

## WORLD AIDS DAY

(Mrs. MORELLA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MORELLA. Mr. Speaker, on Saturday, December 1, communities around the world will acknowledge World AIDS Day. This year's World AIDS campaign will address masculine behaviors and attitudes that contribute to the spread of HIV. The new campaign aims to involve men, particularly young men, more fully in the effort against AIDS.

June 5, 1981, marked the first reported case of AIDS. Since then, 5.3 million people worldwide continue to be infected, with roughly 3 million AIDS-related deaths annually. HIV/AIDS has caused over 25 million fatalities, and 40 million are living with the disease worldwide. Eighteen million are women and 3 million are children.

To combat this growing global threat, I along with 62 of my colleagues have most recently called on President Bush to set aside \$1 billion in emergency fiscal year 2002 funding to fight the global AIDS pandemic, TB, and malaria. This funding is essential so that additional investments from both public and private sources can be leveraged to meet the cost of effectively combating the global AIDS pandemic.

Money is unquestionably a key component to our global battle to eradicate AIDS; however, equally critical is individual behavior. In spite of the progress we have made in our battle against AIDS, there is still approximately 40,000 new HIV infections a year in the United States, the exact number reported 10 years ago. We must encourage men to adopt positive behaviors and to play a greater role in caring for their partners and families. We all have a role to play.

#### HONORING CLEARFIELD EMERGENCY MEDICAL SERVICE

(Mr. SHUSTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHUSTER. Mr. Speaker, I rise today to honor the outstanding achievements of the Clearfield, Pennsylvania, Emergency Medical Service Company. On August 10, 2001, the Pennsylvania Emergency Health Services Council chose Clearfield EMS from among 1,000 ambulance service companies statewide to receive the rural ambulance service-of-the-year award.

Clearfield EMS garnered such an award not only through exemplary ambulance service but also through their involvement in the community. Free flu shots and participation at county fairs and festivals are just a couple of the many ways that Clearfield EMS has taken the lead in community education and involvement.

I congratulate Clearfield EMS on their exceptional accomplishments and

their determination to improve their already stellar service. Clearfield EMS should serve as an example in excellence for other ambulance services nationwide.

□ 1100

#### TREATING HIV-AIDS AS A THREAT TO GLOBAL SECURITY

(Ms. WATSON of California asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. WATSON of California. Mr. Speaker, in honor of World AIDS Day, we must remember that it is estimated that by 2010, one-quarter of South Africa's population will be infected by HIV-AIDS. Other African nations are suffering similar rates of infection.

In late August, I traveled to South Africa to examine the HIV-AIDS pandemic firsthand. While there, I visited KwaZulu-Natal, a region with the highest HIV infection in the world. In that region, an estimated 1 in 3 adults tests positive for HIV. The time has come for the United States to treat HIV as the threat to global security that it is.

Let us not forget that Osama bin Laden has exploited the misery of another state where civil society has collapsed, Afghanistan, to serve as a base for his terror network. The United States must act to prevent HIV from destroying an entire generation, not only of Africans, but those in Afghanistan.

I urge my colleagues to remember this day on the 1st of December and ask for a renewed effort to fight against HIV-AIDS in Africa.

#### TERRORISM RISK PROTECTION ACT

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 297 ask for its immediate consideration.

The Clerk read the resolution, as follows:

##### H. RES. 297

*Resolved*, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism. The bill shall be considered as read for amendment. In lieu of the amendments recommended by the Committee on Financial Services and the Committee on Ways and Means now printed in the bill, an amendment in the nature of a substitute consisting of the text of H.R. 3357 shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services; (2) the further amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative LaFalce of New York or his designee, which

shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. SHIMKUS). The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, the resolution before us today is a fair, modified rule providing for the consideration of H.R. 3210, the Terrorism Risk Protection Act. The rule provides that in lieu of the amendments recommended by the Committee on Financial Services and the Committee on Ways and Means, an amendment in the nature of a substitute consisting of the text of H.R. 3357 shall be considered as adopted.

The rule waives all points of order against consideration of the bill, as amended, and provides for 1 hour of debate in the House, equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services. It also provides for consideration of the amendment in the nature of a substitute printed in the Committee on Rules report accompanying the resolution, if offered by the gentleman from New York (Mr. LaFALCE) or his designee.

The bill shall be considered as read and shall be separately debatable for 1 hour, equally divided and controlled by the proponent and opponent. The rule waives all points of order against consideration of the amendment printed in the reported. Finally, the rule provides for one motion to recommit, with or without instructions.

