

Section-by-Section Analysis of S. 40 and H.R. 3200 to establish the Office of National Insurance (ONI) to issue Federal charters and licenses to life and property and casualty insurers for carrying on the sale, solicitation, negotiation, and underwriting of insurance or any other insurance operations; to provide a comprehensive system for the Federal regulation and supervision of national insurers and national agencies; to provide for policyholder protections in the event of an insolvency or the impairment of a national insurer; and for other purposes.

Section 1. Short Title; table of contents.

Names the bill the “National Insurance Act of 2007” and sets out table of contents.

Section 2. Purposes.

Sets out purposes of the Act, which include—to establish a comprehensive Federal licensing, regulation and supervision system for insurers and insurance producers independent of the State system; to create an Office of National Insurance (“ONI”) within the Treasury Department funded by assessments on federally chartered and licensed insurers and producers; and to appoint a Commissioner of National Insurance (“Commissioner”) to issue Federal charters and licenses; exclusively regulate and supervise operations, market conduct and solvency of national insurers on a uniform, nationwide basis; and establish a comprehensive receivership scheme requiring federally chartered insurers to participate in qualified state guaranty funds.

Section 3. Definitions.

Defines various terms under the bills. H.R. 3200 defines “anti-fraud organization” as a nonprofit organization that assists law enforcement in cases of insurance-related crime and fraud. This definition is not included in S. 40. Limits the definition of “insurance producer” to a person who is engaged directly in selling, soliciting or negotiating insurance coverage and exempts certain extraneous activities. Defines “national agency,” “national insurer” and “national life insurer” as those operating under a Federal charter as set out in the bill. Includes annuities and funding agreements as “insurance policies.” Excludes reinsurance contracts. Defines “protected cell” as specific assets and liabilities of a national insurer set apart from its other assets and liabilities, and provides for “protected cell accounts” to segregate assets. Defines “separate account” as one set up and maintained by a national life insurer, the income, gains and losses of which are segregated from other income, gains or losses of the insurer not related to the account. Includes DC, Puerto Rico and US territories in definition of “State.” Defines “State insurance agency” and “State insurer” as those organized under the laws of a State. Defines “United States holding company” as one organized under the laws of a State that directly or indirectly controls a national insurer.

TITLE I—OFFICE OF NATIONAL INSURANCE

Subtitle A—Establishment of Office of National Insurance

Sec. 1101. Establishment.

Establishes ONI as a US agency functioning consistent with the Administrative Procedures Act. ONI to be headed by the Commissioner of National Insurance and

headquartered in Washington, DC, with no fewer than 6 regional offices. Commissioner and employees to be paid from assessments under the Act.

Sec. 1102. Commissioner of National Insurance.

Commissioner appointed for 5 year term by President with advice and consent of Senate. Commissioner to oversee establishment and operation of national insurers and national agencies and issue charters and licenses; and license, regulate and supervise federally licensed insurance producers other than national agencies. Commissioner has exclusive authority to determine compliance with this Act or application of any State law to matters regulated under this Act. Commissioner's determination to be considered final agency action for purposes of judicial review. Commissioner authorized to issue rules and regulations, and may not delegate any such authority to an insurance self-regulatory organization. Commissioner given full litigation and enforcement authority in Federal or State court, except US Supreme Court. Commissioner may consult with State insurance regulators on matters of common interest. Commissioner may engage with foreign counterparts and international regulatory organizations to develop and implement international regulatory standards, and mutual recognition agreements on licensing of insurance companies and producers. Commissioner shall consult with President and USTR, and may include a representative of any interested State insurance regulators as Commissioner deems appropriate.

Sec. 1103. Office personnel matters.

Commissioner may generally delegate any power to employees or agents, or to an insurance self-regulatory organization unless otherwise prohibited by this Act.

Sec. 1104. Division of Insurance Fraud.

Establishes Division of Insurance Fraud with all powers necessary to enforce this Act except for power to execute search and arrest warrants.

Sec. 1105. Division of Consumer Affairs.

Established to support Commissioner in implementation and enforcement of market conduct regulations.

Sec. 1106. Insurance self-regulatory organizations ("SROs").

Commissioner given broad authority to register an insurance SRO, as well as to supervise and regulate any registered SRO in terms of its operating rules; any disciplinary actions taken by an SRO; removing, suspending or barring an individual from serving or continuing to serve on an SRO; and revoking an SRO's registration. An insurance SRO under this Act has authority to carry out the purposes of the Act and enforce compliance by its members. An insurance SRO may be formed and consist exclusively of national insurers, national agencies, federally licensed insurance producers, or any combination thereof. Within 2 years, Commissioner shall issue regulations governing registration and operations of insurance SROs. Regulations shall ensure that an SRO qualified under this Act have the capacity to carry out the Act's purposes; enforce compliance by its members; and have operating rules assuring fairness in selecting directors and administering its affairs, provide for equitable allocation of various funds among its

members, and have appropriate disciplinary procedures in place for violations of the Act. The regulations shall provide procedures for public notice and comment; as well as specify procedures the Commissioner will follow in any action with regard to the SRO's operating rules or disciplinary actions, or in suspending or revoking an SRO's registration.

Sec. 1107. Office of the Ombudsman

Establishes Ombudsman within ONI to act as liaison between ONI and any regulated person adversely affected by the supervisory or regulatory actions of ONI. Ombudsman given general authority to investigate and make recommendations to Commissioner other than the appointment of a receiver or conservator and certain enforcement-related actions.

Subtitle B—Supervision of National Insurers and National Agencies

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

Sets up scheme for Commissioner examinations of national insurers and national agencies. Regular exams for national insurers to occur no less than every 3 years and special exams when Commissioner deems necessary. Exams for national agencies only in response to specific complaints. Commissioner has subpoena power and can seek court orders for information access.

Sec. 1122. Examination fees and other assessments.

Authorizes Commissioner to assess costs for exams, as well as processing fees, penalties and other assessments. Allows Commissioner to borrow Federal funds as necessary during startup period, to be repaid with interest.

Sec. 1123. Disclosure of information.

Requires Commissioner to set standards for disclosure of reports. Prohibits disclosure of confidential supervisory information, as defined by regulation.

Sec. 1124. Reporting requirement.

Authorizes Commissioner to require quarterly and annual financial statements among other financial reports.

Section 1125. Regulatory supervision and relationship to state law.

Generally exempts national insurers from State insurance requirements, including licensing, examination, reporting, regulation or other supervision relating to insurance sale, solicitation, negotiation or underwriting. Maintains State jurisdiction in the areas of unclaimed property and escheat; State tax; State law relating to participation in an assigned risk plan, mandatory joint underwriting association or other mandatory mechanism designed to make insurance affordable to those unable to obtain it, except to the extent such state law relates to a voluntary joint underwriting association; results in rates that fail to cover the full cost associated with policies written by a residual market mechanism; requires particular rates, prices or forms; or is otherwise inconsistent with this Act. Also exempts State laws mandating coverage for workers' compensation and motor vehicle insurance, except in regard to rates and forms.

Excludes NAIC from definition of “advisory or statistical organization” under the section. State law mandating the participation of insurers in an advisory or statistical organization (except to the extent the State law requires a particular rate, price or form) will control; however, NAIC would not qualify as an “advisory or statistical organization.”

