

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2600

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## AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Terrorism Risk Insur-  
5 ance Act of 2002”.

1 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) property and casualty insurance firms are  
4 important financial institutions, the products of  
5 which allow mutualization of risk and the efficient  
6 use of financial resources and enhance the ability of  
7 the economy to maintain stability, while responding  
8 to a variety of economic, political, environmental,  
9 and other risks with a minimum of disruption;

10 (2) the ability of businesses and individuals to  
11 obtain property and casualty insurance at reasonable  
12 and predictable prices, in order to spread the risk of  
13 both routine and catastrophic loss, is critical to eco-  
14 nomic growth, urban development, and the construc-  
15 tion and maintenance of public and private housing,  
16 as well as to the promotion of United States exports  
17 and foreign trade in an increasingly interconnected  
18 world;

19 (3) the ability of the insurance industry to  
20 cover the unprecedented financial risks presented by  
21 potential acts of terrorism in the United States can  
22 be a major factor in the recovery from terrorist at-  
23 tacks, while maintaining the stability of the econ-  
24 omy;

25 (4) widespread financial market uncertainties  
26 have arisen following the terrorist attacks of Sep-

1       tember 11, 2001, including the absence of informa-  
2       tion from which financial institutions can make sta-  
3       tistically valid estimates of the probability and cost  
4       of future terrorist events, and therefore the size,  
5       funding, and allocation of the risk of loss caused by  
6       such acts of terrorism;

7               (5) a decision by property and casualty insurers  
8       to deal with such uncertainties, either by termi-  
9       nating property and casualty coverage for losses  
10      arising from terrorist events, or by radically esca-  
11      lating premium coverage to compensate for risks of  
12      loss that are not readily predictable, could seriously  
13      hamper ongoing and planned construction, property  
14      acquisition, and other business projects, generate a  
15      dramatic increase in rents, and otherwise suppress  
16      economic activity; and

17              (6) the United States Government should pro-  
18      vide temporary financial compensation to insured  
19      parties, contributing to the stabilization of the  
20      United States economy in a time of national crisis,  
21      while the financial services industry develops the sys-  
22      tems, mechanisms, products, and programs nec-  
23      essary to create a viable financial services market for  
24      private terrorism risk insurance.

1 (b) PURPOSE.—The purpose of this Act is to estab-  
2 lish a temporary Federal program that provides for a  
3 transparent system of shared public and private com-  
4 pensation for insured losses resulting from acts of ter-  
5 rorism, in order to—

6 (1) protect consumers by addressing market  
7 disruptions and ensure the continued widespread  
8 availability and affordability of property and cas-  
9 ualty insurance for terrorism risk; and

10 (2) allow for a transitional period for the pri-  
11 vate markets to stabilize, resume pricing of such in-  
12 surance, and build capacity to absorb any future  
13 losses, while preserving State insurance regulation  
14 and consumer protections.

15 **SEC. 3. DEFINITIONS.**

16 In this Act, the following definitions shall apply:

17 (1) ACT OF TERRORISM.—

18 (A) CERTIFICATION.—The term “act of  
19 terrorism” means any act that is certified by  
20 the Secretary, in concurrence with the Sec-  
21 retary of State, and the Attorney General of the  
22 United States—

23 (i) to be a violent act or an act that  
24 is dangerous to—

25 (I) human life;

1 (II) property; or

2 (III) infrastructure;

3 (ii) to have resulted in damage within  
4 the United States, or outside the United  
5 States in the case of an air carrier or ves-  
6 sel described in paragraph (3)(A)(ii); and

7 (iii) to have been committed by an in-  
8 dividual or individuals acting on behalf of  
9 any foreign person or foreign interest, as  
10 part of an effort to coerce the civilian pop-  
11 ulation of the United States or to influence  
12 the policy or affect the conduct of the  
13 United States Government by coercion.

14 (B) LIMITATION.—No act or event shall be  
15 certified by the Secretary as an act of terrorism  
16 if—

17 (i) the act or event is committed in  
18 the course of a war declared by the Con-  
19 gress; or

20 (ii) losses resulting from the act or  
21 event, in the aggregate, do not exceed  
22 \$5,000,000.

23 (C) DETERMINATIONS FINAL.—Any certifi-  
24 cation of, or determination not to certify, an act  
25 or event as an act of terrorism under this para-

1 graph shall be final, and shall not be subject to  
2 judicial review.

