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AMERICAN INSURANCE ASSOCIATION

Comparison of H.R. 3210 and S. 2600 With Preferred Conference Resolution

	<p align="center">H.R. 3210 (Passed by House of Representatives 11/29/01)</p>	<p align="center">S. 2600 (Passed by Senate 6/18/02)</p>	<p align="center">Preferred Conference Resolution</p>
<p>PER COMPANY RETENTION</p>	<p>Where less than \$1 billion of industry losses, 10% of net commercial premiums. §6(b)(2). See also §5(a)(2).</p>	<p>Based on each company's market share (direct written premiums for prior 2 years) times \$10 billion in the first year and market share times \$15 billion in the second year if the program is extended. Secretary may adjust market share to reflect current market participation. §3(7)</p>	<p>Per company retention should be based on "net," not "direct," written property and casualty insurance premiums during calendar year 2000 and 2001. The Secretary should have adjustment authority to assure equity.</p> <p>Define "net" premium as the premium amount written by a participating insurance company for property and casualty insurance less amount paid for reinsurance and define "primary property and casualty insurance" to include excess insurance and not include reinsurance.</p> <p>Clarify that per-company retention (or deductible) is an annual deductible, not a per event deductible (see definition of "Act of Terrorism," below).</p> <p>If the Secretary extends the Act to self-insured entities (see types of insurers included, below), authorize the Secretary to adjust market share to assure equity among all participating insurance companies, including adjustments to ensure that the participating insurance company has not established or created an affiliate for purpose of reducing its deductible; authorize Secretary to establish deductibles for such entities equivalent to the deductibles of participating insurance companies.</p>

	H.R. 3210 (Passed by House of Representatives 11/29/01)	S. 2600 (Passed by Senate 6/18/02)	Preferred Conference Resolution
INDUSTRY AGGREGATE RETENTION	None	None	No industry aggregate retention.
FINANCIAL ASSISTANCE	<p>Event (or events) must reach \$100 million for it to be a covered terrorist event. §5(a)(2) [for individual insurer trigger]</p> <p>Financial assistance available once industry trigger of \$1 billion is met. §5(a)(1). Financial assistance is available for 90% of losses back to first dollar of loss, less \$5 million for each insurer. §6(b)(1) [see also §6(b)(2) for individual insurer assistance below industry trigger]. Financial assistance is repaid through assessments on all commercial insurers up to \$20 billion of total assistance. §7(b). For financial assistance between \$20 billion and the \$100 billion cap, repayment is through a surcharge on all commercial policies. §8(a)</p> <p>For financial assistance to individual insurers when the \$1 billion industry trigger has not been met, there must be industry-wide losses of at least \$100 million, and the individual insurer must also have its losses exceed 10% of its capital surplus and 10% of its net commercial P&C premiums for prior year. §5(a)(2).</p>	<p>Financial assistance triggered for individual company after individual company retention met. §4(e)(1)(A)</p> <p>An insurer with losses that exceed its retention will share additional losses with the government on a quota share basis. The quota share depends on the amount of aggregate industry losses. To the extent that aggregate industry losses are below \$10 billion, the quota share is 80/20 (government/insurer) for any company that meets its retention. When aggregate industry losses exceed \$10 billion, the quota share for the layer above \$10 billion in losses is 90/10, up to a cap of \$100 billion in losses for each period (from enactment through 2002 and through 2003 if the program is extended). §4(e)(1)</p> <p>Neither the government nor insurers are liable for payment of losses exceeding the \$100 billion cap for each period. §4(e)(2)</p> <p>Prohibits federal compensation to cover losses paid by other federal insurance and reinsurance</p>	<p>No loans.</p> <p>For purposes of meeting individual company retention, trigger should be on a rolling, 12 month basis, not on a calendar basis.</p> <p>Clarify meaning and scope of "Duplicative Compensation" provision.</p>

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	<p>Financial assistance above that trigger is for 90% of the insurer's losses above a retention of 10% of its premiums. §6(b)(2).</p> <p>The Treasury Department has plenary authority to vary assessments, based on a "national interest" determination [§9(c)], although the bill contemplates rapid-repayment for lower levels of the financial assistance, keyed to a \$5 billion number. §7(c)(2)</p> <p>Treasury has same plenary authority with regard to surcharges and, indeed, may determine not to impose any surcharge. §§8(a), 9(c).</p> <p>Cap on all financial assistance of \$100 billion. §6(c)(1).</p>	<p>programs, the "Duplicative Compensation" programs. §4(e)(1)(D)</p>	
INSURER ASSESSMENTS	<p>Up to \$20 billion of financial assistance. §§8(a)(1), 7(b)(1). There are two types of assessments. The first is called an "industry obligation assessment," which is designed for rapid-repayment and is keyed to a \$5 billion financial assistance number. §7(c). The second one is called a "financing assessment," which is an assessment above the "industry</p>	<p>None</p>	<p>No assessments.</p>