Sec. 1126. Preservation of office records.

Authorizes Commissioner to preserve records and sets out procedures for doing so.

Sec. 1127. Compliance with anti-money laundering requirements.

Commissioner shall prescribe regulations and otherwise work to ensure compliance by national life insurers with anti-money laundering laws.

Subtitle C—Enforcement of Federal Insurance Laws

Sec. 1141. National insurer license suspension, restriction, or revocation.

Commissioner may revoke or restrict Federal license of a national insurer in cases of hazardous conduct or undue risk to policyholders, financial or other condition inconsistent with continuing operations, or violation of law, regulation or order of the Commissioner. Sets out notice and hearing requirements. Provides for judicial review.

Sec. 1142. Suspension, restriction, or revocation of federal license of national agencies and federally licensed insurance producers.

Commissioner may revoke or restrict a Federal producer license or lines of insurance covered by a Federal license in cases of violation of law, regulation or order of the Commissioner; false or misleading information in application for a Federal charter or license; fraudulent, coercive or dishonest practices; or demonstrated incompetence, untrustworthiness or financial irresponsibility. Sets out notice and hearing requirements. Provides for judicial review.

Sec. 1143. Cease-and-desist proceedings.

Commissioner may issue notice of charges if he determines that a national insurer, national agency, federally licensed insurance producer or insurer-affiliated party has engaged, or is about to engage, in a violation of law, regulation or order of the Commissioner. Sets out notice and hearing requirements. Allows licensee an opportunity for temporary court order setting aside temporary cease-and-desist order until after a hearing under administrative proceedings.

Sec. 1144. Affirmative action to correct conditions resulting from violations or conduct.

Commissioner’s authority under this subtitle includes authority to require a national insurer, national agency, producer or party to restrict growth; dispose of assets or policies; rescind agreements; employ qualified officers or employees; or take other actions as deemed appropriate in cases of unjust enrichment or reckless disregard of law, regulation or order.

Sec. 1145. Suspension, removal, and prohibition authority.

Commissioner may suspend an insurer-affiliated party from participating in the affairs of a national insurer or national agency if the insurer-affiliated party has violated a law, regulation or order of the Commissioner; engaged in conduct that is hazardous or poses undue risk to policyholders; committed a breach of fiduciary duty where such conduct causes, or will probably cause, financial loss or damage; prejudiced the interests of policyholders; such party has received financial gain and the conduct involves personal dishonesty or willful disregard of policyholders. Commissioner has authority to issue a temporary restraining order suspending such party from office or from further participation with a national insurer or national agency, and to suspend or remove such party. Sets out notice and hearing requirements. Any person suspended or removed under this section may not act as or be affiliated with a national insurer, national agency insurer-affiliated party or federally-licensed insurance producer without Commissioner's written consent. Provides for judicial review.

Sec. 1146. Suspension or prohibition based on criminal activity.

Commissioner may suspend or prohibit an insurer-affiliated party from participating in the affairs of a national insurer or national agency if the party's continued participation poses a threat to policyholders and such party is charged with a crime involving dishonesty or breach of trust, or certain other criminal violations. Provides for an administrative hearing to consider the suspension or prohibition.

Sec. 1147. Ancillary provisions.

Commissioner given subpoena power in matters relating to this article. Provides for judicial review and enforcement. Provides that the remaining directors of a national insurer or national agency shall constitute a quorum if suspension of 1 or more directors under this subtitle reduces it below a quorum, and allows Commissioner to make temporary appointments when all directors are suspended.

Sec. 1148. Hearings and judicial review of suspension, removal or prohibition order.

Establishes terms and procedures for judicial review in Federal courts for a suspension, removal or prohibition order.

Sec. 1149. Civil and criminal penalties.

Establishes three tiers of civil money penalties for a national insurer or national agency, federally licensed insurance producer or insurer-affiliated party. First tier is \$5,000/day for violation of law or regulation, or order of the Commissioner. Second tier is \$25,000/day for: first tier violations and reckless conduct hazardous to a national insurer, State insurer or national agency that involves undue risk to policyholders, or breach of fiduciary duty; and for which such conduct is part of a pattern of misconduct, causes or is likely to cause more than a minimal loss to such national or State insurer, or results in pecuniary or other gain to such national agency, producer or affiliated party. Third tier is a maximum of \$1 million/day for knowingly committing violations covered by first and second tier civil money penalties and knowingly or recklessly causing a substantial loss to a national insurer, state insurer or national agency, or a substantial pecuniary gain or other benefit to such producer or affiliated party. Commissioner may compromise,

modify or remit any penalty. Mitigating factors include size of financial resources and good faith of the entity or person charged, gravity of the violation, history of previous violations. Penalties shall be enforced in Federal district court; validity and appropriateness of penalty not subject to review. Penalties collected under this section shall be deposited into the Treasury (US general fund) and not be used to fund ONI. Establishes criminal penalty of not more than \$1 million, five years' imprisonment, or both, for any person suspended or prohibited under this Act from engaging in the affairs of a national insurer or national agency who knowingly participates in such affairs.

Sec. 1150. Public disclosures of final orders and agreements.

Generally, requires public disclosure of orders and proceedings of Commissioner unless Commissioner deems it contrary to the public interest.

Sec. 1151. Foreign investigations.

Allows Commissioner to request the assistance of any foreign government in conducting any investigation, examination or enforcement action under this subtitle, and to assist foreign governments with their own investigations consistent with the US public interest.

Sec. 1152. Action or proceeding against non-United States insurers.

Generally prohibits Commissioner from taking action against a non-US insurer or officer, director, employee or agent thereof unless Commissioner believes that the conduct or practice of such insurer or individual has been, or is likely to be, carried on in 1 or more States. Failure to comply with a valid order of the Commissioner under this section constitutes grounds for ordering the non-US insurer to terminate all insurance operations in the US.

Sec. 1153. Cooperation between Commissioner and State Commissioners.

Commissioner shall notify the State Insurance Commissioner in which a national insurer or national agency is doing business within 30 days of any actions regarding revocation, suspension or restriction of authority to transact insurance; entry of a formal order to restrict premium writing, obtain additional contributions to surplus, reinsure all or part of its business, or increase capital, surplus or any other account for the security of policyholders or creditors; or placement of a national insurer into receivership.

Subtitle D—Insurance fraud

Sec. 1161. Investigation of insurance fraud.

Commissioner may investigate suspected fraudulent insurance acts by insurance persons engaged in the business of insurance or by other persons. Commissioner shall by regulation require national insurers to place a fraud warning on claim forms and policy applications. Requires a national insurer or insurance person engaged in the business of insurance to report to Commissioner any fraudulent insurance act when that person knows or reasonably believes it is being, will be or has been committed. Generally exempts the person reporting from liability (except where the report is made falsely with actual malice or violates statutory privileges and immunities) where the information is provided to or received from the following entities, or their employees, agents or representatives: the Commissioner; Federal, State or local enforcement or regulatory

officials; an SRO; a person involved in the prevention and detection of fraudulent insurance acts (H.R. 3200 gives specific examples, which are not part of S. 40, clarifying that “person” includes a national insurer, state insurer or anti-fraud organization, and that “investigation” includes cooperation or participation in an investigation); or NAIC. Requires Commissioner to promulgate regulations regarding protection of confidential information.

