Be made without bias or discrimination toward either the transferring or assuming insurer;
- Serve a legitimate state interest;
- Not frustrate the proposed transfer; and
- Not provide differential treatment to national and state insurers.

² A "permitted national insurer" is either a state insurer that is in the process of converting to a national insurer, or a national insurer that is being newly chartered and licensed.

Domestication of U.S. Branches of Non-U.S. Insurers. The bill would allow the Commissioner to approve the domestication of U.S. branches of foreign insurers by allowing a national insurer owned by the foreign insurer to acquire all of the business, assets, and liabilities of the foreign insurer's U.S. branch.

Mergers, Consolidations, and Acquisitions of National Agencies. The Commissioner would be permitted to authorize and provide for regulations governing mergers, consolidations, and acquisitions in which a national agency is the resulting, acquiring, or assuming agency. Resulting national agencies would not be permitted to retain any state license to sell, solicit, or negotiate insurance held by the acquired or participating state agency. The Commissioner could, where he deems it appropriate, grant authorities to national agencies resulting from a merger or consolidation that are prohibited of other national agencies.

Subtitle E. Conversions

The bill would authorize and set forth requirements and procedures under which stock life insurers could convert to national life insurers in mutual form, and mutual insurers could convert to national insurers in stock form. Any plan of conversion pursuant to the Act would need to be approved by the Commissioner after a hearing, and submitted to the stockholders or eligible voters for approval. States would be prohibited from preventing or interfering with a conversion permitted under the Act.

Subtitle F. State Taxation

State Taxation of National Insurers. The bill would provide that state tax laws would not be preempted. National insurers would be subject to all taxes, and entitled to all credits, deductions and offsets, imposed on or provided to insurers chartered by the state in which the national insurer is domiciled. A national insurer could designate its state of domicile as either the state in which it has its principle place of business, or, if the national insurer converted from a state insurer, the state in which it was domiciled prior to the conversion. If the insurer does not designate a state of domicile, it would be deemed to be domiciled in the state where it has its principle place of business.

A state would not be able to impose any taxes on national insurers that it does not impose to the same extent on state insurers, and would not be able to treat national insurers as departments, agencies, or instrumentalities of the federal government for tax purposes.

State Taxation of National Agencies. National agencies would also be subject to all state tax laws to the same extent as agencies chartered in the state in which the national agency is domiciled. A national agency would be considered domiciled in the state where it has its principle place of business. States would not be able to treat national agencies as departments, agencies, or instrumentalities of the federal government for tax purposes.

State Taxation of Non-Admitted and Surplus Lines Insurance. Only states in which an insured maintains its principal place of business or residence could require a premium tax

(including any tax, fee, assessment or other charge) for non-admitted insurance or surplus lines of insurance.

3. Title III -- Insurance Producers and Other Insurance Servicing Persons

Federal Licensing. The bill would give the Commissioner authority to issue federal producer licenses to agencies and individual producers, to adopt pre-and post-licensure requirements such as examinations and reporting, and to determine the lines of insurance authorized under a federal license (which are to include health insurance).

The federal producer license would permit the licensee to act as an agent for any national or state licensed insurer. Likewise, state licensed producers would be permitted to act as agents for any federal or state insurer operating in the state in which they are licensed..

Producer Database. The Commissioner would provide for an electronic database containing information on all federally licensed producers, which shall be exchangeable with state insurers and insurance regulators through a electronic communications network. The Commissioner would be authorized to delegate the maintenance of the database to an insurance self-regulatory organization.

Supervision of Federally Licensed Producers. National insurers and agencies would be under a duty to oversee the activities of certain federally licensed producers. National insurers would be required to supervise the sales and marketing practices of producers who are either (1) employees of the insurer; or (2) individual agents of the insurer whose entire principle business activities are devoted to the placement of insurance on behalf of that insurer, and/or the recumbent, training, or supervision of the insurer's agents. National agencies are required to supervise the sales and marketing practices of their employees and agents. Independently operating producers will be subject to the direct supervision of the Commissioner. These requirements would not apply to wholesale life insurance brokerage agencies.

The Commissioner is required to establish supervision standards. The original draft directed that those standards could not conflict with NASD rules. This has been changed in the introduced bill to state that the Commissioner standards may not conflict with rules adopted by any self-regulatory organization approved by the SEC (including, but not limited to, the NASD).

Preemption of State Laws. The bill would provide broad preemption of state restrictions or requirements with respect to the activities of insurance producers. Federally licensed insurance producers would not be subject to state licensure requirements.

