

**PROGRAM DIVISION
BULLETIN**

2002-24

December 6, 2002

TERRORISM RISK INSURANCE ACT OF 2002-H.R. 3210

The following comments on the Terrorism Risk Insurance Act are based on a business perspective and are not a legal opinion or legal commentary on the provisions of the Act.

The memo contains two sections:

- 1) A short summary and highlights of the Terrorism Risk Insurance Act of 2002.
- 2) A more comprehensive section-by-section analysis including comments from the Report of the Managers of the Conference Committee. Within the section-by-section analysis, our business concerns and questions are provided in *italics*.

Short Summary

The Terrorism Risk Insurance Act of 2002 (the "Act") provides a three-year federal reimbursement program (the "Program") to backstop most commercial property and casualty losses up to \$100 billion in aggregate loss each year arising from one or more foreign-backed acts of terrorism. The bill utilizes a combination of individual insurer deductibles to ensure a significant level of insurer contributions before federal reinsurance is made available. All federal payments are subject to mandatory and discretionary provisions allowing the Federal Government to recoup from all policyholders any federal aid provided.

The Secretary of Treasury is given wide latitude in running the program, which contains a number of ambiguous provisions to be determined at the administrative level. States insurance regulators retain significant authority in the bill, including the power to rescind rates as excessive and to require prior approval of rates and forms in the second and third years of the Program.

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The Act presents complex set of operational challenges resulting from its immediate implementation for both in force policies and all policies effective on or after the date of enactment - November 26, 2002.

Following are the general highlights:

- **Three-Year Program:** The bill provides a three-year federal reimbursement backstop for most commercial property and casualty losses (including cyber-terrorism and business interruption) arising from foreign-backed acts of terrorism. Workers' compensation is covered for both acts of terror and acts of war.

The losses must occur in the United States with exceptions for U.S. air carriers (definition expanded under Homeland Security Bill) and U.S.-centric vessels.

- **Mandatory Offer:** Insurers must offer insurance for the terrorism and workers' compensation war risks covered under the Act for the first two years of the Program.

Current terrorism exclusions on policies in-force are preempted and insurers must notify those policyholders of their options within 90 days of the date of enactment. All policies effective on or after the date of enactment must provide coverage without exclusion of the terrorism events covered by the Act unless the insured affirmatively opts for the exclusion.

- **\$100 Billion Annual Limit:** The bill covers losses up to \$100 billion in aggregate loss each year of the Program. The Act caps both insurers' and government liability for losses at this amount, but Congress could subsequently enact legislation requiring insurers to play some role in payment for such losses.

- **Individual Insurer Retention:** Beginning January 1, 2003, individual insurance company deductibles are set respectively for each year of the Program, at 7, 10, and 15 percent of "direct earned premium". Losses above the deductible would be reimbursed at a 90/10 federal/insurer ratio. The bill also provides a transitional deductible of 1% from the date of enactment through December 31, 2002.

- **Industry-Wide Retention and Federal Recoupment:** In what is best described as an industry-wide deductible, the bill provides for mandatory recoupment of any federal aid provided where the insurance industry combined has paid less than \$10 billion in Year 1, \$12.5 billion in Year Two, and \$15 billion in Year 3. These amounts would be recouped through surcharges on policies, not to exceed 3% of premium charged.

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The Secretary of Treasury has discretionary authority to recoup any federal aid provided under the Program above these amounts.

- **Reinsurance:** In general, insurers can reinsure their retained amounts without impacting federal assistance. The Act also is to have no impact on existing reinsurance agreements.
- **State Authority:** States retain authority over rates and forms, but prior approval is waived for the program's first year.
- **Lawsuits and Punitive Damages:** All lawsuits involving property damage, personal injury, and death go to federal court, but state law where the terrorist act occurred will apply. While no federal payments are allowed for punitive damages, they remain available in accordance with the applicable state law.