Sec. 1162. Penalties.

In addition to existing penalties under US law, Commissioner may revoke, suspend or restrict the Federal license of a national insurer, national agency or other federally licensed insurance producer or insurer-affiliated party; and order restitution to persons aggrieved by such offenses.

Sec. 1163. Civil remedy.

Authorizes a national insurer, national agency or federally licensed insurance producer injured by a fraudulent insurance act to recover payments, benefits or profits received; legal expenses; and other economic damages from the person committing the act. Prohibits dual remedies for commission of a fraudulent insurance act.

TITLE II—NATIONAL INSURANCE COMPANIES AND NATIONAL INSURANCE AGENCIES

Subtitle A—Organization, licensing, and Operations

Sec. 1201. Organization, operation and regulation of national insurance companies and national insurance agencies.

Commissioner authorized to provide for the organization, incorporation, operation and regulation of national insurance companies and national insurance agencies. Commissioner shall issue regulations permitting national insurers to organize in stock, mutual, reciprocal or fraternal form and other matters relating to chartering and licensing. Commissioner shall require each national agency to organize as a corporation, partnership, limited liability company or other form recognized under State law. In determining whether to issue a charter, Commissioner shall consider the character and competencies of the parties seeking it, and the financial resources and future prospects of the applicant. If Commissioner issues a charter certificate to a national agency, Commissioner shall concurrently issue a Federal producer license. A national agency may not sell, solicit or negotiate any line of insurance for which it does not hold a Federal producer license. Grounds for denial of charter include applicant’s failure to comply with formation requirements or to provide requested information; lack of financial resources, character or competence necessary to comply with standards under this Act; or Commissioner determines that a national insurer or national agency is being formed for an illegitimate purpose. Commissioner may not delegate chartering or licensing powers to an SRO.

Section 1202. United States branches of non-United States insurers.

Allows a non-US insurer to transact business in the US through a US branch by qualifying and licensing the branch as a national insurer. The non-US insurer must

establish a trust account for the exclusive benefit, security and protection of policyholders and creditors of the US branch.

Sec. 1203. Federal licensing of national insurers.

A national insurer may not sell, solicit, negotiate or underwrite any line of insurance for which it does not have a Federal license. Commissioner shall issue regulations governing licensing. Federal licenses shall permit national insurers to sell, solicit, negotiate and underwrite lines of insurance, and specify to which lines the license applies. A national insurer may hold a license to sell, solicit, negotiate and underwrite property/casualty insurance. A national insurer holding a life insurance license may also sell, solicit, negotiate and underwrite disability income insurance, long-term care insurance, annuities and funding agreements. A national insurer may not obtain both a property/casualty license and a life license. Commissioner not authorized to license title insurance. Federal license remains in effect until surrendered by the national insurer or revoked or suspended by Commissioner. A national insurer may only reinsure lines related to its Federal license and confine its business to reinsurance. General proscription against discriminating against non-US subsidiaries except to protect policyholders or under other special circumstances as determined by Commissioner. National insurers may only reinsure lines of insurance they are licensed to sell or otherwise permitted to reinsure.

Sec. 1204. Corporate governance.

Requires national insurers and national agencies to adhere to State corporate governance procedures except to the extent that Commissioner determines that any provision of a State corporate law is discriminatory against national insurers. Requires national insurers to establish an audit committee entirely independent of management.

Sec. 1205. Participating policy procedures.

Allows choice of State or Federal regulation by a national life insurer in mutual form at its initial licensing and chartering or conversion under the Act. Authorizes Commissioner to establish participating policy procedures except for limitations a national life insurer in mutual form may retain in surplus.

Sec. 1206. Conversion of State insurer to national insurer or state agency to national agency.

Establishes procedures for State-licensed entities to convert to national form under the Act. Conversion deemed to be a continuation of the corporate existence of a State insurer or agency subject to State law, except that it shall no longer be required to maintain deposits with State insurance regulatory authorities; not hold a State license to sell, solicit, negotiate and underwrite insurance; and shall obtain a Federal license for all lines. Commissioner given authority to exempt a converting insurer or agency from otherwise applicable provisions of the Act. Allows mutual holding companies to remain organized under State law even if they control a State insurer in stock form converting to Federal regulation under this section. Allows a mutual holding company to convert to a stock company.

Sec. 1207. Conversion of national insurer to state insurer or national agency to state agency.

Allows national insurers and agencies to convert to State status.

Sec. 1208. Powers.

Gives general corporate powers to a national insurer or agency subject to regulations. Prohibits States from restricting such powers. Allows national insurers to establish, invest in or acquire subsidiaries, with specified investment limitations, and to pay dividends or other distributions on its outstanding shares.

Sec. 1209. Separate accounts of national life insurer.

Amounts allocated by a national life insurer to a separate account shall not be used for any other purpose. Creditors may attach a security interest.

Sec. 1210. Protected cells.

Amounts allocated to a protected cell under this section shall not be used for any other purpose. Establishment of a protected cell may not in and of itself be considered fraud or intent to defraud. Prohibits States from requiring licensing or regulation of an investor in an insurance securitization as an insurer, reinsurer or other person transacting insurance, or an underwriter or selling agent in an insurance securitization as an insurance or reinsurance agent, broker, intermediary, advisor, consultant or insurance professional by virtue of its activities with the securitization.

Sec. 1211. Chartering and licensing commencement date.

Commissioner required to publish regulations before chartering or licensing a national insurer or national agency. Regulations shall be published in final or interim form within two years of Commissioner's initial appointment and confirmation.

Subtitle B—Financial, Product, and Market Regulations

Sec. 1212. Transitional financial regulators.

The Commissioner shall promulgate financial regulations consistent with NAIC standards and models as below.

Commissioner shall by regulation establish: accounting principles for a national insurer [consistent with NAIC "Accounting Practices and Procedures Manual"]; auditing standards for a national insurer [consistent with NAIC "Model Regulation Requiring Annual Audited Financial reports"]; investment standards for a national insurer [consistent with NAIC "Investment of Insurers Model Act (Defined Standards Version),"] except regarding authorized classes of investments, class or individual investment limitations, or prohibited investments]; risk-based capital standards for a national insurer [consistent with NAIC "Risk-based Capital (RBC) for Insurers Model Act" and related "RBC Instructions" and non-disclosure rules and remedies]; valuation standards for obligations and liabilities of a national life insurer [consistent with NAIC "Accounting Practices and Procedures Manual"]; continuing and alternative (nonforfeiture) benefits standards for national life insurers [consistent with NAIC "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 for preparing and filing an annual actuarial opinion on the adequacy of a national life insurer’s assets to meet obligations and liabilities [consistent with NAIC “Actuarial Opinion and Memorandum Regulation”]; and Standards for preparing and filing an annual actuarial opinion on loss and loss adjustment expense reserves of a national property/casualty insurer [consistent with NAIC “Property and Casualty Actuarial Opinion Model; Law” and applicable “NAIC Property and Casualty Annual Statement Instructions”]. Relevant NAIC models, standards and instructions to be incorporated are those adopted as of May 24, 2007. Commissioner has discretion as to whether to apply those adopted subsequently. Commissioner may modify any initial financial regulation after 5 years, or earlier if Commissioner determines it is necessary to protect policyholders or prevent hazardous conduct by a national insurer. Notwithstanding the above, accounting principles for a national property/casualty insurer shall be consistent with the NAIC “Accounting Practices and Procedures Manual,” including any amendments thereto.