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	obligation," and is limited to 3% of an insurer's net commercial premiums. §7(d).		
POLICYHOLDER SURCHARGES	From \$20 billion to \$100 billion of financial assistance. §8(a). Treasury may waive surcharges, in whole or in part. §§8(a), 9(a). In any case, they are limited to 3% of commercial premium. §7(d)(3).	None	No surcharges.
GOVERNMENT / INSURER QUOTA SHARE	None	The quota share split depends on the amount of aggregate industry losses. If aggregate industry losses are below \$10 billion, the quota share is 80/20 for any company that meets its retention. When aggregate industry losses exceed \$10 billion, the quota share for the layer above \$10 billion in losses is 90/10, up to a cap of \$100 billion in losses for each period. §4(e)	S. 2600 approach Make certain the Treasury Secretary has true-up authority. Make certain that Treasury doesn't make individual claims payments.
IN-FORCE REINSURANCE AGREEMENTS	No provision [but see §10(b)].	For reinsurance contracts in force on the date of enactment, the federal share otherwise payable to a primary insurer must be shared with its reinsurer in the same proportion as its losses would be shared with the reinsurer if the federal program did not exist. §4(e)(6)	Language that works for both insurers and reinsurers.

	H.R. 3210 (Passed by House of Representatives 11/29/01)	S. 2600 (Passed by Senate 6/18/02)	Preferred Conference Resolution
LEGAL REFORM	<p>Creates federal cause of action for claims arising out of, relating to, or resulting from a terrorist event; eliminates punitive damages in such cases, except for terrorist defendants; for non-economic damages, "joint and several liability" is replaced with liability limited to proportional fault; and attorneys fees are capped at 20%. §15(a)</p>	<p>Creates federal cause of action for property damage, personal injury or death arising out of or resulting from an act of terrorism. §10(a)</p> <p>Any amounts awarded for punitive damages are not to be counted as insured losses under the bill. §10(c)</p>	<p>Defer to conferees.</p>

	H.R. 3210 (Passed by House of Representatives 11/29/01)	S. 2600 (Passed by Senate 6/18/02)	Preferred Conference Resolution
"ACT OF TERRORISM" DEFINITION	<p>Limited to international terrorism. Covers acts of war for workers' compensation. The definition is subject to revision, after consultation with the NAIC. §19(1).</p> <p>Requires that damage be within the US, except for US air carriers or flag vessels (or vessel based principally in the US where US income tax is paid and insurance coverage is subject to regulation in US), which are covered wherever geographically the damage occurs. §19(1)(b)(ii).</p>	<p>Limited to international terrorism. The bill covers any act of terrorism committed on behalf of any foreign agent or foreign interest where the damage from the event is in excess of \$5 million and the event was not committed in the course of war declared by the United States. The Secretary of the Treasury has discretion, not subject to judicial review, to certify that an act of terrorism has occurred.</p> <p>Requires that damage be within the US except for US air carriers or vessels. Note: definition of "US" does not include territories, but does include territorial seas. §3(1)</p>	<p>"Act of terrorism" should include "acts of war" for workers' compensation purposes.</p> <p>Expand to cover domestic acts of terrorism; if that is not possible, give Treasury the regulatory authority to expand the definition.</p> <p>"Act of Terrorism" should include "act or acts of terrorism" to clarify that the per-company deductible – if there is one – is an annual deductible, not a per event deductible.</p> <p>Should include US government installations abroad (e.g. embassies and military bases).</p> <p>Should include US territories.</p>
TERRORISM COVERAGE	<p>No requirement to offer or include terrorism coverage in all policies (authority left with the states). §12(a); see also §13(a)(2).</p>	<p>A participating insurance company must "make available" terrorism coverage in all its participating lines "that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism." §4(c)</p>	<p>Prefer House approach. If Senate approach is adopted, clarify the intent of the "make available" language.</p> <p>Exclude notice of premium requirement if no premium is charged.</p> <p>Provide for Treasury Secretary to establish transition procedures for policyholder notification requirements, in order to prevent unworkable notice requirements. Include actual notice language in the bill that insurers would use.</p>