Mr. Speaker, on September 11, the collective memory of Americans was altered forever. The terrorist attacks resulted in an incalculable loss, both in terms of life and the destruction of buildings, property and businesses. In the 2½ months since the attacks, America has begun the painful process of recovery and healing.

Today we are here to consider H.R. 3210, the Terrorism Risk Protection Act. Exposure to terrorism is not only a threat to our national security, but is also a threat to the United States and global economies. The full extent of insured losses from September 11 is not yet known, but current estimates span from the range of \$30 billion to \$70 billion.

There is no doubt that these terrorist attacks have resulted in the most catastrophic loss in the history of property and casualty insurance. While the insurance industry has indicated that it will be able to cover total losses, and should be commended for its resiliency, we are faced with a new situation that requires an innovative and creative solution.

As our President, President Bush, declared, this Nation is now faced with fighting a different kind of war against a new enemy. Just as our military leaders have had to employ new strategies and tactics to fight the war abroad, we have had to make adjustments in our own homeland.

Prior to September 11, terrorism insurance coverage was generally included in most commercial and personal contracts. However, the prospect of future attacks has set off a dangerous chain reaction.

The reinsurance industry, which insures insurance companies, has indicated its inability to provide terrorism coverage without a short-term Federal backstop. Without reinsurance for the risk of terrorism, insurance companies are forced to specifically exclude it from future policies. Without this terrorism coverage, lenders are unlikely to underwrite loans for major projects. This sequence of events could result in dangerous disruptions to the marketplace and further hurt our economy.

While a few fully understood intricacies of risk assessment and premium pricing are apparent, the effects on our marketplace are already being felt. I would like to highlight just a few of these real live examples.

There is a small construction contractor in Maryland that recently found out that his insurance premium might triple to \$150,000 a year.

New York's JFK International Airport terminal cannot secure the \$1 billion in insurance coverage it needs, which has led the developer to reconsider shutting the terminal down.

The city of Chicago has received a bill to renew its war on terrorism insurance for next year at a 5,000 percent increase over its 2001 rates.

These snapshots from around the country form a composite picture of a dire circumstance that requires action from Congress.

Since September 11, Congress has moved in a timely fashion to address the needs that have arisen from the bipartisan supplemental appropriations funding, provided just a few days after the attacks, to legislation that addresses the need for increased airline security, to an economic stimulus package. This House has responded to its calling.

Mr. Speaker, we now must step up again to pass this bill that is before us today. Reinsurance policies are generally written on a 1-year basis. Approximately 70 percent of current reinsurance contracts are set to expire at the end of this year, December 31, 2001.

As the year draws to a close, Congress must act quickly to avert a national economic disaster. The Terrorism Risk Protection Act provides a Federal backstop for financial losses in the event of future terrorism attacks. This crucially needed backstop would create a temporary risk-spreading program to ensure the continued availability of commercial property and casualty insurance and reinsurance for

terrorism-related risks. Under the House plan, the Federal Government provides the necessary backstop without opening the pocketbooks of taxpayers. Every dollar of Federal assistance will be repaid.

The legislation also contains reasonable legal reforms to ensure that Federal assistance reaches its intended recipient. The 1993 World Trade Center bombing which killed 6 people resulted in 500 lawsuits by 700 individuals, businesses and insurance companies.

Mr. Speaker, it has been 8 years and the cases are only just now getting to the trial stage, and hundreds of plaintiffs have yet to even receive 1 cent of compensation. By providing reasonable reforms, victims of terrorism will more quickly and equitably receive compensation, while also reducing the substantial uncertainty facing the insurance industry when pricing terrorism risk.

Finally, the bill provides for studies that examine the effects on terrorism on various sectors of the insurance industry and ways to establish reserves, and guards against losses for future acts of terrorism.

Yesterday, in his testimony before the Committee on Rules, the gentleman from Ohio (Chairman OXLEY) described insurance as "the glue which holds our economy together." The ranking member, the gentleman from New York (Mr. LAFALCE), also spoke, saying that this bill is not a bailout for the insurance company, and is of critical importance.

While there may be many competing ideas on the best way to address this situation, there is one unanimous agreement: that this legislation is absolutely critical to prevent major disruptions in the marketplace and further harm to our economy.

As the gentleman from Louisiana (Chairman BAKER) stated when he testified yesterday, the only intolerable action at this time is to do nothing.