Sec. 1213. Other financial regulations.

Commissioner authorized to issue other financial regulations as deemed necessary.

Sec. 1214. Product regulation for national life insurers.

Establishes choice of law rules. Defines “policy” as a policy, contract, certificate or other evidence of life insurance, disability income insurance or long-term care insurance, or an annuity contract or rider or endorsement thereto; and excludes a funding agreement, reinsurance contract or agreement, special rider or endorsement relating only to the manner of distributing benefits or to reserving rights and benefits used at the request of the individual policyholder. Requires Commissioner to establish, by regulation, standards for policies issued. Authorizes a national insurer to sell, solicit, negotiate and underwrite group, blanket and franchise policies and extend them to insure dependents of employees or members. Commissioner required to establish policy standards by regulation. Commissioner shall, by regulation, define “insurable interest,” identify who has an insurable interest in the health and bodily safety of an individual, establish circumstances under which a non-group policy for an individual may be effectuated, and establish rules for policy transfers and assignments. Excludes annuity contracts and funding agreements from the above regulation. Prohibits States from imposing any standard relating to matters under this section on national insurers or persons who buy insurance from national insurers.

Sec. 1215. Product regulation for national property/casualty insurers.

Requires a national insurer to maintain copies of policy forms and provide to Commissioner a list of standard policy forms it uses. Commissioner not authorized to require any particular rate, rating element, price or form.

Sec. 1216. Regulation of sales and marketing.

Commissioner shall issue regulations governing advertising, sale, issuance, distribution and administration of policies and other products, and claims under policies and products, of national insurers.

Sec. 1217. Prompt corrective action.

Requires GAO to identify appropriate procedures and corrective actions to ensure the fewest possible losses from the hazardous financial condition of a national insurer. GAO study shall utilize the prompt corrective action requirements under the Federal Deposit Insurance Act with respect to insured depository institutions and the NAIC “Model Regulation to Define Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition,” as updated in 2006. GAO report required within 6 months of enactment, to be submitted to Senate Banking and House Financial Services Committees, and Commissioner. Commissioner shall issue regulations based on GAO report recommendations.

Subtitle C—Reinsurance

Sec. 1221. Federal licensing of reinsurers.

Commissioner may license insurers that are not national insurers to provide reinsurance, and by regulation prescribe standards, only after the Commissioner is authorized to charter and license national insurers. Commissioner shall issue a federal license once the applicant has met the standards. To be licensed, a non-US insurer must report its financial statements to Commissioner in a manner substantially similar to that required of national insurers under this Act [H.R. 3200 adds “or in conformance with International Financial Reporting Standards (IFRS)”]; submit to US Federal, State and local court jurisdiction; and demonstrate that all US court judgments would be enforceable and collectible by: being organized or incorporated in a jurisdiction with which the US has a treaty on recognition and enforcement of judgments; [H.R. 3200 adds “which is a signatory to the US Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and agreeing to include in the reinsurance contract a clause that is satisfactory to the Commissioner requiring that all disputes arising out of the interpretation of the reinsurance contract be submitted to arbitration; or which the Commissioner determines has, by statutory, regulatory, and judicial law, consistently given recognition and enforcement to judgments rendered by Federal, State and local courts in the US”] or agreeing to post prejudgment security in the US. Commissioner may revoke, suspend or restrict a Federal reinsurer’s license in accordance with the Act. A federally licensed reinsurer is deemed to be a national insurer under this Act. Commissioner shall require each licensed reinsurer to submit annual report of its financial condition [S. 40 adds “and an annual report on the condition of any trust fund regulated under this subtitle in such form as may be prescribed by the Commissioner”].

Section 1222. Credit for insurance ceded by a national insurer or federally licensed reinsurer.

A national insurer may establish an asset or reduce its liabilities for insurance ceded to another national insurer or federally licensed reinsurer; or to a State insurer, a US branch entered through a State or a non-US insurer if such insurance is consistent with standards established by Commissioner. Commissioner shall establish, by regulation, standards governing insurance ceded by a national insurer [H.R. 3200 adds “to any of the entities listed (in the previous subsection—i.e., State insurer, US branch entered through a State or non-US insurer) in order to protect the policyholders of a national insurer, which

standards shall not be applied in a discriminatory manner with respect to any such entity” and adds a provision authorizing Commissioner to require a State insurer, US branch entered through a State or non-US insurer to submit an annual report on the condition of any trust fund required as security under this section].

Sec. 1223. Relationship to state law.

With certain exceptions, no State may prevent or interfere with a State insurer domiciled in such State or a US branch entered through such State from establishing an asset or reducing its liability as a result of insurance ceded to a national insurer or federally licensed reinsurer to the extent it would allow such cession by another State insurer domiciled in such State. This is also prohibited if the domicile of the ceding insurer allows such asset or reduction.

Sec. 1224. Freedom of commercial contract.

A State is generally prohibited from denying a State insurer or US insurer entered through a State all or part of any asset, or requiring any increase in liability for insurance ceded to any national insurer or federally licensed reinsurer because its reinsurance contract contains, or does not contain, 1 or more specific contract terms; or otherwise requiring specific language or terms in a reinsurance contract. Exception made for contract language to protect policyholders.

Sec. 1225. Review by the Commissioner.

Commissioner shall review State action taken pursuant to the above section regarding contract language to protect policyholders. Sets standards for review: closely based on standards established by Commissioner; made in consultation with Commissioner; serves legitimate state interest; does not frustrate subject reinsurance contract.

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

Sec. 1231. Acquisition of control of national insurers.

Establishes procedures for control of national insurers and gives Commissioner broad powers to regulate and enforce. Clarifies that this section is not preempted by other Federal laws regarding holding companies. Prohibits delegation of Commissioner powers under this section to an SRO.

Sec. 1232. Mergers, consolidations, and acquisitions of national insurers.

With approval of the Commissioner, a national insurer is authorized to merge with another national insurer or State insurer where the resulting insurer is a national insurer, regardless of whether the insurers involved are stock, mutual or fraternal. The resulting insurer shall not hold any State license to sell, solicit, negotiate or underwrite insurance. Authorizes a State insurer to merge with a national insurer where the resulting insurer is a State insurer. Prohibits delegation of Commissioner powers under this section to an SRO.

Sec. 1233. Bulk transfers.