Section-by-Section Analysis

Section 1. Short Title and Table of Contents

- **Title:** Terrorism Risk Insurance Act of 2002
- **Table of Contents:**

Title I: Terrorism Insurance Program

- Sec. 101. Congressional findings and purpose.
- Sec. 102. Definitions.
- Sec. 103. Terrorism Insurance Program.
- Sec. 104. General authority and administration of claims.
- Sec. 105. Preemption and nullification of pre-existing terrorism exclusions.
- Sec. 106. Preservation provisions.
- Sec. 107. Litigation management.
- Sec. 108. Termination of Program

Title II: Satisfaction of Judgements from Blocked Assets of Terrorists and State Sponsors of Terrorism

Title III: Certain Authorities of the Federal Reserve Board

TITLE I

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Section 101. Findings and Purpose: In general, the bill is designed to provide a temporary shared public/private federal compensation program to cover commercial property and casualty losses arising from acts of terrorism.

Section 102. Definitions:

- **Subsection 102(1)--“Act of Terrorism”:** Must be certified by the Secretary of Treasury (the “Secretary”) in concurrence with the Secretary of State and Attorney General as an:
 - Act of terrorism that is violent or dangerous to human life, property, or infrastructure resulting in damage in the U.S. (outside the U.S. for air carriers, U.S.-centric vessels, and U.S. missions) **and**
 - Committed by individual(s) acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
 - The term excludes acts of war in a war declared by Congress (except for workers’ compensation) and events causing losses of \$5 million or less.
 - The Secretary’s decision to certify (or not) is final and not subject to judicial review.

The Statement of Managers makes clear that the legislation applies only to terrorist acts involving individual(s) “acting on behalf” of a foreign interest or person. Thus, domestically generated acts of terrorism would not be covered. Acts of unknown causation are not specifically addressed.

- **Subsections 102(2) and 102(3)--“Affiliate” and “Control”:** The standard definition of affiliate is used vis-à-vis one entity to another (controls, controlled by, or common control) where control means:
 - direct or indirect ability to vote 25% or more of any class of voting stock
 - controlling the election of a majority of directors or trustees of another entity; or
 - the Secretary determines (notice and opportunity for hearing required) that one entity can exercise a controlling influence over the management or policies of another entity.

The Statement of Managers asserts that these terms are used for purposes of treating affiliated insurers as a consolidated entity for purposes of calculating “direct earned premium,” which is used to determine an insurer’s deductible under the Program.

- **Subsection 102(4)--“Direct Earned Premium”:** This means a direct earned premium for property and casualty insurance issued by any insurer for insurance

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against losses occurring at locations in the United States and sites outside the U.S. in the case of air carriers, U.S.-centric vessels, and at a U.S. mission.

The definition is intended to be consistent with the NAIC's definition of direct earned premium, but would include only that premium for policies covering losses which would be subject to the Program (i.e., primarily domestic premium).

- **Subsection 102(5)-“Insured Loss”:** Any loss resulting from an act of terrorism (including an act of war in the case of workers compensation) covered by primary or excess P&C coverage issued by an insurer if the loss occurs in the U.S.
 - Losses outside the U.S. are covered for U.S. air carriers, and flag vessels, as well as vessels based principally in the U.S. that pay U.S. taxes and receive insurance subject to regulation within the U.S. (previously referred to as “U.S.-centric”), or at a U.S. mission

The bill was clarified to ensure that excess policies were covered.

- **Subsection 102(6)-“Insurer”:** Insurer is broadly defined to include any entity (including any affiliate) that receives direct premiums for any type of commercial P&C coverage (other than state residual funds, captives, and other self insurance arrangements under subsections 103(d) and (f)) and meets any criteria the Secretary reasonably prescribes; **and**
 - is licensed or admitted to provide primary insurance in any State;
 - is an eligible surplus lines carrier listed on the NAIC's Quarterly Listing of Alien Insurers;
 - is approved to offer P&C insurance by a federal agency for maritime, energy, and aviation activity;
 - State residual market pools or workers' compensation funds; **or**
 - Captives or other self-insurance arrangements by municipalities (including workers' compensation self-insurance programs and State workers' compensation reinsurance pools)-if the Secretary approves their inclusion prior to a terrorist event causing an insured loss.

