

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10640 SENATE LABOR & COMMERCE

terrorism, under the tax laws of foreign countries, and

(7) whether it would be appropriate to permit similar reserves for other future catastrophic events, such as natural disasters, taking into account the factors under the preceding paragraphs.

(b) **REPORT-** Not later than 4 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study under subsection (a), together with recommendations for amending the Internal Revenue Code of 1986 or other appropriate action.

SEC. 12. STATE PREEMPTION.

(a) **COVERED PERILS-** A commercial insurer shall be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under this Act or under any regulations issued by the Secretary.

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

(c) **FILE AND USE-**

(1) **IN GENERAL-** With respect only to commercial property and casualty insurance covering acts of terrorism, any provision of State law that requires, as a condition precedent to the effectiveness of rates or policies for such insurance that is made available by an insurer licensed to transact such business in the State, any action (including prior approval by the State insurance regulator for such State) other than filing of such rates and policies and related information with such State insurance regulator is preempted to the extent such law requires such additional actions for such insurance coverage.

(2) **SUBSEQUENT REVIEW AUTHORITY-** Paragraph (1) shall not be considered to preempt a provision of State law solely because the law provides that rates and policies for such insurance coverage are, upon such filing, subject to subsequent review and action, which may include actions to disapprove or discontinue use of such rates or policies, by the State insurance regulator.

(3) **TREATMENT OF PRIOR REVIEW PROVISIONS-** Any authority for prior review and action by a State regulator preempted under paragraph (1) shall be deemed to be authority to conduct a subsequent review and action on such filings.

SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE FOR ACTS OF TERRORISM.

(a) **SENSE OF CONGRESS REGARDING COVERED PERILS-** It is the sense of the Congress that--

(1) the NAIC, in consultation with the Secretary, should develop appropriate definitions for acts of terrorism that are consistent with this Act and appropriate standards for making determinations regarding occurrences of acts of terrorism;

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

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

(4) after consultation with the NAIC, the Secretary should adopt further definitions for acts of terrorism and standards for determinations that are appropriate for this Act.

(b) INSURANCE RESERVE GUIDELINES-

(1) SENSE OF CONGRESS REGARDING ADOPTION BY STATES- It is the sense of the Congress that--

(A) the NAIC should develop appropriate guidelines for commercial insurers and pools regarding maintenance of reserves against the risks of acts of terrorism; and

(B) each State should adopt such guidelines for purposes of regulating commercial insurers doing business in that State.

(2) CONSIDERATION OF ADOPTION OF NATIONAL GUIDELINES- Upon the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall make a determination of whether the guidelines referred to in paragraph (1) have, by such time, been developed and adopted by nearly all States in a uniform manner. If the Secretary determines that such guidelines have not been so developed and adopted, the Secretary shall consider adopting, and may adopt, such guidelines on a national basis in a manner that supersedes any State law regarding maintenance of reserves against such risks.

(c) GUIDELINES REGARDING DISCLOSURE OF PRICING AND TERMS OF COVERAGE-

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

(2) ADOPTION OF NATIONAL GUIDELINES- If the Secretary determines that the States have not enacted laws or adopted regulations adequately providing for the disclosures described in paragraph (1) within a reasonable period of time after the date of the enactment of this Act, the Secretary shall, after consultation with the NAIC, adopt guidelines on a national basis requiring such disclosure in a manner that supersedes any State law regarding such disclosure.

SEC. 14. CONSULTATION WITH STATE INSURANCE REGULATORS AND NAIC.

(a) IN GENERAL- The Secretary shall consult with the State insurance regulators and the NAIC in carrying out this Act.

(b) FINANCIAL ASSISTANCE, ASSESSMENTS, AND SURCHARGES- The Secretary may take such actions, including entering into such agreements and providing such technical and

organizational assistance to insurers and State insurance regulators, as may be necessary to provide for the distribution of financial assistance under section 6 and the collection of assessments under section 7 and surcharges under section 8.

(c) INVESTIGATING AND AUDITING CLAIMS- The Secretary may, in consultation with the State insurance regulators and the NAIC, investigate and audit claims of insured losses by commercial insurers and otherwise require verification of amounts of premiums or losses, as appropriate.

SEC. 15. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION FOR CLAIMS RELATING TO TERRORIST ACTS-

(1) IN GENERAL- Subject to paragraph (2), if the Secretary makes a determination pursuant to section 5(b) that one or more acts of terrorism occurred, there shall exist a Federal cause of action, which, except as provided in subsection (b), shall be the exclusive remedy for claims arising out of, relating to, or resulting from such acts of terrorism.