Mr. Speaker, I urge my colleagues to join me in supporting this rule, a fair rule, and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank my colleague from Texas for yielding me the customary 30 minutes.

Mr. Speaker, I rise in opposition to the rule. I oppose the hubris it embodies and the process it represents. In what is becoming standard procedure, the House is preparing to move forward with an important bill that is not ready for prime time.

No one doubts the critical nature of this bill. The withdrawal of terrorism coverage by reinsurers may force primary insurers to radically increase premiums for policyholders or to withdraw coverage entirely. The con-

sequences could reverberate throughout the entire economy. Virtually nothing could happen in the American economy without insurance, and the vast majority in this body agrees that Congress has a duty to intervene in the reinsurance marketplace to safeguard against a cascading economic crisis.

Unfortunately, the leadership in the body has seized upon the crisis in an attempt to circumvent regular order and move forward with tort reform, a wholly extraneous matter. Tort reform does not belong in this bill, nor was it requested by the reinsurance industry representatives during the many discussions leading up to the legislation.

Even by the standards that are in place here, this is a heavy-handed attempt to curtail victims' rights. The tort reform provision threatens to derail the principal objective of the legislation, which is to revitalize and reestablish a rational and functional reinsurance market.

Yesterday's Committee on Rules hearing on the bill revealed utter confusion among the chairmen and ranking members of the two committees as to what the bill actually contained. The chairmen had not seen the measure, but had a hunch of what might be in it. The ranking members were wholly in the dark. Committee on Rules members were given copies of the comprehensive substitute provisions seconds before the hearing commenced.

Something else became apparent at the hearing as well. All the principals involved in the legislation, the gentleman from Ohio (Chairman OXLEY), the gentleman from New York (Mr. LAFALCE), the gentleman from Pennsylvania (Mr. KANJORSKI) and the gentleman from Louisiana (Mr. BAKER) were firmly convinced of the importance of the legislation and the need to move it forward, and, indeed, all four showed a great willingness to work together with each other to reach a consensus and a good bill which the country sorely needs. They believed that within an additional 24 hours they could have reached that agreement and moved a bill that virtually all of us would have supported.

Now, this is the way a deliberate body should operate, and, indeed, was operating as this bill moved expeditiously through the legislative process. But after the Committee on Financial Services carefully crafted a bipartisan measure, the House leadership seized their work product in order to move a controversial measure they know would not survive the scrutiny of the entire Congress.

□ 1115

Mr. Speaker, this is not leadership; this is petulance. The American people expect more from their leaders in a time of crisis.

We are also being asked to support a rule that blocks any attempt to remedy these extraneous provisions. Indeed, some measures in the committee itself that had passed by a majority

vote to improve the bill were not even included as the bill was written. The gentleman from New York (Mr. LAFALCE) and the gentleman from Michigan (Mr. CONYERS) both offered amendments for the rule that simply strike the sections of the bill that related to tort reform, and the gentleman from Pennsylvania (Mr. KANJORSKI) offered a compromise amendment on tort reform to prohibit the use of Federal assistance to cover punitive damage awards.

The gentleman from New York (Mr. CROWLEY) offered an amendment which would have expanded the legislation to cover not only commercial policyholders, but personal policyholders, like our Nation's homeowners who have been grievously hurt in New York City and other parts of the country. Without this extension, homeowners are going to see their premiums rise dramatically. But none of these amendments were made in order.

What is the leadership's aversion to regular order? Why the single-minded obsession with sabotaging critical legislation unanimously agreed upon at the committee level? And why the unwillingness to show their handiwork to the scrutiny of their colleagues before a Committee on Rules hearing and floor consideration?

Moreover, Mr. Speaker, there are other critical priorities that Congress is ignoring. As we take the time to rush through a measure designed to protect the insurance industry, surely we could utilize that same energy to address the needs of those who have lost their jobs and their health insurance in the wake of September 11.

With this in mind, I will be urging defeat of the previous question so that we can adopt a rule to order an amendment offered by the gentleman from New York (Mr. RANGEL). This amendment would provide relief for unemployed workers in the form of unemployment compensation and the extension of COBRA benefits and Medicaid.

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. OXLEY), the chairman of the Committee on Financial Services, to speak to us supporting this rule.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, first I want to pay tribute to the gentleman from Texas (Mr. SESSIONS), my good friend, for once again helping us craft a very fair and equitable rule to debate this very difficult issue that faces us. Just a few short weeks ago, we faced this terrible attack on America on September 11, and I do not think any one of us could have foreseen the events that have taken place since that time that have drawn this Congress towards addressing some of the most critical issues facing us.