Once again, the Statement of Managers asserts that the term affiliate is used for purposes of treating affiliated insurers as a consolidated entity for purposes of calculating “direct earned premium,” which in turn determines an insurers' deductible under the Program.

There is no limitation against new startup companies from participating in the Program.

- **Subsection 102(7)-“Insurer Deductible”:** The value of an insurer's “direct earned premium” for the previous calendar year multiplied by:

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- 1 percent for the Transition Period (November 26 thru December 31, 2002),
 - 7 percent in 2003;
 - 10 percent in 2004; and
 - 15 percent in 2005.
- For insurers without a full prior year of operations, the Secretary can establish whatever portion of direct earned premiums that should apply “subject to appropriate methodologies.”

The term seems to capture the goal of utilizing direct earned premium for only those lines covered by the federal backstop. The definition also makes clear Congress’s intent to allow startup insurers to enter the marketplace, but the initial retention level is at the full discretion of the Secretary.

- **Subsections 102(8-10): Defines NAIC, Person, and Program**

Person is broadly defined and includes States, political subdivisions, and other governmental entities.

- **Subsection 102(11)-“Program Years”:**

- Transition Period: Date of enactment through December 31, 2002
- Year One: Calendar Year 2003
- Year Two: Calendar Year 2004
- Year Three: Calendar year 2005

The bill does not address the timing of potential attacks on “New Year’s Eve or New Year’s Day. Presumably, this will be based on the time and date of the location of the terrorist act. However, the timing could have significant consequences in determining the applicable insurer deductible or whether federal coverage is available at all if an attack occurs on New Year’s Day 2006 after the Program expires.

- **Subsection 102(12)-“Property and Casualty Insurance”:** The term includes commercial P&C lines (including excess insurance, workers’ comp and surety), but EXCLUDES

- crop and livestock insurance,
- private mortgage insurance,
- medical malpractice,
- financial guaranty insurance provided by a monoline financial guaranty company
- health or life (including group life);
- flood insurance under the National Flood Insurance Act; and
- reinsurance or retrocessional insurance.

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It is understood that A&H offered as a commercial P&C policy is covered by the Act, but would not be covered if offered as a life product. However, a few persons may contend that the exclusion of "health" insurance applies to A&H.

- **Subsection 102(14)-"State":** includes the 50 states, D.C., Puerto Rico, Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any U.S. territory or possession.
- **Subsection 102(15)-"United States":** This includes the several states and territorial sea and continental shelf of the U.S. as defined by the Violent Crime Control and Law Enforcement Act of 1994.
- **Subsection 102(16)-Rule of Construction for Dates:** Clarifies that for any dates used in the bill, the date starts on 12:01 a.m. of that date and ends at midnight.

Again, presumably, this will be based on the time and date of the location of the terrorist act.

Section 103. Terrorism Insurance Program:

- **Subsection 103(a)-Program Establishment and Mandatory Participation:** Establishes the Program in the Department of the Treasury with the Secretary in charge of administration. The Secretary is to pay the federal share of insured losses in accordance with subsection 103(e).

Every insurer as defined in the Act must participate in the Program

- **Subsection 103(b)--Conditions for Payment:** In order for the Secretary to make payments under the Program:
 - a person suffering an "insured loss" (or representative) must file a claim with an insurer;
 - the insurer must have provided clear and conspicuous disclosure to the policyholder of the premium charged for losses covered under the Program and the federal share of compensation;
 - the insurer must process the claim in accordance with "appropriate business practices" or other procedures required by the Secretary; **and**
 - the insurer must submit to the Secretary (under procedures established by the Secretary) a claim for payment that provides written certification of the underlying claim, any payments made for insured losses, and certification of compliance with all the procedures in this subsection.