(2) EFFECT OF DETERMINATION- A determination referred to in paragraph (1)--

(A) shall not be subject to judicial review;

(B) shall take effect upon its publication in the Federal Register; and

(C) shall be subject to such changes as the Secretary may provide in one or more later determinations made in accordance with the provisions of this paragraph.

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

(4) JURISDICTION- For each determination under paragraph (1), the Judicial Panel on Multidistrict Litigation shall designate one or more district courts of the United States which shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) brought pursuant to this subsection. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(5) LIMITS ON DAMAGES- In an action brought under this subsection for damages:

(A) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(B)(i) Each defendant in such an action shall be liable only for the amount of noneconomic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(ii) For purposes of clause (i), the term 'noneconomic damages' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(6) **COLLATERAL SOURCES-** Any recovery by a plaintiff in an action under this subsection shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of the acts of terrorism with respect to which the determination under paragraph (1) was made.

(7) **ATTORNEY FEES-** Reasonable attorneys fees for work performed shall be subject to the discretion of the court, but in no event shall any attorney charge, demand, receive, or collect for services rendered, fees or compensation in an amount in excess of 20 percent of the damages ordered by the court to be paid pursuant to this section, or in excess of 20 percent of any court-approved settlement made of any claim cognizable under this section. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than 1 year, or both.

(b) **EXCLUSION-** Nothing in this section shall in any way limit the liability of any person who--

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism with respect to which a determination under subsection (a)(1) was made, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

(c) **RIGHT OF SUBROGATION-** The United States shall have the right of subrogation with respect to any claim paid by the United States under this Act.

(d) **RELATIONSHIP TO OTHER LAW-** Nothing in this section shall be construed to affect--

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

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

(e) **SATISFACTION OF JUDGMENTS FROM FROZEN ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM-**

(1) **IN GENERAL-** Except as provided in paragraph (2), in every case in which a person obtains a judgment against a terrorist party on a claim for compensatory damages for an act of terrorism, or a claim for money damages brought pursuant to section 1605(a)(7) of title 28, United States Code, the frozen assets of that terrorist party, or any agency or instrumentality of that terrorist party, shall be available for satisfaction of the judgment, to the extent of any compensatory damages awarded in the judgment for which the terrorist party is liable.

(2) **PRESIDENTIAL WAIVER-**

(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(B) A waiver under this paragraph shall not apply to--

(i) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

(ii) any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.

(3) DEFINITIONS- In this subsection:

(A) The term 'terrorist party' means a terrorist, a terrorist organization, or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(B) The term 'frozen assets' means assets seized or frozen by the United States in accordance with law.

(C) The term 'property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' and the term 'asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

SEC. 16. STUDY OF POTENTIAL EFFECTS OF TERRORISM ON LIFE INSURANCE INDUSTRY.

(a) ESTABLISHMENT- Not later than 30 days after the date of enactment of this Act, the President shall establish a commission (in this section referred to as the 'Commission'), to study and report on the potential effects of an act or acts of terrorism on the life insurance industry in the United States and the markets served by such industry.

(b) MEMBERSHIP AND OPERATIONS-

(1) APPOINTMENT- The Commission shall consist of 7 members, as follows:

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

(B) The Chairman of the Board of Governors of the Federal Reserve System or the

designee of the Chairman.

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

(D) 4 members appointed by the President, who shall be--

(i) a representative of direct underwriters of life insurance within the United States;

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

(iii) an officer of the NAIC; and

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

(2) OPERATIONS- The chairperson of the Commission shall determine the manner in which the Commission shall operate, including funding, staffing, and coordination with other governmental entities.

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

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

(2) possible actions or mechanisms to sustain or supplement the ability of the life insurance industry in the United States to cover losses due to death or disability resulting from an act or acts of terrorism in the event that--

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

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

(C) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the life insurance industry in the United States to independently cover such losses.

(d) RECOMMENDATIONS- The Commission may make a recommendation pursuant to subsection (c) only upon the concurrence of a majority of the members of the Commission.

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

(f) TERMINATION- The Commission shall terminate 60 days after submission of the report pursuant to subsection (e).

SEC. 17. RAILROAD AND TRUCKING INSURANCE STUDY.

The Secretary of the Treasury shall conduct a study to determine how the Federal Government can address a possible crisis in the availability and affordability of railroad and trucking insurance by making such insurance for acts of terrorism available on commercially reasonable terms. Not later than 120 days after the date of the enactment of this Act the Secretary shall submit to the Congress a report regarding the results and conclusions of the study.

SEC. 18. STUDY OF REINSURANCE POOL SYSTEM FOR FUTURE ACTS OF TERRORISM.