3 (2) BUSINESS INTERRUPTION COVERAGE.—The  
4 term “business interruption coverage”—

5 (A) means coverage of losses for temporary  
6 relocation expenses and ongoing expenses, in-  
7 cluding ordinary wages, where—

8 (i) there is physical damage to the  
9 business premises of such magnitude that  
10 the business cannot open for business;

11 (ii) there is physical damage to other  
12 property that totally prevents customers or  
13 employees from gaining access to the busi-  
14 ness premises; or

15 (iii) the Federal, State, or local gov-  
16 ernment shuts down an area due to phys-  
17 ical or environmental damage, thereby pre-  
18 venting customers or employees from gain-  
19 ing access to the business premises; and

20 (B) does not include lost profits, other  
21 than in the case of a small business concern (as  
22 defined in section 3 of the Small Business Act  
23 (15 U.S.C. 632) and applicable regulations  
24 thereunder) in any case described in clause (i),  
25 (ii), or (iii) of subparagraph (A).

1 (3) INSURED LOSS.—The term “insured loss”—

2 (A) means any loss resulting from an act  
3 of terrorism that is covered by primary property  
4 and casualty insurance, including business  
5 interruption coverage, issued by a participating  
6 insurance company, if such loss—

7 (i) occurs within the United States; or

8 (ii) occurs to an air carrier (as de-  
9 fined in section 40102 of title 49, United  
10 States Code) or to a United States flag  
11 vessel (or a vessel based principally in the  
12 United States, on which United States in-  
13 come tax is paid and whose insurance cov-  
14 erage is subject to regulation in the United  
15 States), regardless of where the loss oc-  
16 curs; and

17 (B) excludes coverage under any life or  
18 health insurance.

19 (4) MARKET SHARE.—

20 (A) IN GENERAL.—The “market share” of  
21 a participating insurance company shall be cal-  
22 culated using the total amount of direct written  
23 property and casualty insurance premiums for  
24 the participating insurance company during the  
25 2-year period preceding the year in which the

1 subject act of terrorism occurred (or during  
2 such other period for which adequate data are  
3 available, as determined by the Secretary), as a  
4 percentage of the aggregate of all such property  
5 and casualty insurance premiums industry-wide  
6 during that period.

7 (B) ADJUSTMENTS.—The Secretary may  
8 adjust the market share of a participating in-  
9 surance company under subparagraph (A), as  
10 necessary to reflect current market participa-  
11 tion of that participating insurance company.

12 (5) NAIC.—The term “NAIC” means the Na-  
13 tional Association of Insurance Commissioners.

14 (6) PARTICIPATING INSURANCE COMPANY.—  
15 The term “participating insurance company” means  
16 any insurance company, including any subsidiary or  
17 affiliate thereof—

18 (A) that—

19 (i) is licensed or admitted to engage  
20 in the business of providing primary insur-  
21 ance in any State, and was so licensed or  
22 admitted on September 11, 2001; or

23 (ii) is not licensed or admitted as de-  
24 scribed in clause (i), if it is an eligible sur-  
25 plus line carrier listed on the Quarterly



1 Listing of Alien Insurers of the NAIC, or  
2 any successor thereto;

3 (B) that receives direct premiums for any  
4 type of commercial property and casualty insur-  
5 ance coverage or that, not later than 21 days  
6 after the date of enactment of this Act, submits  
7 written notification to the Secretary of its in-  
8 tent to participate in the Program with regard  
9 to personal lines of property and casualty insur-  
10 ance; and

11 (C) that meets any other criteria that the  
12 Secretary may reasonably prescribe.

13 (7) PARTICIPATING INSURANCE COMPANY DE-  
14 DUCTIBLE.—The term “participating insurance com-  
15 pany deductible” means—

16 (A) a participating insurance company’s  
17 market share, multiplied by \$10,000,000,000,  
18 with respect to insured losses resulting from an  
19 act of terrorism occurring during the 1-year pe-  
20 riod beginning on the date of enactment of this  
21 Act; and

22 (B) a participating insurance company’s  
23 market share, multiplied by \$15,000,000,000,  
24 with respect to insured losses resulting from an  
25 act of terrorism occurring during the 1-year pe-

1           riod beginning on the day after the date of ex-  
2           piration of the period described in subpara-  
3           graph (A), if the Program is extended in ac-  
4           cordance with section 6.

5           (8) PERSON.—The term “person” means any  
6           individual, business or nonprofit entity (including  
7           those organized in the form of a partnership, limited  
8           liability company, corporation, or association), trust  
9           or estate, or a State or political subdivision of a  
10          State or other governmental unit.

11          (9) PROGRAM.—The term “Program” means  
12          the Terrorism Insured Loss Shared Compensation  
13          Program established by this Act.

14          (10) PROPERTY AND CASUALTY INSURANCE.—  
15          The term “property and casualty insurance”—

16                (A) means commercial lines of property  
17                and casualty insurance, including workers’ com-  
18                pensation insurance;

19                (B) includes personal lines of property and  
20                casualty insurance, if a notification is made in  
21                accordance with paragraph (6)(B); and

22                (C) does not include—

23                    (i) Federal crop insurance issued or  
24                    reinsured under the Federal Crop Insur-  
25                    ance Act (7 U.S.C. 1501 et seq.);

1 (ii) private mortgage insurance, as  
2 that term is defined in section 2 of the  
3 Homeowners Protection Act of 1998 (12  
4 U.S.C. 4901); or

5 (iii) financial guaranty insurance.