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The clear and conspicuous disclosure under this section must be implemented as follows:

- within 90 days of enactment for policies in force on the date of enactment;
- at the time of offer, purchase, or renewal of policy for policies issued within 90 days of enactment.
- as a separate line item in policies at the time of offer, purchase, and renewal for policies issued more than 90 days after enactment.

A strict reading of the statute says that if these requirements are not satisfied, federal assistance cannot be provided. Arguably, the Secretary of Treasury has authority to grant waivers from strict adherence to these requirements, but such authority is not clearly delineated in the statute.

In addition, the Statement of Managers asserts that these conditions must be met before the Secretary can reimburse an insurer. Since the Program operates as a reimbursement system, failure to satisfy the conditions above could leave an insurer liable for the full amount of a loss. Additional questions also arise concerning the timing of payments, particularly an insurer's obligation to make payments to the insured before the federal share is paid-even if all conditions are satisfied.

Another area of concern would be offsets of federal payments under the Program resulting from aid provided to an insured under another federal program (discussed in subsection 103(e) below). Given the significant financial implications of this provision, additional efforts may be needed with the Secretary to provide that any payments required of insurers should be tied directly to the provision of federal assistance where applicable.

Finally, we expect the Secretary to provide some guidance concerning the wording of disclosures. For example, significant losses could be experienced that still fall short of the insurer deductible and fail to require federal compensation. Interim rules may be promulgated immediately to assist insurers in meeting their notification obligations.

• **Subsection 103(c)--Mandatory Availability of Insurance:** Upon enactment, and during 2003 and 2004, every insurance company that offers commercial property and casualty insurance covered under the Program must participate in the Program and make terrorism insurance available in all participating lines.

In addition, the coverage is not to differ materially from the "terms, amounts, and other coverage limitations" that apply to losses arising from non-terrorism related acts.

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It is widely accepted that insurers can utilize pricing for terrorism losses that is distinct from pricing for other perils and that the language in subsection 103(c) embodies this view. It is the “coverage” that must be the same. Nevertheless, a few persons have suggested that the requirement to apply the same “terms” for terrorism losses as non-terror losses extends to price and this argument may be made at some time.

The Act provides an explicit mechanism for policyholders with in-force contracts with terrorism exclusions to reject full coverage and request reinstatement of the exclusions (see Subsection 105(c)). The intent of the Act is to allow policyholders to have the same option for all policies effective on or after the date of enactment.

Year 3/2005: By September 1, 2004, based on the effectiveness of the Program and factors affecting capacity, availability, and affordability of terrorism insurance, the Secretary is to determine whether insurers must continue to make coverage available on the same terms, amounts, etc. in 2005.

Our sense is that the Secretary will determine that all P&C insurers will remain subject to the bill’s provisions for the third year of the Program.

• **Subsection 103(d)--State Residual Market Pools and Workers’ Comp Funds:** As soon as practicable, the Secretary is to issue regulations extending the program to State residual market pools and State workers’ compensation funds.

If a residual pool does not share its profits and losses with private insurers, it is treated as a separate insurer.

If the pool does share profit and losses, it is to report to each private insurer on its share of insured losses which are included as part of its insured losses under the Program. In addition, a private insurer is to include in its premium calculations any “premiums” distributed by the pool to the private insurer.

• **Subsection 103(e)-Payment for Insured Losses:** This section provides that federal reimbursement is equal to 90% of insured losses above the applicable individual insurer deductible. No federal payments are to be made for insured losses (both private and federal shares) under the Program that exceed \$100 billion in each Program Year (The first Program Year (2003) includes the Transition Period) and no insurer is liable for amounts above \$100 billion if it has met its deductible.

The Secretary is to notify Congress if the \$100 billion limit will be met and Congress is to determine the source and procedures for additional payments. In addition, the Secretary has sole discretion to determine when claims become final and how to pro

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rate insurer shares if the annual cap is met. There is no judicial review of such decisions.

In the event of losses that exceed the cap, the Secretary has extraordinary authority to apportion losses and determine who gets paid and who does not, without any review.