Licensing Commencement Date. Federal insurance licenses would not be available until the Commissioner adopts regulations with respect to fees and assessments, reporting, market conduct, producer licensing, and other regulations necessary prior to the initial licensing of federal producers. The Commissioner would be required to issue these regulations in final form within 2 years of his confirmation.

4. Title IV -- Holding Companies

Definition/Registration. The bill would require members of "insurance holding company systems" to register with the Commissioner. Insurance holding company systems are defined as two or more affiliated persons, one of which is a national insurer.

Standards and Management. The bill sets forth standards for transactions by insurance holding company systems to which national insurers are members. These standards would address the terms of the system's transactions, charges and fees, allocations of expenses, bookkeeping, and dividends or distributions to shareholders.

The bill would also regulate extraordinary dividends or distributions. Any national insurer that is a member of an insurance holding company system would need to notify the Commissioner 30 days prior to paying an extraordinary dividend. The insurer could pay the dividend if the Commissioner approves the dividend or fails to approve the dividend within 30 days.

Relationship to State Law. The bill would permit national insurers that are part of an insurance holding company system to be affiliated with state licensed insurers or agencies. The Commissioner would be given exclusive jurisdiction over reinsurance pooling agreements to which one or more national property and casualty insurers and affiliated state property/casualty insurers are parties.

5. Title V -- Receivership

The bill would permit the Commissioner to establish a receivership for a national insurer for the purpose of rehabilitation or liquidation by appointing the ONI as receiver. The Commissioner could take such action for the following reasons: (1) insolvency; (2) substantial dissipation of assets or earnings due to a violation of law or any hazardous practice; (3) hazardous condition; (4) willful violation of a cease-and-desist order; (5) concealment or refusal to produce documents or information requested by the ONI; (6) inability to pay or meet obligations to creditors in the normal course of business; (7) violations of law; (8) consent to appointments; and (9) money laundering.

When a national insurer is placed into receivership, the effect would be equivalent to an order of liquidation with a finding of insolvency. The Commissioner would have the power to establish by regulation the standards and procedures for receivership, including provisions regarding automatic stays upon the commencement of receivership. To protect customers, these regulations must contain provisions similar to those in the NAIC's Life and Health Insurance Guaranty Association Model Act and its Insurer Receivership Model Act.

6. Title VI -- Insolvency Protection

Participation in Guaranty Associations. The bill would require national and state insurers to be members of a "qualified association" for each line of insurance covered in each state in which

the national insurer is doing business. Such associations would be permitted to levy assessments on national insurers to the same extent that they levy assessments on state insurers.

A “qualified association” would mean a state insurance guaranty association or state insurance guaranty fund that:

- Admits both national and state insurers;
- Provides benefits/coverage to national and state insurers that are at least equal to the benefits/coverage for life and health guaranty associations and property and casualty guaranty associations, in the event of receivership; and
- Has a board of directors that is representative of insurers without discriminating against national insurers and is representative of insurers of different sizes and lines of insurance written; and

Within 3 years of enactment, the Commissioner would be required to publish a list of those state insurance guaranty associations and funds that are qualified associations, and give reasons why an entity is deemed non-qualified. Those not included on the list could petition the Commissioner for reconsideration. Any association or fund that elects to be a non-qualified association would be subject to federal preemption, and would not be allowed to levy assessments against national or state insurers to pay claims for a member that is liquidated.

Establishment of the National Insurance Guarantee Corporation. The bill would establish the National Insurance Guarantee Corporation (the "Corporation"), a nonprofit corporation whose membership would consist of all national insurers or state insurers that operate in states that do not have qualified associations for the line of insurance offered by the insurer. The Corporation's board of directors would be elected by its membership, or, if such election is not made in a timely manner, appointed by the Commissioner, and its initial rules and bylaws would be prescribed by the Commissioner.

The Corporation would be made up of “member insurers,” defined as any national or state insurer that operate in a state that does not have a qualified association for the line of insurance offered by that insurer. The bill would identify certain entities that could not be member insurers, including: hospitals, HMOs, fraternal benefit societies; mandatory state pooling plans; mutual assessment companies; surplus lines carriers; risk retention groups; state insurers writing non-admitted insurance; organizations whose business is charitable gift annuities; and similar entities.

The Corporation would not be an agency of or receive any funding from the federal government, but would be subject to the oversight and supervision of the Commissioner.

The Corporation would be permitted, subject to approval of the Commissioner, to contract with third parties to administer benefits. It would be required to maintain the following five accounts for administration and assessments: (1) a life insurance account, (2) an annuity account, (3) a health account, (4) a worker's compensation account, (5) an automobile insurance account, and (6) an account for all other lines of property and casualty insurance.

