
S.1373

Insurance Consumer Protection Act of 2003 (Introduced in Senate)

SEC. 101. INSURANCE REGULATORY COMMISSION ESTABLISHED.

- (a) **ESTABLISHMENT-** There is established within the Department of Commerce an Insurance Regulatory Commission to be composed of 5 commissioners to be appointed by the President, by and with the advice and consent of the Senate.
- (b) **AUTONOMY OF COMMISSION-** Except as otherwise specifically provided in this Act, the Secretary of Commerce may not intervene in any matter or proceeding before the Commission, including enforcement actions.
- (c) **CHAIRMAN-** The President shall designate 1 of the members as Chairman of the Commission.
- (d) **POLITICAL PARTIES-** Not more than 3 of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.
- (e) **FULL-TIME EMPLOYMENT-** No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any insurance company operations or transactions of a character subject to regulation by the Commission pursuant to this title.
- (f) **TERMS-** Each commissioner shall hold office for a term of 7 years and until his successor is appointed and has qualified, except that--
- (1) a commissioner shall not continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of the fixed term of office;
 - (2) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and
 - (3) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 6 years, and 1 at the end of 6 years, after the date of the enactment of this title.

SEC. 102. POWERS OF THE COMMISSION; COMPENSATION; PERSONNEL.

(a) HEARINGS- The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION FROM FEDERAL AGENCIES- The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the

head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES- The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) COMPENSATION OF MEMBERS- Each member of the Commission shall be compensated in an amount equal to that prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(e) TRAVEL EXPENSES- The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(f) APPOINTMENTS; COMPENSATION- The Chairman of the Commission may appoint and fix the compensation of an executive director and other personnel as may be necessary to carry out this Act.

(g) DETAIL OF GOVERNMENT EMPLOYEES- Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(h) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES- The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 103. OFFICE AND PLACE OF MEETING.

The principal office of the Commission shall be in the city of Washington, District of Columbia, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 104. DELEGATION OF FUNCTIONS BY THE COMMISSION.

(a) AUTHORITY TO DELEGATE- The Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the

Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. Nothing in this section shall be deemed to supersede the provisions of section 556(b) of title 5, United States Code, or to authorize the delegation of the function of rule making as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule.

(b) REVIEW- With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party or intervenor in such action, within such time and in such manner as the Commission by rule shall prescribe. The vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review. A person or party shall be entitled to review by the Commission if adversely affected by action at a delegated level.

(c) ACTION OF COMMISSION- If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

SEC. 105. RULES AND REGULATIONS.

(a) IN GENERAL- The Commission shall promulgate rules and regulations necessary to carry out its responsibilities under this Act.

(b) SCOPE OF AUTHORITY- The Secretary of Commerce may not delay or prevent the issuance of any rule, or the promulgation of any regulation, by the Commission.

SEC. 106. INVESTIGATIVE POWERS OF THE COMMISSION.

The Commission shall have the power to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices and management of any person, partnership, or corporation engaged in the business of insurance.

SEC. 107. INSURANCE RATE REPORTS.

(a) IN GENERAL- Except as provided by subsection (f), an interstate insurer shall report the information specified by the Commission that is collected by a licensed advisory organization on an annual basis for each class of insurance designated in the prior calendar year by the Commission.

(b) DESIGNATION OF UNAVAILABILITY OR UNAFFORDABILITY- No later than October 1 of each year the Commission shall designate those classes of insurance that are generally unavailable or unaffordable in the United States, certain regions, or to certain groups or businesses in the United States, or for which there have been unusually great premium increases, or in the case of any class of liability insurance, for which reinsurance is generally unavailable or unaffordable in the United States or for which there have been unusually great reinsurance premium increases. The factors the Commission shall consider in making this determination shall include--

- (1) consumer complaints;
- (2) rate complaints;
- (3) surveillance by the Commission; and
- (4) market conduct.

(c) RETENTION OF INFORMATION- The Commission shall retain the information reported pursuant to this section for a period of no less than 3 years.

(d) CONSOLIDATED REPORTING- Insurers that are members of the same insurance group may aggregate the information required by this section in a single report.

(e) Exemptions-

- (1) IN GENERAL- Except as provided by paragraphs (2) and (3), the reporting requirements of

this section do not apply to any interstate insurer that--

- (A) has been established for less than 3 years; or
- (B) demonstrates to the satisfaction of the Commission that its market share is less than 1 percent of the coverage for which the Commission seeks information.

(2) DENIAL OF EXEMPTION- The Commission may deny the exemption application if it determines that--

- (A) the aggregate data, when reported, is less than 60 percent of the written premium volume for the class; or
- (B) unless the aggregate data reported would not be statistically credible or reasonably complete and informative.

(3) RETROACTIVE REVOCATION OF EXEMPTION- An interstate insurer that is exempt under paragraph (1) from reporting shall, upon request of the Commission, report the information required by subsection (a) to cover the 3 most recent calendar years in accordance with subsection (g).

(4) DUPLICATE REPORTING NOT REQUIRED- An interstate insurer that has reported data for a calendar year pursuant to this section may not be required to report that same data in a subsequent year.

(f) REPORT FORM- The reports required by this section shall be filed on a form provided by the Commission, or through electronic means established by the Commission, no later than May 1 of the calendar year following the year for which the information is reported.

(g) TEMPORARY REGULATIONS- The Commission shall adopt temporary regulations implementing this section without regard to the provisions of chapter 5 of title 5, United States Code. The temporary regulations may not remain in effect for more than 180 days.

(h) CONFIDENTIALITY- The information provided pursuant to subsection (a) shall be confidential and not revealed by the Commission, except that the Commission may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identified interstate insurers or insureds.

SEC. 108. ANNUAL AND SPECIAL REPORTS.