6 (11) SECRETARY.—The term “Secretary”  
7 means the Secretary of the Treasury.

8 (12) STATE.—The term “State” means any  
9 State of the United States, the District of Columbia,  
10 the Commonwealth of Puerto Rico, the Common-  
11 wealth of the Northern Mariana Islands, American  
12 Samoa, Guam, and each of the United States Virgin  
13 Islands.

14 (13) UNITED STATES.—The term “United  
15 States” means the several States, and includes the  
16 territorial sea of the United States.

17 (14) RULE OF CONSTRUCTION FOR DATES.—  
18 With respect to any reference to a date in this Act,  
19 such day shall be construed—

20 (A) to begin at 12:01 a.m. on that date;

21 and

22 (B) to end at midnight on that date.

23 **SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSA-**  
24 **TION PROGRAM.**

25 (a) ESTABLISHMENT OF PROGRAM.—

1           (1) IN GENERAL.—There is established in the  
2 Department of the Treasury the Terrorism Insured  
3 Loss Shared Compensation Program.

4           (2) AUTHORITY OF THE SECRETARY.—Notwith-  
5 standing any other provision of State or Federal  
6 law, the Secretary shall administer the Program,  
7 and shall pay the Federal share of compensation for  
8 insured losses in accordance with subsection (e).

9           (b) CONDITIONS FOR FEDERAL PAYMENTS.—No  
10 payment may be made by the Secretary under subsection  
11 (e), unless—

12           (1) a person that suffers an insured loss, or a  
13 person acting on behalf of that person, files a claim  
14 with a participating insurance company;

15           (2) the participating insurance company pro-  
16 vides clear and conspicuous disclosure to the policy-  
17 holder of the premium charged for insured losses  
18 covered by the Program and the Federal share of  
19 compensation for insured losses under the  
20 Program—

21           (A) in the case of any policy covering an  
22 insured loss that is issued on or after the date  
23 of enactment of this Act, on a separate line  
24 item in the policy, at the time of offer, pur-  
25 chase, and renewal of the policy; and

1 (B) in the case of any policy that is issued  
2 before the date of enactment of this Act, as a  
3 line item described in subparagraph (A), not  
4 later than 90 days after that date of enactment;

5 (3) the participating insurance company proc-  
6 esses the claim for the insured loss in accordance  
7 with its standard business practices, and any reason-  
8 able procedures that the Secretary may prescribe;  
9 and

10 (4) the participating insurance company sub-  
11 mits to the Secretary, in accordance with such rea-  
12 sonable procedures as the Secretary may establish—

13 (A) a claim for payment of the Federal  
14 share of compensation for insured losses under  
15 the Program;

16 (B) written verification and certification—

17 (i) of the underlying claim; and

18 (ii) of all payments made for insured  
19 losses; and

20 (C) certification of its compliance with the  
21 provisions of this subsection.

22 (c) MANDATORY PARTICIPATION; MANDATORY  
23 AVAILABILITY.—Each insurance company that meets the  
24 definition of a participating insurance company under sec-  
25 tion 3—

1 (1) shall participate in the Program;

2 (2) shall make available in all of its property  
3 and casualty insurance policies (in all of its partici-  
4 pating lines), coverage for insured losses; and

5 (3) shall make available property and casualty  
6 insurance coverage for insured losses that does not  
7 differ materially from the terms, amounts, and other  
8 coverage limitations applicable to losses arising from  
9 events other than acts of terrorism.

10 (d) PARTICIPATION BY SELF INSURED ENTITIES.—

11 (1) DETERMINATION BY THE SECRETARY.—

12 The Secretary may, in consultation with the NAIC,  
13 establish procedures to allow participation in the  
14 Program by municipalities and other governmental  
15 or quasi-governmental entities (and by any other en-  
16 tity, as the Secretary deems appropriate) operating  
17 through self insurance arrangements that were in  
18 existence on September 11, 2001, but only if the  
19 Secretary makes a determination with regard to par-  
20 ticipation by any such entity before the occurrence  
21 of an act of terrorism in which the entity incurs an  
22 insured loss.

23 (2) PARTICIPATION.—If the Secretary makes a  
24 determination to allow an entity described in para-  
25 graph (1) to participate in the Program, all reports,

1 conditions, requirements, and standards established  
2 by this Act for participating insurance companies  
3 shall apply to any such entity, as determined to be  
4 appropriate by the Secretary.