Benefits for Policyholders of National Life Insurers. The bill would set forth regulations and procedures under which the Corporation would provide benefits to the policyholders of national or state life insurers that are placed into receivership for purposes of rehabilitation or liquidation. The Commissioner would be required to adopt regulations regarding the lines of insurance covered, the scope of coverage, defenses, exclusions, and the coverage limits on benefits for policyholders that are based on the NAIC's Life and Health Insurance Guaranty Association Model Act.

Claims Covered for Policyholders of National Property/Casualty Insurers. The bill would also set forth regulations and procedures under which the Corporation would provide benefits to the policyholders of national or state property/casualty insurers that are placed into receivership for purposes of liquidation. Coverage would be provided for claims on all lines of direct insurance, with some limitations. Certain types of lines would be expressly excluded from coverage.

This section also lays out the coverage limitations on claims and would require claimants to exhaust all coverage provided before receiving benefits, if possible. Claimants who may be able to recover from more than one qualified association would be required to prioritize those claims and first seek recovery from a qualified association in the claimant's place of residence.

Powers and Duties of the Corporation. The bill would provide the Corporation a wide range of powers normally associated with a guaranty association, including the power to assume the obligations of national life or property/casualty insurers or state life or property/casualty insurers subject to liquidation and provide benefits or pay claims to policyholders of such insurers.

Subrogation. Persons receiving benefits or payments from the Corporation would be deemed to have assigned their rights against the assets of the national insurer to the Corporation, and the Corporation would have all other common law rights that would have been available to the national insurer, policyholder, beneficiary, or payee of an insurance policy with respect to the policy.

Assessments. In order to obtain the funds necessary to operate and provide benefits or payments, the Corporation would be permitted to assess fees from its members. The amount charged of each insurer would be based on the premiums received by the insurer in states without qualified associations during the calendar year preceding the assessment, but could not exceed two percent of the insurer's net direct written premiums for the calendar year preceding the assessment.

The bill would require the Corporation to provide the insurer with 30 days notice of the assessment, and would allow member insurers to protest an assessment by accompanying payment with a statement that the payment is under protest and a brief statement of the grounds for the protest. An unfavorable decision could be appealed to the Commissioner.

Regulation. The Commissioner would have authority to issue any regulations deemed necessary to facilitate the operations of the Corporation and implement the insolvency protection provisions of the bill.

State Taxation. States would be prohibited from imposing a premium, franchise, or income tax on a national insurer unless the state allows the national insurer to recoup Corporation assessments to the same extent that a state insurer is allowed to recoup state insurance guaranty association or fund assessments or through the rates or a policyholder surcharge.

Examination of the Corporation; Annual Report. The Corporation would be regulated and subject to examination by the Commissioner and required to submit, annually, a financial report and a report of its activities over the past year to both the Commissioner and the state insurance commissioners of each non-qualified state.

Immunity. The bill would provide immunity from liability for any of the following in the performance of their duties under the state insurance guaranty association: member insurers and their directors, officers, employees or agents; state insurance guaranty associations and their directors, officers, employees or agents; the Corporation and its representatives; the Commissioner and his representatives; and state insurance commissioners and their representatives.

7. Title VII -- Miscellaneous Provisions

Nondiscrimination. The bill would prevent state discrimination against:

- any state insurer or producer by reason of that party's efforts to obtain a federal charter or license;
- any affiliate of a national insurer, agency, or federally licensed producer by reason of its affiliation;
- any policy holder, insured, claimant, or state licensed insurance producer by reason of that party's dealings with a national insurer, agency, federally licensed producer, or affiliate of such parties; or
- any state licensed insurance producer because it places policies on behalf of a national insurer.

Application of the Federal Antitrust Laws to National Insurers, National Agencies, and Federally Licensed Producers. The bill would provide that national insurers, agencies, and producers would be subject to federal antitrust laws, except that (1) such laws would not apply to the development, dissemination, or use of standard insurance policy forms or activities incidental thereto by such parties, and (2) Section 3 of the McCarran-Ferguson Act (15 USC § 1013) (which exempts the "business of insurance" from federal antitrust regulation to the extent that it is regulated by state law) would only apply to such parties to the extent that they are subject to state law.

Section 5 of the Federal Trade Commission Act (15 USC § 45) (regulating unfair or deceptive trade practices) would not apply to national insurers, agencies, or producers.

Application of State Law and Regulation to National Insurers, National Agencies, and Federally Licensed Producers. Reinforcing the broad preemptive force of the bill, this section states that federal licensees would not be subject, under any state law, "to any form of licensing, examination, reporting, regulation, or other supervision relating to the sale, solicitation, or negotiation of insurance, to the underwriting of insurance, or to any other insurance operations."