(a) **STUDY-** The Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General of the United States shall jointly conduct a study on the advisability and effectiveness of establishing a reinsurance pool system relating to future acts of terrorism to replace the program provided for under this Act.

(b) **CONSULTATION-** In conducting the study under subsection (a), the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall consult with (1) academic experts, (2) the United Nations Secretariat for Trade and Development, (3) representatives from the property and casualty insurance industry, (4) representatives from the reinsurance industry, (5) the NAIC, and (6) such consumer organizations as the Secretary considers appropriate.

(c) **REPORT-** Not later than 6 months after the date of the enactment of this Act, the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall jointly submit a report to the Congress on the results of the study under subsection (a).

SEC. 19. DEFINITIONS.

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

(1) ACT OF TERRORISM-

(A) **IN GENERAL-** The term 'act of terrorism' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary in consultation with the NAIC.

(B) **REQUIREMENTS-** An act meets the requirements of this subparagraph if the act--

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States;

(iii) is committed by a person or group of persons or associations who are recognized, either before or after such act, by the Department of State or the Secretary as an international terrorist group or have conspired with such a group or the group's agents or surrogates;

(iv) has as its purpose to overthrow or destabilize the government of any country,

or to influence the policy or affect the conduct of the government of the United States or any segment of the economy of United States, by coercion; and

(v) is not considered an act of war, except that this clause shall not apply with respect to any coverage for workers compensation.

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

(3) **AGGREGATE WRITTEN PREMIUM**- The term 'aggregate written premium' means, with respect to a year, the aggregate premium amount of all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance.

(4) **COMMERCIAL INSURER**- The term 'commercial insurer' means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurer.

(5) **COMMERCIAL PROPERTY AND CASUALTY INSURANCE**-

(A) **IN GENERAL**- The term 'commercial property and casualty insurance' means insurance or reinsurance, or retrocessional reinsurance, for persons or properties in the United States against--

(i) loss of or damage to property;

(ii) loss of income or extra expense incurred because of loss of or damage to property;

(iii) third party liability claims caused by negligence or imposed by statute or contract, including workers compensation; or

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

(B) **EXCLUSIONS**- Such term does not include--

(i) insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, or other insurance for personal, family, or household needs;

(ii) insurance for professional liability, including medical malpractice, errors and omissions, or directors' and officers' liability; or

(iii) health or life insurance.

(6) **CONTROL**- A company has control over another company if--

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

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

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

(7) COVERED PERIOD- The term 'covered period' has the meaning given such term in section 20.

(8) INDUSTRY-WIDE LOSSES- The term 'industry-wide losses' means the aggregate insured losses sustained by all insurers from coverage written under all lines of commercial property and casualty insurance.

(9) INSURED LOSS- The term 'insured loss' means any loss, net of reinsurance and retrocessional reinsurance, covered by commercial property and casualty insurance.

(10) NAIC- The term 'NAIC' means the National Association of Insurance Commissioners.

(11) NET PREMIUM- The term 'net premium' means, with respect a commercial insurer and a year, the aggregate premium amount collected by such commercial insurer for all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance by such commercial insurer, less any premium paid by such commercial insurer to other commercial insurers to insure or reinsure those risks.

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

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

(14) STATE INSURANCE REGULATOR- The term 'State insurance regulator' means, with respect to a State, the principal insurance regulatory authority of the State.

(15) TRIGGERING DETERMINATION- The term 'triggering determination' has the meaning given such term in section 5(a).

(16) TRIGGERING EVENT- The term 'triggering event' means, with respect to a triggering determination, the occurrence of an act of terrorism, or the occurrence of such acts, that caused the insured losses resulting in such triggering determination.

(17) UNITED STATES- The term 'United States' means, collectively, the States (as such term is defined in this section).

SEC. 20. COVERED PERIOD AND EXTENSION OF PROGRAM.

(a) COVERED PERIOD- Except to the extent provided otherwise under subsection (b), for purposes of this Act, the term 'covered period' means the period beginning on the date of the enactment of this Act and ending on January 1, 2003.

(b) **EXTENSION OF PROGRAM-** If the Secretary determines that extending the covered period is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, the Secretary may, subject to subsection (c), extend the covered period by not more than two years.

(c) **REPORT-** The Secretary may exercise the authority under subsection (b) to extend the covered period only if the Secretary submits a report to the Congress providing notice of and setting forth the reasons for such extension.

SEC. 21. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out this Act.

Passed the House of Representatives November 29, 2001.

Attest:

JEFF TRANDAHL,

Clerk.

Calendar No. 252

107th CONGRESS

1st Session

H. R. 3210

AN ACT

To ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

December 3, 2001

Read the second time and placed on the calendar

END