5 (e) SHARED INSURANCE LOSS COVERAGE.—

6 (1) FEDERAL SHARE.—

7 (A) IN GENERAL.—Subject to the cap on  
8 liability under paragraph (2) and the limitation  
9 under paragraph (6), the Federal share of com-  
10 pensation under the Program to be paid by the  
11 Secretary for insured losses resulting from an  
12 act of terrorism occurring during the 1-year pe-  
13 riod beginning on the date of enactment of this  
14 Act—

15 (i) shall be equal to 80 percent of that  
16 portion of the amount of aggregate insured  
17 losses that—

18 (I) exceeds the participating in-  
19 surance company deductibles required  
20 to be paid for those insured losses;  
21 and

22 (II) does not exceed  
23 \$10,000,000,000; and

1                   (ii) shall be equal to 90 percent of  
2                   that portion of the amount of aggregate in-  
3                   sured losses that—

4                               (I) exceeds the participating in-  
5                               surance company deductibles required  
6                               to be paid for those insured losses;  
7                               and

8                               (II) exceeds \$10,000,000,000.

9                   (B) EXTENSION PERIOD.—If the Program  
10                   is extended in accordance with section 6, the  
11                   Federal share of compensation under the Pro-  
12                   gram to be paid by the Secretary for insured  
13                   losses resulting from an act of terrorism occur-  
14                   ring during the 1-year period beginning on the  
15                   day after the date of expiration of the period  
16                   described in subparagraph (A), shall be cal-  
17                   culated in accordance with clauses (i) and (ii)  
18                   of subparagraph (A), subject to the cap on li-  
19                   ability in paragraph (2) and the limitation  
20                   under paragraph (6).

21                   (C) PRO RATA SHARE.—If, during the pe-  
22                   riod described in subparagraph (A) (or during  
23                   the period described in subparagraph (B), if the  
24                   Program is extended in accordance with section  
25                   6), the aggregate insured losses for that period



1 exceed \$10,000,000,000, the Secretary shall de-  
2 termine the pro rata share for each partici-  
3 pating insurance company of the Federal share  
4 of compensation for insured losses calculated  
5 under subparagraph (A).

6 (D) PROHIBITION ON DUPLICATIVE COM-  
7 PENSATION.—The Federal share of compensa-  
8 tion for insured losses under the Program shall  
9 be reduced by the amount of compensation pro-  
10 vided by the Federal Government for those in-  
11 sured losses under any other Federal insurance  
12 or reinsurance program.

13 (2) CAP ON ANNUAL LIABILITY.—Notwith-  
14 standing paragraph (1), or any other provision of  
15 Federal or State law, if the aggregate insured losses  
16 exceed \$100,000,000,000 during any period referred  
17 to in subparagraph (A) or (B) of paragraph (1)—

18 (A) the Secretary shall not make any pay-  
19 ment under this Act for any portion of the  
20 amount of such losses that exceeds  
21 \$100,000,000,000; and

22 (B) participating insurance companies  
23 shall not be liable for the payment of any por-  
24 tion of the amount that exceeds  
25 \$100,000,000,000.

1           (3) NOTICE TO CONGRESS.—The Secretary  
2 shall notify the Congress if estimated or actual ag-  
3 gregate insured losses exceed \$100,000,000,000 in  
4 any period described in paragraph (1), and the Con-  
5 gress shall determine the procedures for and the  
6 source of any such excess payments.

7           (4) FINAL NETTING.—The Secretary shall have  
8 sole discretion to determine the time at which claims  
9 relating to any insured loss or act of terrorism shall  
10 become final.

11           (5) DETERMINATIONS FINAL.—Any determina-  
12 tion of the Secretary under this subsection shall be  
13 final, and shall not be subject to judicial review.

14           (6) IN-FORCE REINSURANCE AGREEMENTS.—  
15 For policies covered by reinsurance contracts in  
16 force on the date of enactment of this Act, until the  
17 in-force reinsurance contract is renewed, amended,  
18 or has reached its 1-year anniversary date, any Fed-  
19 eral share of compensation due to a participating in-  
20 surance company for insured losses during the effec-  
21 tive period of the Program shall be shared—

22           (A) with all reinsurance companies to  
23 which the participating insurance company has  
24 ceded some share of the insured loss pursuant  
25 to an in-force reinsurance contract; and

1 (B) in a manner that distributes the Fed-  
2 eral share of compensation for insured losses  
3 between the participating insurance company  
4 and the reinsurance company or companies in  
5 the same proportion as the insured losses would  
6 have been distributed if the Program did not  
7 exist.

8 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**  
9 **CLAIMS.**

10 (a) GENERAL AUTHORITY.—The Secretary shall have  
11 the powers and authorities necessary to carry out the Pro-  
12 gram, including authority—

13 (1) to investigate and audit all claims under the  
14 Program; and

15 (2) to prescribe regulations and procedures to  
16 implement the Program.