Duplicative Compensation: The federal share paid under the Program is to be reduced by any other compensation provided to a person under any other federal program.

It's unclear how this would work in practice. Since the Program is described as a reimbursement program, it appears that an insurer would be liable for the unpaid federal share in accordance with the terms of the insurance policy. We expect the Secretary to provide clarification on this issue in the rulemaking process.

Mandatory Recoupment of Federal Share: In complex language, the bill provides for mandatory federal recoupment of any federal assistance paid for insured losses where aggregate insurer payments fall below a specified minimum amount in a given Program Year. Specifically, if the total amount of insurer payments for insured losses does not exceed the amounts shown below in the given year, the Secretary must impose a policy surcharge to recoup the amount of federal compensation provided. The amount which must be recouped is the lesser of aggregate insured losses for all insurers in a given Program Year, OR

- \$10 billion in 2003 and Transition Period;
- \$12.5 billion in 2004; and
- \$15 billion in 2005.

This amount above is called the "marketplace aggregate retention amount."

*For example, assume a terrorist attack in 2003 results in \$15 billion of insured losses. The share of insurer payments total \$5 billion and the federal government pays the remaining \$10 billion. Since the entire insurance industry has paid only \$5 billion of its 2003 marketplace aggregate retention (\$10 billion), that additional \$5 billion **must** be recouped by the federal government.*

However, in the event uncompensated insured losses exceed the marketplace aggregate retention amount, federal payments are not mandated to be recouped.

Discretionary Recoupment: The Secretary also possesses discretionary authority to use such surcharges to recoup any amount federal assistance above the mandatory recoupment amount. In determining whether to exercise such discretion, the Secretary can utilize any factors he deems appropriate, but must weigh the conditions in the commercial insurance marketplace, the affordability of commercial insurance

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for small and medium-sized businesses, and the ultimate cost to taxpayers of no recoupment.

Mandatory Policy Surcharge for Mandatory Recoupment: In order to collect mandatory recoupment, the Secretary must impose a premium surcharge on commercial property and casualty policies in force after the date the Secretary establishes a mandatory recoupment amount. Surcharges (called “terrorism loss risk spreading premiums”) would be based on a percentage of the amount charged for coverage under the policy, but could not exceed 3% on an annual basis (surcharges are still capped at 3% if discretionary recoupment is applied).

The Secretary can determine which period of coverage during the calendar year is appropriate to begin the surcharge. Insurers would collect the surcharge and remit amounts collected to the Secretary

The Statement of Managers declares that these surcharges are to be imposed on all commercial property and casualty policies. Since property and casualty is defined for purposes of the Program, the surcharge would apply to only those lines covered under the Act.

It’s not clear whether a surcharge will be subject to state premium taxes. Due to the nature and purpose of these surcharges, we expect Treasury to determine that the surcharges shall be excluded from state premium taxes and all other fees, assessments and costs. In addition, we expect Treasury to exclude the surcharge from each insurer’s direct earned premium.

Surcharge Adjustments: The Secretary also has authority to adjust surcharges for lower risk areas (e.g. rural or smaller commercial centers) or due to economic considerations impacting commercial centers of urban areas. The Secretary also can adjust surcharges based on the varying terrorism risks of different lines.

However, to the extent surcharge adjustments are made for one type policyholder for mandatory recoupment amounts, other policyholders must make up the difference through additional surcharges.

The Secretary has extraordinary power and discretion to determine how the recoupment process will function, including authority to require policyholder payback for all federal assistance provided under the bill.

- **Subsection 103(f)-Captives and Self-Insureds:** In consultation with the NAIC or appropriate State regulatory authority, the Secretary can allow captives and other self-insurance arrangements by “municipalities and other entities (such as workers’ compensation self-insurance programs and State workers’ compensation reinsurance

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pools) to participate in the Program. The determination to include these entities must be made prior to a terrorist event and the requirements of the Act must be applied “comparably” to such entities.

