

# Terrorism Risk Insurance Legislation

## Summary of Key Provisions

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002. The legislation creates a federal terrorism reinsurance program to serve as a federal backstop for terrorism insurers in the case of future terrorist attacks.

The conference report on this legislation (H. Rpt. 107-779) was cleared for approval after House Republican leaders dropped their opposition to a compromise between Senate Democrats and the White House on language regarding punitive damages. Under the compromise agreement, civil suits arising from terrorist attacks would be heard in federal courts, while punitive damages would not count as insured losses subject to government aid. The remainder of the conference agreement closely resembles language previously agreed to in both the House (HR 3210) and Senate (S 2600) versions of the bill.

The following is a summary of the key provisions that comprise the Terrorism Risk Insurance Act:

- **Purpose:** Establishes Federal Terrorism Insurance Program to administer a system of shared public/private compensation for insured losses resulting from acts of terrorism in order to protect consumers and create transitional period for private insurance markets to stabilize.
- **Governance:** The Secretary of the Treasury will oversee Terrorism Insurance Program. The Secretary has authority to establish regulations and procedures to implement program.
- **Length of Program:** Three years, terminating on December 31, 2005, plus a “transition year” for balance of 2002.
- **Definition of Terrorism:** Term “act of terrorism” defined as -
  - Any act certified by the Secretary of Treasury, in concurrence with the Secretary of State and Attorney General, to be an act that is dangerous to human life, property, or infrastructure and to have resulted in damage within the U.S. (or outside the U.S. in the case of a U.S.-flagged vessel), or on the premises of a U.S. mission.
  - Act must have been committed by individual(s) acting on behalf of a foreign person or foreign interest as part of an effort to coerce the U.S. population or government.
  - Losses from the act must exceed \$5 million.
- **Eligibility of Insurers:** An eligible insurer is any entity or affiliate that -
  - Is a recipient of direct earned premiums for any type of commercial property and casualty insurance coverage;
  - Is licensed (or admitted) to provide insurance in any State, approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, or is a State residual market insurance entity or State workers’ compensation fund; and.
  - Meets any other criteria that the Secretary may reasonably prescribe.
- **Program Trigger:** Program is triggered following occurrence of event determined by Secretary of the Treasury to be act of terrorism. Losses from the act must exceed \$5 million.
- **Individual Company Trigger (or Deductible):** Trigger or deductible for individual company is 1% of *direct earned premiums* in 2002, 7% in 2003, 10% in 2004, and 15% in 2005.
- **Industry-wide Retention:** Industry-wide Federal assistance is provided without mandatory recoupment if the aggregate retention amount from insured terrorism losses exceeds insurance marketplace retentions of \$10 billion in first year (includes the remainder of 2002), \$12.5 billion in second year, or \$15 billion in third year, if Secretary of Treasury extends mandatory terrorism coverage period to a third year.
- **Cap on Assistance:** \$100 billion per year, with 2002 transition year combined with 2003.

- **Post Trigger Federal Assistance:** When program is triggered, Federal government is to pay 90% of insured terrorism losses in excess of individual insurer trigger/deductibles while the insurer pays 10%.
- **Recoupment of Assistance:** Recoupment to be through surcharges of up to 3% of annual premiums on all policyholders. Mandatory recoupment for all amounts provided to insurers *under* industry-wide retention. No mandatory recoupment of uncompensated losses in excess of industry-wide retention. Secretary of the Treasury has discretion to recoup additional amounts.
- **Covered Lines:** Commercial, plus war coverage for workers' compensation; excludes reinsurance. Secretary of the Treasury has discretion to add group life insurance and other personal lines.
- **Mandatory Terrorism Coverage:** For the first two years, insurers must offer terrorism insurance in all commercial policies. Coverage must be available on terms identical to terms, amounts, other coverage limitations applicable to losses incurred from events other than acts of terrorism. Secretary of the Treasury has discretion to extend requirement to the third year.
- **Application to State Residual Market Entities and State Workers Compensation Funds:** Residual market entities and State funds are included in the insurers covered by the Act. The Act also applies to surplus lines carriers listed on the Quarterly Listing of Alien Insurers published by the National Association of Insurance Commissioners. In addition, if so determined (prior to an act of terrorism) by Secretary of the Treasury, in consultation with NAIC, it could also include captive insurers and other self-insurance arrangements such as workers compensation self-insurance programs and State workers compensation reinsurance pools.
- **Cost Disclosure of Terrorism Coverage:** Insurers must disclose terrorism insurance premiums and the existence of the federal backstop.
- **Consultation with State Insurance Regulators (NAIC):** As the Secretary of Treasury determines appropriate, concerning the Terrorism Insurance Program.
- **State Regulation Uniformity:** No stated uniformity.
- **Civil Actions and Litigation:** Federal cause of action in district court(s) designated by Judicial Panel on Multidistrict Litigation with the substantive law of the state in which the act occurred applied.
- **Legal Modifications and Limitations:** Punitive damages do not constitute "insured losses" and thus no federal participation. U.S. right of subrogation.
- **Reports from Insurers:** No reports required, except for data not available to NAIC. Secretary of Treasury responsible for compiling of data.
- **State Preemption:** Applicable to terrorism definition and state prior approval rating statutes. Also applies to existing terrorism exclusions, with provisions for reinstatement under certain conditions. Access to books/records by Secretary of Treasury guaranteed.
- **Civil Monetary Penalties:** \$1 million against insurers for failing to pay assessments or surcharges, erroneous data, or violation of regulations.
- **Report to Congress:** Secretary of the Treasury, in consultation with NAIC, the insurance industry and other experts, is to issue a report not later than June 30, 2005, covering required items.
- **Satisfaction of Judgments from Assets of Terrorists:** Yes.