17 (b) INTERIM RULES AND PROCEDURES.—The Sec-  
18 retary shall issue interim final rules or procedures speci-  
19 fying the manner in which—

20 (1) participating insurance companies may file,  
21 verify, and certify claims under the Program;

22 (2) the Secretary shall publish or otherwise  
23 publicly announce the applicable percentage of in-  
24 sured losses that is the responsibility of participating  
25 insurance companies and the percentage that is the

1 responsibility of the Federal Government under the  
2 Program;

3 (3) the Federal share of compensation for in-  
4 sured losses will be paid under the Program, includ-  
5 ing payments based on estimates of or actual aggre-  
6 gate insured losses;

7 (4) the Secretary may, at any time, seek repay-  
8 ment from or reimburse any participating insurance  
9 company, based on estimates of insured losses under  
10 the Program, to effectuate the insured loss sharing  
11 provisions contained in section 4;

12 (5) each participating insurance company that  
13 incurs insured losses shall pay its pro rata share of  
14 insured losses, in accordance with section 4; and

15 (6) the Secretary will determine any final net-  
16 ting of payments for actual insured losses under the  
17 Program, including payments owed to the Federal  
18 Government from any participating insurance com-  
19 pany and any Federal share of compensation for in-  
20 sured losses owed to any participating insurance  
21 company, to effectuate the insured loss sharing pro-  
22 visions contained in section 4.

23 (c) SUBROGATION RIGHTS.—The United States shall  
24 have the right of subrogation with respect to any payment  
25 made by the United States under the Program.

1 (d) CONTRACTS FOR SERVICES.—The Secretary may  
2 employ persons or contract for services as may be nec-  
3 essary to implement the Program.

4 (e) CIVIL PENALTIES.—The Secretary may assess  
5 civil money penalties for violations of this Act or any rule,  
6 regulation, or order issued by the Secretary under this Act  
7 relating to the submission of false or misleading informa-  
8 tion for purposes of the Program, or any failure to repay  
9 any amount required to be reimbursed under regulations  
10 or procedures described in section 5(b). The authority  
11 granted under this subsection shall continue during any  
12 period in which the Secretary’s authority under section  
13 6(d) is in effect.

14 **SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EX-**  
15 **TENSION.**

16 (a) TERMINATION OF PROGRAM.—

17 (1) IN GENERAL.—The Program shall termi-  
18 nate 1 year after the date of enactment of this Act,  
19 unless the Secretary—

20 (A) determines, after considering the re-  
21 port and finding required by this section, that  
22 the Program should be extended for one addi-  
23 tional year, beginning on the day after the date  
24 of expiration of the initial 1-year period of the  
25 Program; and

1 (B) promptly notifies the Congress of such  
2 determination and the reasons therefor.

3 (2) DETERMINATION FINAL.—The determina-  
4 tion of the Secretary under paragraph (1) shall be  
5 final, and shall not be subject to judicial review.

6 (3) TERMINATION AFTER EXTENSION.—If the  
7 Program is extended under paragraph (1), the Pro-  
8 gram shall terminate 1 year after the date of com-  
9 mencement of such extension period.

10 (b) REPORT TO CONGRESS.—Not later than 9  
11 months after the date of enactment of this Act, the Sec-  
12 retary shall submit a report to Congress—

13 (1) regarding—

14 (A) the availability of insurance coverage  
15 for acts of terrorism;

16 (B) the affordability of such coverage, in-  
17 cluding the effect of such coverage on pre-  
18 miums; and

19 (C) the capacity of the insurance industry  
20 to absorb future losses resulting from acts of  
21 terrorism, taking into account the profitability  
22 of the insurance industry; and

23 (2) that considers—

24 (A) the impact of the Program on each of  
25 the factors described in paragraph (1); and

1           (B) the probable impact on such factors  
2           and on the United States economy if the Pro-  
3           gram terminates 1 year after the date of enact-  
4           ment of this Act.

5           (c) FINDING REQUIRED.—A determination under  
6           subsection (a) to extend the Program shall be based on  
7           a finding by the Secretary that—

8                   (1) widespread market uncertainties con-  
9                   tinue to disrupt the ability of insurance compa-  
10                   nies to price insurance coverage for losses re-  
11                   sulting from acts of terrorism, thereby resulting  
12                   in the continuing unavailability of affordable in-  
13                   surance for consumers; and

14                   (2) extending the Program for an addi-  
15                   tional year would likely encourage economic sta-  
16                   bilization and facilitate a transition to a viable  
17                   market for private terrorism risk insurance.