It's not clear how the Secretary will implement this provision and how expansive the Secretary will be in terms of eligible captives and types of risks covered.

- **Subsection 103(g)-Reinsurance:** This section makes clear that insurers can obtain reinsurance for their deductibles and 10% share of losses above the deductible. In addition, federal assistance will not be reduced based on any reinsurance provided. However, an insurer cannot receive monies from other sources (including the federal share) that exceed the amount of an insurer’s insured losses. If so, unless there is an agreement between the insurer and reinsurer to the contrary, such excess amounts must be returned to the Secretary.

The provision concerning potential refunds to the Treasury seems to indicate that insurers and reinsurers are allowed to structure reinsurance agreements around the amount of federal aid made available.

- **Subsection 103(h)-Group Life:** The Secretary is to study on an expedited basis the availability and affordability of group life insurance for acts of terrorism. To the extent the Secretary determines such coverage is not or will not be available, in consultation with the NAIC shall make the Act applicable to such insurance as appropriate.

If applied, the Secretary has authority to apply whatever restrictions, limits, or conditions on group life that the Secretary deems appropriate based on the study.

- **Subsection 103(i)-Study of Life and Other Lines:** The bill also provides for a study on life insurance and other lines of insurance due within nine months of the date of enactment.

Section 104. General Authority and Administration of Claims.

- **Subsections 104(a-d)--Various Authorities of the Treasury Secretary:** The Secretary is given all powers necessary to carry out the Program, including investigating and auditing claims, issuing rules (including interim rules), contracting out Program related services, and consulting with the NAIC.

- **Subsection 104(e)-Civil Penalties:** After determination on the record with an opportunity for a hearing, the Secretary may assess civil money penalties against insurers up to \$1 million for:
 - failing to charge, collect, or remit surcharges;

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- intentionally providing erroneous information on losses;
- submitting fraudulent claims;
- failing to provide disclosures; or
- otherwise failing to comply with the acts or its regulations.

- **Subsection 104(f)-Submission of Premium Information:** The Secretary is to compile terrorism premium rate information annually for the previous year. If that info is not available to the Secretary, he may compel disclosure to the NAIC, which would then turn it over to the Secretary. The information is available to Congress upon request.

- **Subsection 104(g)-Funding:** Appropriates out of funds in the Treasury not otherwise appropriated such sums as necessary to pay the federal share under the Program and administrative expenses.

The language used in this subsection seems to suggest that federal funding is subject to availability within the Treasury, although House Budget Committee staff has indicated that the language provides truly open-ended funding to make any federal payments required under the Program.

Section 105. Preemption and Nullification of Pre-Existing Terrorism Exclusions:

- **Subsection 105(a)-Nullification of Contractual Exclusions:** Provides that any terrorism exclusion in a contract for commercial property and casualty insurance in force on the date of enactment is void with respect to insured losses covered under the Act.

- **Subsection 105(b)-Nullification of State Approval of Exclusions:** This section voids state approvals of contractual exclusions for losses arising from acts of terrorism in force on the date of enactment to the extent those losses are covered under the bill.

This represents a technical fix from earlier language that would have eliminated exclusions for acts of terrorism not covered under this Act, such as domestically generated terrorism.

However, many state authorized exclusions stated that they would no longer apply if Congress passed a terrorism insurance backstop. New exclusions will need to be developed and filed, as appropriate, in order to implement all of the options intended by the Act.

Congressional staff has stated that the intent of the Act is to return insurance contracts to their structure before the events of September 11, 2001. There will be

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questions concerning pre-existing policy exclusions that could restrict coverage for losses arising from a terrorist event.

- **Subsection 105(c)--Reinstatement of Exclusions in Force on Date of Enactment:** Permits the reinstatement of exclusions voided by subsections 105(a) and 105(b) if the insured sends the insurer a written statement affirmatively authorizing the reinstatement, **or**
 - the insured fails to pay the increased premium for coverage, **and**
 - the insurer provided 30 days notice prior to the reinstatement noticing the increased premium for terrorism coverage and the rights of the insured with respect to such coverage, including the date the exclusion would be reinstated if no premium were paid.