Defines various terms. Defines “bulk transfer” as the transfer by an insurer to another insurer of existing policies constituting all or substantially all of 1 or more of its lines of

business, except where control or liability to policyholders remains with the transferring insurer. Defines “permitted national insurer” as a State insurer converting to a national insurer or a newly chartered and licensed national insurer. Authorizes various bulk transfers between State insurers, national insurers and permitted national insurers. Prior approval of Commissioner required for bulk transfers involving a national insurer. Such transfers shall be approved unless likely to be hazardous to policyholders. Sets out conditions for bulk transfers that do not require policyholder consent and those that do. State generally may not require policyholder consent for a bulk transfer, submit a bulk transfer to State review or prevent or interfere with a bulk transfer, except for certain situations where the State must meet certain standards, including a requirement for the State to work with the Commissioner. Commissioner may issue a notice of failure by the State to meet such standards. A State may not provide differential treatment to an entity in a bulk transfer. Prohibits delegation of Commissioner powers under this section to an SRO.

Sec. 1234. Domestication of United States branch of a non-United States insurer.

Authorizes Commissioner to approve domestication of a US branch of a non-US insurer, and sets conditions for doing so, including withdrawal of trusted assets or other deposits of a US branch established under State law. A State may not interfere with the above process. Prohibits delegation of Commissioner powers under this section to an SRO.

Sec. 1235. Mergers, consolidations, and acquisitions of national agencies.

Sets approval requirements and requires Commissioner’s prior approval for a national agency to merge with another national agency or State insurance agency where the resulting agency is a national agency. The resulting agency shall not hold any State license to sell, solicit or negotiate insurance and shall obtain appropriate Federal producer licenses. Authorizes a State insurance agency to merge with a national agency where the resulting agency is a State insurance agency. Prohibits delegation of Commissioner powers under this section to an SRO.

Subtitle E—Conversions

Sec. 1241. Definitions.

Defines various terms to cover conversions to and from stock and mutual form for both national life insurers and national insurers.

Sec. 1242. Conversion of stock life insurer to national life insurer in mutual form.

Authorizes a stock life insurer to convert to a national life insurer in mutual form. A State may not interfere with such conversion. Sets conditions for such conversions.

Sec. 1243. Conversion of mutual insurer to national insurer in stock form.

Authorizes a mutual insurer to convert to a national insurer in stock form. Sets conditions for conversions and limitations on acquiring stock and establishes penalties for violation and procedures for judicial review. A State may not prevent conversion. Prohibits delegation of Commissioner powers under this section to an SRO.

Subtitle F—State Taxation

Sec. 1251. State taxation of national insurers

Subjects national insurers to State and local taxes, (including retaliatory taxes) except that a State may not impose additional taxes aimed specifically at a national insurer.

Sec. 1252. State taxation of national agencies.

A national agency is made subject to State taxes to the same extent as an agency chartered in the State of domicile.

Sec. 1253. State taxation of non-admitted and surplus lines insurance.

No State other than the State where an insured maintains its principal place of business, or principal residence for an individual, may require any Premium Tax for Non-Admitted Insurance or Surplus Lines insurance, which term is defined as “any tax, fee, assessment, or other charge imposed by a State on an insured, either directly or through a producer that is based on any payment made as consideration for Non-Admitted Insurance or Surplus Lines Insurance, and any other compensation given in consideration for a contract of insurance.”

TITLE III—INSURANCE PRODUCERS AND OTHER INSURANCE SERVICING PERSONS

Sec. 1301. Federal licensing of insurance producers.

Commissioner given authority to issue Federal producer licenses and set terms for obtaining such licenses. National agency to receive Federal producer license upon issuance of charter certificate. Insurance producer licensed by a State may sell, solicit or negotiate insurance in such State on behalf of a national insurer without a Federal producer license.

Sec. 1302. Producer database.

Commissioner shall adopt regulations for developing an electronic database relating to federally licensed insurance producers and electronic communication network linking Commissioner with State insurance regulators for an electronic exchange of such information. Commissioner may delegate authority to maintain database to an SRO, taking into consideration regulatory capabilities, staffing, avoidance of unnecessary duplication or other factors necessary to protect policyholders.

Sec. 1303. Supervision and oversight of federally licensed insurance producers.

National insurer shall have a duty to supervise sales and marketing practices of a federally licensed insurance producer who is an individual if the producer is an employee or agent, or if producer’s entire or principal business is for such national insurer. National agency or other federally licensed insurance producer shall have a duty to supervise sales and marketing practices of a federally licensed insurance producer who is an individual if the producer is an employee and the individual’s business is within the scope of his/her employment, or is an agent operating under terms of an agreement between the agent and such national agency or other producer. Commissioner shall, by regulation, issue standards for supervision, which shall not conflict with rules adopted by any SRO approved by the SEC pursuant to its authority for broker-dealer supervision of

registered representatives. Limited exemption from this section if Commissioner determines supervision would be unreasonable or inappropriate. Sales and marketing practices of a federally licensed insurance producer who is an individual and who is not subject to supervision as set out above shall be subject to direct supervision of Commissioner. Exemption for wholesale life insurance brokerage agency.

Sec. 1304. Relationship to State law.

A State may not restrict or prevent a national insurer, or require a license for, claims adjustment, reinsurance cessions or retrocessions, binding and managing assumed reinsurance business of a national insurer that is a reinsurer, or activities relating to underwriting and claims settlement in connection with policies written by a national insurer. A State may not prevent or restrict a federally licensed insurer from, or require a license for, engaging in any activity authorized by this Act. A State may not prevent or restrict an insurance producer licensed by such State from selling, soliciting or negotiating insurance in such State on behalf of a national insurer.

Sec. 1305. Licensing commencement date.

Establishes certain regulations for: fees and assessments; market conduct issues and for producer licensing and others deemed necessary by the Commissioner that must be published in final or interim final form before Commissioner can license a Federal insurance producer. Regulations must be published in final form within 2 years of Commissioner's initial appointment and confirmation.

TITLE IV—HOLDING COMPANIES

Sec. 1401. Definitions.

Defines “extraordinary dividend or distribution.” Defines “insurance holding company system” as 2 or more affiliated persons, 1 or more of which is a national insurer.

Sec. 1402. Registration.

Requires each national insurer that is a member of an insurance holding company system to register with Commissioner. Establishes terms for, and exemptions from, registration.

Sec. 1403. Standards and management of a national insurer within an insurance holding company system.

Establishes standards for transactions within an insurance holding company system to which a national insurer is subject (generally, must be reasonable). Commissioner may disapprove certain transactions involving a national insurer and any person within its insurance holding company system if they do not comply with standards or adversely affect policyholders. No national insurer that is a member of an insurance holding company system shall pay an extraordinary dividend until 30 days after Commissioner has received notice. Commissioner must approve or disapprove within the 30 day period.

Sec. 1404. Relationship to state law.

A national insurer that is part of an insurance holding company system may be affiliated with an insurer or agency not chartered or licensed under this Act. Commissioner shall

have exclusive jurisdiction over reinsurance pooling agreements where 1 or more national property/casualty insurers or agency are parties.

Sec. 1405. Conflict with other Federal laws.

This title shall not conflict with or supersede other Federal law or regulation on holding companies, including financial and saving and loan holding companies.

Sec. 1406. No delegation permitted.

Commissioner may not delegate to an SRO any authority under this title.

TITLE V—RECEIVERSHIP

Sec. 1501. Appointment of office as receiver.