18           (d) CONTINUING AUTHORITY TO PAY OR ADJUST  
19           COMPENSATION.—Following the termination of the Pro-  
20           gram under subsection (a), the Secretary may take such  
21           actions as may be necessary to ensure payment, reim-  
22           bursement, or adjustment of compensation for insured  
23           losses arising out of any act of terrorism occurring during  
24           the period in which the Program was in effect under this

1 Act, in accordance with the provisions of section 4 and  
2 regulations promulgated thereunder.

3 (e) REPEAL; SAVINGS CLAUSE.—This Act is repealed  
4 at midnight on the final termination date of the Program  
5 under subsection (a), except that such repeal shall not be  
6 construed—

7 (1) to prevent the Secretary from taking, or  
8 causing to be taken, such actions under subsection  
9 (d) of this section and sections 4(e)(4), 4(e)(5),  
10 5(a)(1), 5(c), 5(d), and 5(e) (as in effect on the day  
11 before the date of such repeal), and applicable regu-  
12 lations promulgated thereunder, during any period  
13 in which the authority of the Secretary under sub-  
14 section (d) of this section is in effect; or

15 (2) to prevent the availability of funding under  
16 section 9(b) during any period in which the author-  
17 ity of the Secretary under subsection (d) of this sec-  
18 tion is in effect.

19 (f) SENSE OF THE CONGRESS.—It is the sense of the  
20 Congress that the Secretary should make any determina-  
21 tion under subsection (a) in sufficient time to enable par-  
22 ticipating insurance companies to include coverage for acts  
23 of terrorism in their policies for the second year of the  
24 Program, if the Program is extended in accordance with  
25 this section.



1 (g) STUDY AND REPORT ON SCOPE OF THE PRO-  
2 GRAM.—

3 (1) STUDY.—The Secretary, after consultation  
4 with the NAIC, representatives of the insurance in-  
5 dustry, and other experts in the insurance field,  
6 shall conduct a study of the potential effects of acts  
7 of terrorism on the availability of life insurance and  
8 other lines of insurance coverage.

9 (2) REPORT.—Not later than 9 months after  
10 the date of enactment of this Act, the Secretary  
11 shall submit a report to the Congress on the results  
12 of the study conducted under paragraph (1).

13 (h) REPORTS REGARDING TERRORISM RISK INSUR-  
14 ANCE PREMIUMS.—

15 (1) REPORT TO THE NAIC.—Beginning 6  
16 months after the date of enactment of this Act, and  
17 every 6 months thereafter, each participating insur-  
18 ance company shall submit a report to the NAIC  
19 that states the premium rates charged by that par-  
20 ticipating insurance company during the preceding  
21 6-month period for insured losses covered by the  
22 Program, and includes an explanation of and jus-  
23 tification for those rates.

24 (2) REPORTS FORWARDED.—The NAIC shall  
25 promptly forward copies of each report submitted

1 under paragraph (1) to the Secretary, the Secretary  
2 of Commerce, the Chairman of the Federal Trade  
3 Commission, and the Comptroller General of the  
4 United States.

5 (3) AGENCY REPORTS TO CONGRESS.—

6 (A) IN GENERAL.—The Secretary, the Sec-  
7 retary of Commerce, and the Chairman of the  
8 Federal Trade Commission shall submit joint  
9 reports to Congress and the Comptroller Gen-  
10 eral of the United States summarizing and eval-  
11 uating the reports forwarded under paragraph  
12 (2).

13 (B) TIMING.—The reports required under  
14 subparagraph (A) shall be submitted—

15 (i) 9 months after the date of enact-  
16 ment of this Act; and

17 (ii) 12 months after the date of sub-  
18 mission of the first report under clause (i).

19 (4) GAO EVALUATION AND REPORT.—

20 (A) EVALUATION.—The Comptroller Gen-  
21 eral of the United States shall evaluate each re-  
22 port submitted under paragraph (3), and upon  
23 request, the Secretary, the Secretary of Com-  
24 merce, the Chairman of the Federal Trade  
25 Commission, and the NAIC shall provide to the

1 Comptroller all documents, records, and any  
2 other information that the Comptroller deems  
3 necessary to carry out such evaluation.

4 (B) REPORT TO CONGRESS.—Not later  
5 than 90 days after receipt of each report sub-  
6 mitted under paragraph (3), the Comptroller  
7 General of the United States shall submit to  
8 Congress a report of the evaluation required by  
9 subparagraph (A).

10 **SEC. 7. PRESERVATION OF STATE LAW.**

11 Nothing in this Act shall affect the jurisdiction or  
12 regulatory authority of the insurance commissioner (or  
13 any agency or office performing like functions) of any  
14 State over any participating insurance company or other  
15 person—

16 (1) except as specifically provided in this Act;

17 and

18 (2) except that—

19 (A) the definition of the term “act of ter-  
20 rorism” in section 3 shall be the exclusive defi-  
21 nition of that term for purposes of compensa-  
22 tion for insured losses under this Act, and shall  
23 preempt any provision of State law that is in-  
24 consistent with that definition, to the extent  
25 that such provision of law would otherwise

1 apply to any type of insurance covered by this  
2 Act;

3 (B) during the period beginning on the  
4 date of enactment of this Act and ending at  
5 midnight on December 31, 2002, rates for ter-  
6 rorism risk insurance covered by this Act and  
7 filed with any State shall not be subject to prior  
8 approval or a waiting period, under any law of  
9 a State that would otherwise be applicable, ex-  
10 cept that nothing in this Act affects the ability  
11 of any State to invalidate a rate as excessive,  
12 inadequate, or unfairly discriminatory; and

13 (C) during the period beginning on the  
14 date of enactment of this Act and for so long  
15 as the Program is in effect, as provided in sec-  
16 tion 6 (including any period during which the  
17 authority of the Secretary under section 6(d) is  
18 in effect), books and records of any partici-  
19 pating insurance company that are relevant to  
20 the Program shall be provided, or caused to be  
21 provided, to the Secretary or the designee of the  
22 Secretary, upon request by the Secretary or  
23 such designee, notwithstanding any provision of  
24 the laws of any State prohibiting or limiting  
25 such access.