The Commission shall have the power to require, by general or special orders or by subpoena, any person engaged in the business of insurance, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports, or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

SEC. 109. EXAMINATION OF INSURANCE COMPANIES.

(a) IN GENERAL- The Commission shall examine interstate insurers, including an on-site financial examination and an on-site market conduct examination no less often than once during each 12-month period.

(b) EXEMPTIONS- The Commission may exempt an interstate insurer from an on-site financial examination under subsection (a) in any 12-month period if the Commission determines that the financial condition of the interstate insurer warrants such an exemption. The Commission may not grant such an exemption more than once in any 24-month period.

(c) SPECIAL EXAMINATIONS- The Commission may order special examinations of any insurer which holds an interstate insurance license. The examination shall be conducted by examiners chosen by the Commission. The Commission shall in all cases approve the form of the examination. The expenses of all examinations may, in the discretion of the Commission, be assessed against the insurer examined, and when so assessed, shall be paid by the insurer examined. Copies of the reports of such examinations may, in the discretion of the Commission, be furnished to the State insurance departments, to officers and directors, or receivers of the insurer, and to any persons as the Commission shall deem appropriate.

(d) STANDARDS- The Commission shall establish standards for determining when a special examination should be conducted.

SEC. 110. CENTRAL DEPOSITORY FOR INSURANCE DATA.

(a) ANNUAL STATEMENTS; PERIODIC REPORTS- The Commission shall collect the annual statements and other periodic reports of all insurers holding interstate insurance licenses. These statements and reports shall be available to the public. The Commission shall compile information from these statements and reports in a data base for the purpose of studying the insurance industry.

(b) DATA BASE- The Commission shall maintain a data base on information concerning any State or Federal regulatory and legal actions involving any person engaged

in the business of insurance. The Commission shall gather any such information from State insurance departments and any other source of information.

(c) INFORMATION TO BE MADE PUBLIC- (1) The Commission shall--
(A) make public, from time to time, such portions of the information obtained by it as are in the public interest;
(B) make annual and special reports to the Congress and submit therewith recommendations for additional legislation; and
(C) provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.
(2) The Commission shall not have authority to make public any information it determines is a trade secret or any commercial or financial information which is obtained from any person and which the Commission determines is privileged or confidential, except that the Commission may disclose such information to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

TITLE II--FEDERAL LICENSING AND STANDARDS

Subtitle A--Licensing and Standards

SEC. 211. FEDERAL LICENSING OF INTERSTATE INSURERS.

(a) IN GENERAL- Notwithstanding any provision of State law, an interstate insurer may underwrite and sell in any State any line of insurance for which it holds a Federal license. An interstate insurer may not underwrite or sell any line of insurance for which it does not hold a Federal license.

(b) ISSUANCE OF FEDERAL LICENSES- The Commission may, under such regulations as the Commission shall--

- (1) provide for licensing of interstate insurers to underwrite and sell property and casualty, life, and medical malpractice lines of insurance;
 - (2) issue to interstate insurers Federal licenses specifying the lines of insurance they may underwrite and sell; and
 - (3) submit a report to Congress--
 - (A) making recommendations on whether national insurers should be authorized to underwrite health insurance; and
 - (B) including proposed legislation to authorize such underwriting.
- (c) DURATION- A Federal license issued by the Commission pursuant to this section shall remain in effect until surrendered by the interstate insurer or until revoked or suspended by the Commission in accordance with the provisions of this Act.
- (d) REINSURANCE-
- (1) LIMITATION- An interstate insurer may reinsure only the lines of insurance that it is licensed to underwrite and sell under its Federal license or which it is otherwise permitted to reinsure by the terms of its Federal license.
 - (2) AUTHORITY TO SELL ONLY REINSURANCE- An interstate insurer may confine its business to reinsurance.

SEC. 212. UNITED STATES BRANCHES OF FOREIGN INSURERS.

- (a) NATIONAL TREATMENT REQUIRED-
- (1) FAIR TREATMENT OF SUBSIDIARIES AND BRANCHES- Except as otherwise provided in this section, the Commission may not impose any condition to the granting of a Federal license under this section to an interstate insurer or the supervision of an interstate insurer granted a Federal license under this section solely because the interstate insurer is a subsidiary of a non-United States person, is partially owned by a non-United States person, or is a United States branch of a non-United States insurer.
 - (2) PERMISSIBLE CONDITIONS- Notwithstanding paragraph (1), the Commission may impose conditions to the granting of a Federal license or the supervision of an interstate insurer that are different from those imposed on other interstate insurers if--
 - (A) the conditions attached are imposed on the legal form in which the interstate insurer chooses to operate; or
 - (B) the Commission makes a written finding that the conditions are related to the protection of policyholders and are the minimum necessary to achieve the purposes of this Act.
- (b) FEDERAL INSURANCE LICENSE- A foreign insurer may obtain a Federal license to transact insurance in the United States through a United States branch by qualifying that branch as an interstate insurer, subject to all legal requirements applicable under regulations prescribed by the Commission.
- (c) Trust Accounts Required-

(1) IN GENERAL- A United States branch of a foreign insurer may not qualify as an interstate insurer unless it establishes trust accounts required by this subsection.

(2) ASSETS- A United States branch of a foreign insurer shall establish a trust account in the United States with a bank in which it maintains assets held in trust for the exclusive benefit, security, and protection of United States policyholders and creditors of that branch in such amount and under such conditions as the Commission may require for as long as there is any outstanding liability of that branch arising out of its insurance transactions in the United States.

(3) SURPLUS- To the extent required by the Commission, a United States branch of a foreign insurer shall maintain any surplus arising out of its United States insurance transactions in a trust account in the United States subject to the same solvency standards as those that apply to other interstate insurers.