Commissioner may establish a receivership for a national insurer for the purpose of rehabilitation or liquidation. Establishes grounds for receivership, including insolvency; substantial dissipation of assets or earnings due to legal violations or hazardous activity; hazardous condition; willful violation of a cease-and-desist order; concealment; inability to meet obligations; violations of law likely to cause insolvency or weaken national insurer's condition; consent by directors, shareholders or members to appointment; and money laundering. Directors of a national insurer are not liable for their actions with respect to appointment of ONI as receiver. ONI is not subject to direction or supervision of any other Federal or State agency when acting as receiver.

Sec. 1502. Effect of receivership proceeding.

Receivership under this section is deemed to be a court order of liquidation with a finding of insolvency for purposes of any State law relating to guaranty associations.

Sec. 1503. Powers and duties.

ONI as receiver shall assume all powers of directors, officers and managers of a national insurer. Lists additional specific powers to be assumed as receiver.

Sec. 1504. Rulemaking.

Commissioner shall, by regulation, establish rules for receivership proceedings. Regulations shall be substantially similar to corresponding provisions of the Uniform Receivership Law adopted by the Interstate Insurance Receivership Compact Commission in September 1998. Rules regarding coordination with State Guaranty Associations shall contain provisions substantially similar to sections 8I, 8J, 8K and 14C of the NAIC Life and Health Insurance Guaranty Association Model Act in effect on May 24, 2007, and to sections 405 and 612 of NAIC Insurer Receivership Model Act promulgated in December 2005.

Sec. 1505. Judicial review.

Establishes procedures for national insurers to seek federal district court review and order, for ONI to remove itself after 30 days as receiver or allow it to remain. Establishes judicial review for disallowance of a claim against the receivership by ONI acting as receiver.

TITLE VI—INSOLVENCY PROTECTION

Sec. 1601. Participation in guaranty associations.

A national insurer shall become and continue as a member of a qualified association, as later defined, for each line of insurance covered in each state where it is doing business. Qualified associations are authorized to levy assessments on national insurers. A national insurer or state insurer offering a line of insurance in a State that does not have a qualified association for such line of insurance shall become a member of the National Insurance Guaranty Corporation (the “Corporation”) if such line of insurance is covered by the Corporation.

Sec. 1602. Qualified and nonqualified associations.

A “qualified association” means a State insurance guaranty association or fund that admits both State and national insurers; in the event a member is placed into receivership, provides benefits or coverage to policyholders of such member not less than those set out in this Act; and has a board that is representative of insurers on a basis that it does not discriminate against national insurers and is representative of insurers of different sizes and lines of insurance. Within 3 years of enactment, Commissioner shall publish list of State insurance guaranty associations and funds determined to be qualified associations, and give reasons why an association or fund is not included. Authorizes associations and funds to petition Commissioner regarding qualified or nonqualified status, and sets out various conditions for doing so. Authorizes Commissioner to revoke qualified association status if an association or fund fails to satisfy terms of the definition under this section. Specifies that a State insurance guaranty association or fund that is not a qualified association is a “nonqualified association.” A nonqualified association may not levy an assessment upon a national or State insurer to pay claims for a member insurer that is subject to an order of conservation, rehabilitation or liquidation, with a limited exception where it subsequently becomes nonqualified. In the event of a conservation, rehabilitation or liquidation of a State or national insurer during the 4 year period from the date of enactment (the “temporary period”), a State guaranty association or fund may assess national insurers in an insolvency of a State insurer, and assess State insurers and national insurers in an insolvency of a national insurer. Exception where a State association or fund notifies Commissioner that it does not intend to levy assessments or provide coverage or benefits to policyholders of national insurers during the temporary period, in which case the Corporation shall provide coverage or benefits in respect to any conservation, rehabilitation or liquidation that would have been the State association or fund’s responsibility.

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

In the event no qualified association is established within 4 years of enactment, Commissioner shall establish the National Insurance Guaranty Corporation (the “Corporation”). Corporation shall be a nonprofit corporation under terms of the DC Nonprofit Corporation Act. Membership includes national or State insurers operating in a State without a qualified association for the line of insurance offered if such line is covered by the Corporation. Excludes: hospital or medical service organizations; HMOs; fraternal benefit societies; mandatory or voluntary State pooling plans; mutual assessment companies or persons; surplus lines carriers, risk retention groups or a State insurer

writing business on a non-admitted or unlicensed basis; charitable gift annuities; or similar entities. Establishes a board of directors, which shall be elected by members within 4 years; otherwise appointed from membership by Commissioner. Commissioner shall establish bylaws and rules governing the Corporation. Corporation is subject to supervision and oversight by Commissioner. Corporation is not an agency or instrumentality of the Federal government, and is not backed by full faith and credit, has no authority to borrow from the US Treasury and is not part of the Federal budget. Corporation shall establish 6 separate accounts for: life insurance, annuities, health, workers' compensation, auto insurance and all other lines of property/casualty insurance to which this title applies.

Sec. 1604. Benefits for policyholders of national life insurers.

Corporation shall provide benefits where a national life insurer or State life insurer doing business in a State does not have a qualified association to back it and it is placed into receivership, rehabilitation or liquidation. This section is generally intended to cover policyholders and limited beneficiaries. Commissioner shall, by regulation, establish lines of insurance covered, scope of coverage, defenses, exclusions and coverage limits. Regulations shall be substantially similar to the NAIC Life and Health Insurance Guaranty Association Model Act in effect on May 24, 2007. Provides for certain exclusions, such as risks borne by the policyholder, reinsurance, policy portions not falling within certain interest rate parameters, certain employer plans, policies involving fees or dividends, policies preempted by Federal or State law, obligations falling outside of policy terms, accounting guaranties for certain defined benefit plan participants, unallocated annuity contracts and funding agreements. Sets limits for coverage benefits. Benefits under this section are limited by subrogation and assignment rights. Corporation shall not be required to guarantee, assume, reinsure or perform contractual obligations of the insolvent or impaired insurer that do not materially affect the economic values or benefits of the covered policy.

Sec. 1605. Claims covered for policyholders of national property/casualty insurers.

Defines "Association" as any property/casualty insurance guaranty association created under State law which pays claims made under policies of an insolvent insurer on behalf of policyholders residing in the State. Defines "claimant" as any insured making a first party claim or instituting a liability claim, except for a person who is an affiliate of the insolvent insurer. Defines "covered claim" as an unpaid claim arising out of and within the coverage up to the applicable limits of a policy issued by a member insurer that becomes insolvent after the effective date, and the claimant or insured does not have a qualified association covering the risk at the time of the insured event; or the claim is a first party claim for damage to property with a permanent location in the State. "Covered claim" does not include: punitive damages; any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, underwriting association, HMO, hospital plan corporation, professional health service corporation or self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise, or any claim for an amount due any of the above asserted against a person covered by a policy issued by an insolvent insurer, other than to the extent the claim exceeds the Corporation's obligation limits set forth in this