1 **SEC. 8. SENSE OF THE CONGRESS REGARDING CAPACITY**  
2 **BUILDING.**

3 It is the sense of the Congress that the insurance in-  
4 dustry should build capacity and aggregate risk to provide  
5 affordable property and casualty insurance coverage for  
6 terrorism risk.

7 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS; PAYMENT**  
8 **AUTHORITY.**

9 (a) ADMINISTRATIVE EXPENSES.—There are author-  
10 ized to be appropriated to the Secretary, out of funds in  
11 the Treasury not otherwise appropriated, such sums as  
12 may be necessary for administrative expenses of the Pro-  
13 gram, to remain available until expended.

14 (b) PAYMENT AUTHORITY.—This Act constitutes  
15 payment authority in advance of appropriation Acts, and  
16 represents the obligation of the Federal Government to  
17 provide for the Federal share of compensation for insured  
18 losses under the Program.

19 **SEC. 10. PROCEDURES FOR CIVIL ACTIONS.**

20 (a) FEDERAL CAUSE OF ACTION.—

21 (1) IN GENERAL.—There shall exist a Federal  
22 cause of action for property damage, personal injury,  
23 or death arising out of or resulting from an act of  
24 terrorism, which shall be the exclusive cause of ac-  
25 tion and remedy for claims for such property dam-

1 age, personal injury, or death, except as provided in  
2 subsection (d).

3 (2) PREEMPTION OF STATE ACTIONS.—All  
4 State causes of action of any kind for property dam-  
5 age, personal injury, or death arising out of or re-  
6 sulting from an act of terrorism that are otherwise  
7 available under State law, are hereby preempted, ex-  
8 cept as provided in subsection (d).

9 (b) GOVERNING LAW.—The substantive law for deci-  
10 sion in an action described in subsection (a)(1) shall be  
11 derived from the law, including applicable choice of law  
12 principles, of the State in which the act of terrorism giving  
13 rise to the action occurred, except to the extent that—

14 (1) the law, including choice of law principles,  
15 of another State is determined to be applicable to  
16 the action by the district court hearing the action;  
17 or

18 (2) otherwise applicable State law (including  
19 that determined pursuant to paragraph (1), is incon-  
20 sistent with or otherwise preempted by Federal law.

21 (c) PUNITIVE DAMAGES.—Any amounts awarded in  
22 a civil action described in subsection (a)(1) that are attrib-  
23 utable to punitive damages shall not count as insured  
24 losses for purposes of this Act.

1 (d) CLAIMS AGAINST TERRORISTS.—Nothing in this  
2 section shall in any way be construed to limit the ability  
3 of any plaintiff to seek any form of recovery from any per-  
4 son, government, or other entity that was a participant  
5 in, or aider and abettor of, any act of terrorism.

6 (e) EFFECTIVE PERIOD.—This section shall apply  
7 only to actions described in subsection (a)(1) arising out  
8 of or resulting from acts of terrorism that occur during  
9 the effective period of the Program, including, if applica-  
10 ble, any extension period provided for under section 6.

11 **SEC. 11. SATISFACTION OF JUDGMENTS FROM FROZEN AS-**  
12 **SETS OF TERRORISTS, TERRORIST ORGANI-**  
13 **ZATIONS, AND STATE SPONSORS OF TER-**  
14 **RORISM.**

15 (a) IN GENERAL.—Notwithstanding any other provi-  
16 sion of law, and except as provided in subsection (b), in  
17 every case in which a person has obtained a judgment  
18 against a terrorist party on a claim based upon an act  
19 of terrorism or for which a terrorist party is not immune  
20 under section 1605(a)(7) of title 28, United States Code,  
21 the blocked assets of that terrorist party (including the  
22 blocked assets of any agency or instrumentality of that  
23 terrorist party) shall be subject to execution or attachment  
24 in aid of execution in order to satisfy such judgment to

1 the extent of any compensatory damages for which such  
2 terrorist party has been adjudged liable.