	H.R. 3210 (Passed by House of Representatives 11/29/01)	S. 2600 (Passed by Senate 6/18/02)	Preferred Conference Resolution
TYPES OF INSURANCE INCLUDED	Commercial property and casualty lines. Excludes insurance for personal, family or household needs and professional liability. Also excludes life and health insurance. §§3, 19(4), 19(5).	Mandatory for commercial property and casualty lines; voluntary for personal property and casualty lines. Excludes crop insurance, private mortgage insurance, and financial guarantee insurance. §§3(10) and 4(c) The bill explicitly covers basic business interruption insurance, but only covers lost profits for those policyholders who fit within the Small Business Administration's definition of a small business. §3(2)	Define "financial guaranty insurance" by reference to appropriate New York State law. No limitation on business interruption coverage. Allow personal lines to be covered on a voluntary basis.
TYPES OF INSURERS INCLUDED (INCLUDING SELF-INSURERS)	Any "legal entity that provides commercial property and casualty insurance" for persons or property in the US, also including domestic airplanes and ships outside the US. Includes affiliates. §§19(4), (5). Authorizes Secretary to ensure that it covers, "as appropriate," offshore and non-admitted entities. §10(b). The Secretary may, in consultation with the NAIC, apply the Act to self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event, and if all of the provisions of the Act are applied uniformly to such entities. §10(a).	Includes those "licensed or admitted to engage in the business of providing primary insurance in any state" that were licensed or admitted on September 11, 2001. Appears to exclude state funds that are not licensed. Includes affiliates. §3(6) The Secretary may, in consultation with the NAIC, apply the Act to self-insurance arrangements (in existence on 9/11/01) by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event, and if all of the provisions of the Act are applied uniformly to such entities. §4(d)	Should include all state funds and other residual market mechanisms, irrespective of whether they are actually licensed insurers. Add language clarifying that excess insurance is included as a type of primary insurance. If the Secretary extends the Act to self-insured entities, authorize the Secretary to adjust market share to assure equity among all participating insurance companies, including adjustments to ensure that the participating insurance company has not established or created an affiliate for purpose of reducing its deductible; authorize Secretary to establish deductibles for such entities equivalent to the deductibles of participating insurance companies. For self-insured and other entities created after September 11, conditions listed above should apply if Secretary determines that participation furthers the purposes of the Act.

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PREEMPTION	<p>Insurers authorized to include amounts necessary to cover the assessments in their commercial rates on a going-forward basis. State rate laws are preempted to the extent necessary. §12(b).</p> <p>Prior state review of rates and endorsements for terrorism coverage in commercial policies preempted, but not subsequent review and action. §12(c)</p>	<p>Preempts state law on definition of “act of terrorism.” §7(2)(A)</p> <p>Through 2002, insurance rates for terrorism coverage would only be subject to state “file and use” laws, thus preventing the application of state prior approval laws and “waiting period” requirements. After this period, terrorism rates would be subject to state rating law. §7(2)(B)</p> <p>Insurers participating in the program would be required to make available to all their customers terrorism coverage that “does not differ materially from the terms, amounts and other coverage limitations” applicable to the rest of the policy. §4(c)</p>	<p>Clear preemption of the definition of “Act of Terrorism.”</p> <p>Rates and forms for terrorism risk insurance are not subject to prior review from the date of enactment to date of termination. State retains ability to invalidate rate as excessive, inadequate or unfairly discriminatory. Decision to invalidate rate subject to review by the Secretary.</p> <p>If Senate approach is adopted, clarify the mandatory “make available” language, in addition to exclusions included in the base policy (e.g., nuclear exclusions).</p>
STUDIES	<p>Authorizes four studies: (1) on the appropriateness of amending the Tax Code to authorize insurers to establish tax-free reserves for terrorism and other catastrophic events; (2) life insurance; (3) railroad and trucking insurance; and (4) a reinsurance pool system for future acts of terrorism. §§ 11, 16-18.</p>	<p>Three studies are required: (1) on the impact of terrorism on the availability of life insurance and other lines; and (2) on the availability and affordability of terrorism insurance, using the report to determine whether to extend the program for another year. §6(g)</p> <p>In addition, insurers must report terrorism risk insurance premium information to the NAIC, which will report to various federal agencies, which in turn will file a single report to Congress on insurance premiums. §6(h)</p>	<p>Study on the long-term insurability of terrorism risks and appropriate methods to address it.</p>

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DURATION	Expires January 1, 2003, but can be extended to January 1, 2005. §20.	The program expires one year from date of enactment, unless extended by the Secretary for another year. §6(a)(1)	At least 2 years, plus 1-year extension. Require Treasury Secretary to provide notification 90 days in advance of termination date whether program will be extended. The protection accorded by the legislation should fully cover any policy written during the program, provided that the policy did not expire more than one year after the sunset date of the law if extended. Other than this provision, nothing in the Act shall require that insurance be made available for policy periods occurring outside the duration of the Program.
SPECIFIC WORKERS' COMPENSATION ENHANCEMENTS	None. [§19(1)(B)(v)]	None.	Authorize establishment of a workers' compensation terrorism reinsurance pool. Add an "American Workers Protection Program" to have all workers' compensation claims arising from an act of war, or from nuclear, biological, or radiological attack reimbursable by the federal government. (Note that the House definition of "terrorism" includes acts of war for workers' compensation purposes. [§19(1)(B)(v)])
ENFORCEMENT AUTHORITY			Clarify that Secretary has exclusive authority to enforce provisions of the Act.