Act; any first party claim by an insured whose net worth exceeds \$25 million on December 31 of the year prior to the year the member insurer becomes insolvent; or any first party claim by an insured which is an affiliate of the insolvent insurer. Defines “insolvent insurer” as an insurer with a line of business covered by the Corporation and doing business in a State without a qualified association, covering the type of risk insured, and against whom a final order of liquidation with a finding of insolvency has been issued pursuant to title V and its regulations. Corporation shall provide benefits if a national or State property/casualty insurer is doing business in a State that does not have a qualified association for the line of business offered by such insurer in such State (provided such line is covered by the Corporation), and such insurer is placed into receivership for purposes of liquidation. Provides coverage for covered claims on all lines of direct insurance within certain specified periods prior to the order of liquidation or within 30 days after. Excludes coverage on claims for life, annuity, health or disability insurance (except as provided in Sec. 1604); mortgage or financial guaranty, or other forms of insurance offering protection against investment risks; fidelity or surety bonds or bonding obligations; credit, vendors single interest or collateral protection insurance or similar insurance protecting creditor interests; insurance of warranties or service contracts; title insurance; ocean marine insurance; transactions involving transfer of investment or credit risk unaccompanied by transfer of insurance risk; or insurance provided by or guaranteed by any State or the Federal government. Sets limitations of coverage, which in no event can exceed an insolvent insurer’s obligation under the policy or coverage from which the claim arises. Excludes claims filed more than 18 months after order of liquidation or final date for filing claims against the liquidator or receiver of the insolvent insurer; or claims filed with the Corporation or receiver for losses incurred but not reported. Claimant is required to first exhaust all other coverage applicable to the claim. Amount payable under this title will be reduced by the full applicable limits of such other coverage, or by the total recovery where no applicable stated limits exist. Exceptions: No person shall be required to exhaust any right under the policy of an insolvent insurer; claims under policies providing joint liability coverage shall be considered claims covered by the same facts, injury or loss that gave rise to the covered claim against the Corporation; a claim under an insurance policy shall include a claim against an HMO, hospital plan corporation or professional health service corporation and any amount payable on behalf of a self-insurer; and to the extent the Corporation’s obligation is reduced by this section, the liability of the person insured by the policy of the insolvent insurer shall be reduced by the same amount. Sets priority for order of recovery where any person has a claim covered under more than 1 qualified association. Corporation shall have the right to recover all amounts paid on behalf of a person in the case of: the insured’s net worth exceeding \$25 million, or any person who is an affiliate of the insolvent insurer.

Sec. 1606. Duties and powers of the Corporation.

When a national or State life insurer is a member insurer subject to rehabilitation, the Corporation may guarantee, assume or reinsure any or all of the insurance policies of the national or State life insurer, and assume other contractual obligations of the insurer. When a national or State life insurer is a member insurer subject to liquidation, the Corporation shall guarantee, assume or reinsure the insurance policies of the national or

State life insurer or assure payment of contractual obligations, and shall provide means reasonably necessary to discharge the duties imposed by this section. The Corporation, with respect to life insurance policies and annuities, shall assure payment of benefits for premiums identical (except for terms of conversion and renewability) to those payable under the policies of the national or State life insurer who is a member insurer, with certain specific provisions regarding group and nongroup policies. Benefits under this title shall terminate on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured or the Corporation. Nonpayment of premiums shall terminate benefits under this title. Corporation shall be liable for unearned premiums due to policyholders after liquidation is initiated. Corporation may impose permanent and temporary liens to carry out duties of this section. Corporation may issue substitute coverage under specified conditions. When a national or State property/casualty insurer is a member insurer placed into receivership for purposes of liquidation, Corporation shall be deemed the insurer to the extent of its obligation on covered claims. Corporation shall investigate and pay covered claims to the extent of its obligations. Corporation given other general corporate powers.

Sec. 1607. Subrogation.

Persons receiving benefits or payments for claims under this title are deemed to have assigned their rights under covered policies to the Corporation. Corporation shall have all common law rights of subrogation and other remedies that would have been available to the national insurer or policyholder, beneficiary or payee of an insurance policy with respect to the policy. If any provision of this section is held not to be effective with respect to any person or claim, the amount payable with respect to related benefits and payments shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies (or portion thereof) covered by this title. If a person recovers amounts under this title to which the Corporation has rights, the person shall pay the Corporation the portion of recovery attributable to the insurance policies (or portion thereof) covered by this title.

Sec. 1608. Assessments.

Corporation shall be authorized to assess member insurers separately for each account, at such time and for such amounts as the board deems necessary to fund operations and benefit payments. 3 classes of assessments: (1) general and administrative—Each member insurer shall be assessed an amount necessary to cover general administrative and legal costs of the Corporation, divided equally among all member insurers. (2) Property/casualty—Corporation shall allocate claims paid and expenses incurred among the workers' comp, auto or other property/casualty account, and assess member insurers doing business in States without qualified associations that are licensed to sell property/casualty insurance separately for each account. Sets formula for the amount of assessments based on claims and expenses and premiums received. (3) Life and annuity—Corporation shall allocate benefits paid and expenses incurred among the life insurance, annuity and health account, and assess member insurers doing business in States without qualified associations that are licensed to see life insurance separately for each account. Sets formula for the amount of assessments based on benefits and expenses and premiums received. Corporation shall not impose an assessment until such

funds are needed. Maximum assessment amount set at 2% of net direct written premiums of the insurer for the calendar year preceding the assessment on the kind of insurance in the account. If the maximum assessment in any year does not provide an amount sufficient to make all necessary payments from the life insurance account, Corporation may assess the annuity and/or health account, except that in each subsequent year, as necessary, Corporation shall assess the life account to the maximum extent to make all necessary payments from the life account and to reimburse the annuity and/or health account. Same process applies for insufficient amounts in the annuity account and health account. Parallel structure set up for insufficient amounts in the workers' comp, auto insurance or other property/casualty insurance account. Directors of the Corporation may abate or defer an assessment if the payment would endanger the ability of the member insurer to fulfill its contractual obligations. The amount of such abatement or deferral may be assessed against the other member insurers doing business in States without qualified associations, consistent with the basis for assessments set forth in this section. Once the conditions that caused such abatement or deferral have been rectified or removed, the member insurer shall pay all assessments deferred pursuant to a repayment plan approved by the directors of the Corporation. Directors may refund to member insurers, in proportion to their contribution to that account, contributed amounts in excess of that necessary for the Corporation to carry out its obligations during the coming year under this title with regard to that account. Corporation may retain a reasonable amount to provide for continuing expenses and future claims. A member insurer may protest all or part of an assessment, but the statement and grounds for protest must be accompanied by the full amount of the assessment when due. Corporation shall notify the member insurer in writing of the determination with respect to the protest, within 60 days unless it notifies the insurer that additional time is required. Not later than 30 days after the final decision is made, Corporation shall notify the protesting member insurer in writing. Not later than 60 days after notice of the final decision, the protesting member insurer may appeal to the Commissioner. Corporation may refer protests to the Commissioner for final decision, with or without recommendation from the Corporation. If the protest or appeal is upheld, the amount paid in error or in excess shall be returned to the member insurer, with interest. In the event the conservation, rehabilitation or liquidation of a national or State insurer commences at a time when a State insurance guaranty association or fund is a nonqualified association, but subsequently becomes a qualified association, the Corporation shall continue to be responsible and be entitled to levy assessments as if the association or fund remained a nonqualified association. Corporation may request information of member insurers doing business in states without qualified associations to carry out its duties under this section, and member insurers shall promptly comply with such a request.