3 (b) PRESIDENTIAL WAIVER.—

4 (1) IN GENERAL.—Subject to paragraph (2),  
5 upon determining on an asset-by-asset basis that a  
6 waiver is necessary in the national security interest,  
7 the President may waive the requirements of sub-  
8 section (a) in connection with (and prior to the en-  
9 forcement of) any judicial order directing attach-  
10 ment in aid of execution or execution against any  
11 property subject to the Vienna Convention on Diplo-  
12 matic Relations or the Vienna Convention on Con-  
13 sular Relations.

14 (2) EXCEPTION.—A waiver under this sub-  
15 section shall not apply to—

16 (A) property subject to the Vienna Conven-  
17 tion on Diplomatic Relations or the Vienna  
18 Convention on Consular Relations that has been  
19 used by the United States for any nondiplo-  
20 matic purpose (including use as rental prop-  
21 erty), or the proceeds of such use; or

22 (B) the proceeds of any sale or transfer for  
23 value to a third party of any asset subject to  
24 the Vienna Convention on Diplomatic Relations



1           or the Vienna Convention on Consular Rela-  
2           tions.

3           (c) SPECIAL RULE FOR CASES AGAINST IRAN.—Sec-  
4 tion 2002 of the Victims of Trafficking and Violence Pro-  
5 tection Act of 2000 (Public Law 106–386; 114 Stat.  
6 1542) is amended—

7           (1) in subsection (a)(2)(A)(ii), by inserting  
8           after “July 27, 2000” the following: “or before Oc-  
9           tober 28, 2000,”;

10          (2) in subsection (b)(2)(B), by inserting after  
11          “the date of enactment of this Act” the following:  
12          “(less amounts therein as to which the United  
13          States has an interest in subrogation pursuant to  
14          subsection (c) arising prior to the date of entry of  
15          the judgment or judgments to be satisfied in whole  
16          or in part hereunder).”;

17          (3) by redesignating subsections (d), (e), and  
18          (f) as subsections (e), (f), and (g), respectively; and

19          (4) by inserting after subsection (c) the fol-  
20          lowing new subsection (d):

21          “(d) DISTRIBUTION OF FOREIGN MILITARY SALES  
22 FUNDS INADEQUATE TO SATISFY FULL AMOUNT OF  
23 COMPENSATORY AWARDS AGAINST IRAN.—

24                 “(1)(A) In the event that the Secretary deter-  
25                 mines that the amounts available to be paid under

1 subsection (b)(2) are inadequate to pay the entire  
2 amount of compensatory damages awarded in judg-  
3 ments issued as of the date of the enactment of this  
4 subsection in cases identified in subsection  
5 (a)(2)(A), the Secretary shall, not later than 60 days  
6 after such date, make payment from the account  
7 specified in subsection (b)(2) to each party to which  
8 such judgment has been issued a share of the  
9 amounts in that account which are not subject to  
10 subrogation to the United States under this Act.

11 “(B) The amount so paid to each such person  
12 shall be calculated by the proportion that the  
13 amount of compensatory damages awarded in a  
14 judgment issued to that particular person bears to  
15 the total amount of all compensatory damages  
16 awarded to all persons to whom judgments have  
17 been issued in cases identified in subsection  
18 (a)(2)(A) as of the date referred to in subparagraph  
19 (A).

20 “(2) Nothing herein shall bar, or require delay  
21 in, enforcement of any judgment to which this sub-  
22 section applies under any procedure or against as-  
23 sets otherwise available under this section or under  
24 any other provision of law.

1           “(3) Any person receiving less than the full  
2 amount of compensatory damages awarded to that  
3 party in judgments to which this subsection applies  
4 shall not be required to make the election set forth  
5 in subsection (a)(2)(C) in order to qualify for pay-  
6 ment hereunder.”.

7 (d) DEFINITIONS.—In this section:

8           (1) The term “terrorist party” means a ter-  
9 rorist, a terrorist organization, or a foreign state  
10 designated as a state sponsor of terrorism under sec-  
11 tion 6(j) of the Export Administration Act of 1979  
12 (50 U.S.C. App. 2405(j)) or section 620A of the  
13 Foreign Assistance Act of 1961 (22 U.S.C. 2371).

14           (2) The term “blocked asset” means any asset  
15 seized or frozen by the United States in accordance  
16 with law, or otherwise held by the United States  
17 without claim of ownership by the United States.

18           (3) The term “property subject to the Vienna  
19 Convention on Diplomatic Relations or the Vienna  
20 Convention on Consular Relations” and the term  
21 “asset subject to the Vienna Convention on Diplo-  
22 matic Relations or the Vienna Convention on Con-  
23 sular Relations” mean any property or asset, respec-  
24 tively, the attachment in aid of execution or execu-  
25 tion of which would result in a violation of an obliga-

1 tion of the United States under the Vienna Conven-  
2 tion on Diplomatic Relations or the Vienna Conven-  
3 tion on Consular Relations, as the case may be.

Passed the Senate June 18, 2002.

Attest:

*Secretary.*

107TH CONGRESS  
2D SESSION

**S. 2600**

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**AN ACT**

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