Section 106. Preservation Provisions

- **Subsection 106(a)-Preserving State Law:** The section asserts that nothing in the Act affects the jurisdiction or regulatory authority state insurance regulators except as specifically provided in the Act.

Definition of Act of Terrorism: States that the term “act of terrorism” is the exclusive definition for purposes of compensation of insured losses under the Act. It also preempts state laws that are inconsistent with that definition “to the extent that such provision of law would otherwise apply to any type of insurance covered by the Title.

Rate and Form Approval: Through 2003 of the Program only, rates and forms for terrorism insurance under the Act are not subject to prior approval or waiting periods. However, States are still free to invalidate rates as excessive, unfairly discriminatory, or inadequate. In addition, States with prior approval authority of forms can apply subsequent review to “such disclosures”

Preemption of State Laws on Insurer Books and Records: Notwithstanding state laws prohibiting or limiting access to insurer books and records, while the Program is in place (including post-Program administration), such books and records that are relevant to the Program are to be provided to the Secretary or his designee.

- **Subsection 106(b)-Existing Reinsurance Agreements-**This section makes clear that nothing in this Act is to be construed to alter, amend, or expand the terms of coverage under any existing reinsurance agreement in effect on the date of enactment. The terms and conditions of such agreements are to be determined based on their own language.

Section 107. Litigation Management.

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- **Subsection 107(a)-Exclusive Federal Cause of Action:** For certified acts of terrorism, there is an exclusive federal cause of action for property damage, personal injury, or death.

All State actions for these types of claims otherwise available under State law are preempted, but the substantive law governing the federal action (including choice of law principles) is to be derived from the state where the terrorist act occurred unless inconsistent with or preempted by federal law.

This preemption could be construed to apply to workers' compensation cases and authorize federal suits concerning workers' compensation outside the state workers' compensation system.

Jurisdiction: For each determined act of terrorism, the Judicial Panel on Multidistrict Litigation must designate one court (or multiple courts if necessary) to have original and exclusive jurisdiction for these federal causes of action.

Punitive Damages: States that any punitive damages awarded are not covered under the Program as insured losses.

If punitive damages are insurable under state law, they will be included in the loss paid by the insurer, unless they are excluded in policies from the outset.

- **Subsection 107(b)-Exclusions:** Clarifies that the constraints in this section do not limit the liability of governments, organizations, and persons that knowingly participate in, conspire to commit, or aid and abet an act of terrorism.
- **Subsection 107(c)-Subrogation:** The U.S. has the right of subrogation with respect to any claims paid by the U.S. under the Act.
- **Subsection 107(d)-Relationship to Other Laws:** Nothing in this section affects a party's contractual right to arbitrate a dispute or any provision of the Air Transportation Safety and System Stabilization Act.
- **Subsection 107(e)-**The section applies only to actions involving property damage, personal injury, or death during the time of the Program.

Section 108-Program Termination:

- **Subsections 108(a-c):** The program is terminated on December 31, 2005, but the Secretary has authority to continue administering surcharges and other administrative requirements relating to the Program, including funding of the Program.

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- **Subsection 108(d)-Study and Report:** The Secretary, in consultation with the NAIC, industry, and other experts is to assess the Program's effectiveness and assess future market capacity, availability, and affordability of insurance (including for railroads and public transit).

A report is due to Congress by June 30, 2005

Title II. Satisfaction of Judgments Against Terrorist, Terrorist Organizations, and State Sponsors of Terrorism.

This Title enhances the ability of persons with judgments against terrorists arising out of terrorist actions to attach blocked assets for purposes of satisfying compensatory damage claims.

Title III. Authority of the Federal Reserve Board

This Title permits approval of emergency lender of last resort funding requests in situations where less than five governors are available. Adequately secured Reserve Bank credit can be granted to any person under these provisions.

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