Sec. 1609. Regulations.

Commissioner shall issue regulations necessary to facilitate operations of the Corporation and implement the insolvency provisions of this title.

Sec. 1610. State taxation.

No State shall have power to impose its premium, franchise, income, retaliatory or other primary tax applicable to insurance companies, on any national insurer, unless such State

allows the national insurer to recoup Corporation assessments allocable to such State in the same manner a State insurer is allowed to recoup State insurance guaranty association or fund assessments in such State, or through rates or policyholder surcharge in any State that allows State insurers to recoup assessments only through the rates.

Sec. 1611. Examination of the Corporation; annual report.

Corporation shall be subject to exam and regulation by Commissioner. Corporation shall submit to Commissioner, and each State insurance commissioner in any State without a qualified association, a financial report and report of activities during the preceding fiscal year as related to its duties and functions under this title.

Sec. 1612. Immunity.

No liability or cause of action against any of the following for any action or omission in the performance of their powers and duties under the State insurance guaranty association or fund or provisions of a State insurance guaranty association or fund law or under this title: a member insurer and its directors, officers, employees and agents; any State insurance guaranty association or fund and its respective directors, officers, employees or agents; the Corporation and its directors, officers, employees and agents; the Commissioner and representatives thereof; and any State insurance commissioner and representatives thereof.

TITLE VII—CONFORMING AMENDMENTS AND MISCELLANEOUS PROVISIONS

Sec. 1701. Nondiscrimination.

No State may discriminate against: any State insurer because such insurer or affiliate has applied or declared its intention to become a national insurer; any State-licensed insurance producer because such producer or affiliate has applied or declared its intention to become a national agency or federally licensed insurance producer under this Act; any affiliate of a national insurer, national agency or federally licensed producer because of its affiliation; any policyholder, insured, claimant, State-licensed producer or other representative of a national insurer, agency or federally licensed producer under this Act, or affiliate thereof; or any State-licensed insurance producer because it sells, solicits or negotiates an insurance policy written or sold by a national insurer.

Sec. 1702. Application of the Federal antitrust laws to national insurers, national agencies, and federally licensed insurance producers.

Federal antitrust law shall apply except in the development, dissemination or use of standard insurance policy forms, or activities incidental thereto. Section 3 of McCarran-Ferguson (15 USC § 1013), (exempting the “business of insurance” from Federal antitrust regulation if it is regulated by state law) would apply to national insurers, national agencies and federally licensed producers regulated by state law. Section 5 of the Federal Trade Commission Act, regulating unfair or deceptive trade practices, shall not apply to national insurers, national agencies and federally licensed insurance producers.

Sec. 1703. Application of State law and regulation to national insurers, national agencies, and federally licensed insurance producers.

National insurers and agencies and federally licensed producers are not subject to State law regarding licensing, exam, reporting, regulation or other supervision relating to the sale, solicitation, negotiating or underwriting of insurance.

Sec. 1704. Federal court jurisdiction.

Federal district courts shall have original jurisdiction in civil actions against a national insurer or agency, or federally licensed producer, and against the Commissioner.

Sec. 1705. Federal court venue.

Civil actions by a national insurer or agency, or federally licensed producer, against the Commissioner may be prosecuted in the judicial district where such insurer or agency is located.

Sec. 1706. Judicial review.

Provides for a party aggrieved by an order of the Commissioner under this Act to obtain review in US Court of Appeals within any circuit where such party has its main office, or in DC Court of Appeals. Judgment of the court is final, except for review by US Supreme Court upon certiorari.

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

Amends such Act to include national insurers and agencies and federally licensed insurance producers.

Sec. 1708. Amendments to the Federal securities laws.

Amends the Securities Act of 1933 and Securities Act of 1934 to include Commissioner and add language: “the Commissioner of National Insurance with regard to all interpretations of, and the enforcement of, the National Insurance Act of 2007 relating to the activities, conduct, and operations of national insurers, national agencies, and federally licensed insurance producers.” Amends the Investment Company Act of 1940 to add Commissioner, National Insurance Act of 2007. Amends the Investment Advisers Act of 1940 to add Commissioner.

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

Amends ERISA to add Commissioner and adds language: “licensed as a national insurer.”

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

Adds ONI to definitions relating to State insurance regulators. Specifies that the provision of information or material by ONI to a Federal banking agency shall not constitute a waiver of any privilege or other legal protection or exemption from public disclosure. Adds Commissioner and various requirements regarding privacy. Adds language relating to national insurers or agencies, or federally licensed producers. Adds National Insurance Act of 2007. Makes other technical changes. Adds language specifying that insurance activities of a national insurer or agency, and a federally

licensed producer, shall be functionally regulated by ONI. Adds language providing an exemption for a national insurer in mutual form that is reorganizing into a mutual holding company.

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

Adds Commissioner and National Insurance Act of 2007. Makes other technical changes.

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

Adds “Federal,” Commissioner, ONI. Makes other technical changes.

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

Adds language regarding removal, concealment, alteration, destruction. Provides that whoever commits a fraudulent insurance act or knowingly and intentionally interferes with enforcement of, or investigations pursuant to, this Act shall be subject to criminal punishment as specified. Punishments include fines and imprisonment, as well as financial restitution. Defines “fraudulent insurance act” as an act or omission committed by a person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits, participates in, or aids, abets, or conspires to commit or solicits another person to commit, specified offenses including: presenting false information with respect to a national insurer or agency, or related producer, concerning an insurance policy application, renewal or reinsurance contract, the rating of a national insurer, a claim for payment or benefit, premiums paid, payments made under a policy or reinsurance contract, a document filed with the Commissioner, the financial condition of a national insurer, the formation, acquisition, merger, consolidation, dissolution or withdrawal from 1 or more lines of insurance or reinsurance by a national insurer, issuance of evidence of insurance, or reinstatement of a policy; solicitation or acceptance of new or renewal insurance risks while having knowledge of insolvency; removal, concealment, alteration or destruction of records (S. 40 includes only national and Federal entities; H.R. 3200 adds State insurer or agency); transacting the business of insurance without the required license under terms of the Act; committing or aiding and abetting the acts or omissions specified in this section.

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

Adds “Federal” and makes other technical changes.

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

Adds Commissioner.

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

Adds terms referencing and incorporating the National Insurance Act of 2007, Commissioner, national insurer, national agency and federally licensed insurance producer. Commissioner shall prescribe regulations necessary to carry out this title.
[End of S. 40]

Sec. 1717. GAO study of insurance sector competitiveness [H.R. 3200 only].

Comptroller General shall conduct a study to analyze the overall competitiveness of the US insurance sector, to include: evaluation of the efficiency of the dual charter system for insurers established by this Act; and analysis of any efficiencies created for national insurers, including specifically speed to market, licensing and global competitiveness. Comptroller shall submit a report to House Financial Services and Senate Banking Committees within 3 years of enactment. Report shall contain recommendations to improve regulatory efficiencies for national insurers and enhance competitiveness among the insurance sector.