We have done a great job, in my estimation, acting on a bipartisan basis, dealing with things like giving the President the authority to wage a military campaign in Afghanistan, providing the funding necessary to get New York back on its feet and to compensate victims of this terrible tragedy and, ultimately, I think, passing an economic stimulus package.

This legislation that we will be taking up shortly is a direct response to what happened after September 11, and that is almost immediately. The reinsurance market which, for the most part, is offshore and not American, indicated very strongly that they would no longer write reinsurance policies for terrorism. This, of course, had a resounding effect on the American domestic insurance industry, the property and casualty companies, because with the inability to essentially reinsure or to spread the risk through reinsurance, they faced a real conundrum.

This is not about the losses that took place on September 11, and this bill is not a bailout for the insurance companies. The insurance companies stepped up to the plate and are taking care of their obligations that resulted from the September 11 attack. Indeed, it is going to be a \$40 billion to \$50 billion project for them to make these folks whole.

What it is all about now is what happens next. All of us hope that our efforts today will not be needed in the future because our bill only occurs and only triggers when an event actually occurs of a terrorist nature to be determined by the Secretary of the Treasury. We all hope and pray that our efforts today, while beneficial, will not have to be used. I think all of us share that. But in the event that we have another terrorist attack, we have to be prepared, and the issue is how can the domestic insurance companies provide the kind of coverage, as the gentleman from Texas (Mr. SESSIONS) said yesterday in the Committee on Rules, saying that the glue that holds our economy together truly is insurance.

People have told us, lenders and everybody else, we can no longer provide the kind of insurance coverage necessary. We do not know how to price it. This is a case of first impression, and we need a backstop; not a bailout, but a backstop, so that we can provide some kind of certainty for the insurance industry and, more importantly, for our concern. Because make no mistake about it: this legislation that we are going to be taking up soon is all about keeping our economy strong, not about bailing out insurers, but to actually provide the kind of continuity and certainty in the economic field. I have talked to developers who have development projects literally in the pipeline who are waiting to see what the Congress can do to provide this backstop.

Mr. Speaker, this is a fair rule. It provides the opportunity for the gentleman from New York (Mr. LAFALCE), my good friend and the ranking mem-

ber, to offer a substitute of his choosing. It also offers the minority the opportunity for a motion to recommit, as is the custom. That basically says that the other side gets two bites of the apple. That is fine. But I also think, Mr. Speaker, that this bill that we will be debating should be a bipartisan effort, just like all the other efforts have been in this House.

Make no mistake about it: this House is going to act. The other body has some real problems. There is some question as to whether they can even get their act together; but today, sometime between 3 and 4 this afternoon, this House will have spoken loudly and clearly that we understand the problem and that we are ready to address the problem in a bipartisan way. This rule gets us towards that effort.

I want to thank the gentleman from Texas (Mr. SESSIONS), and particularly the newly arriving chairman of the Committee on Rules (Mr. DREIER), just newly arrived, not newly arrived to Congress obviously, but newly arrived to the Chamber, for his excellent work in crafting a rule that all of us can support.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in opposition to this rule, and I would hope that all of my colleagues would join me in opposition. One of the most important things for us to do is have a fair rule so that we can debate the important issues of the day. It is not simply to get things behind us; it is not simply to create partisan contests. It is to frame important issues and then have discrete votes on those.

Now, the majority has not permitted that. They have said, oh, look, lump every single issue imaginable that we are concerned about into one substitute and put it all together. Well, the problem is, 90-some percent of the time, the only thing we accomplish there is to get a partisan vote with Democrats for the most part for, Republicans for the most part against; and we cannot really focus in on the discrete, but important, issues unless we have individual amendments, which the majority has denied. That is unfortunate, because there are individual issues of great import that do not have partisan considerations that we should debate separately and vote on separately.

For example, should there or should there not be a deductible? Well, I believe strongly that there should be a deductible before the Federal Government comes in, and the bill coming out of the Committee on Rules does not have a deductible. I personally believe, the administration believes, that there should be a deductible. It would prefer at least that portion of our substitute. The administration negotiated with certain Senators a proposal that included a significant deductible. That is

a separate and distinct issue. Let the insurance industry pay first; how much is negotiable, but at least \$5 billion, before it is necessary to have a Federal backstop. And they absolutely have the capacity to do that with no difficulty whatsoever, and yet they are denying us the right to vote on that discrete issue.

Another discrete issue is, well, should the Federal Government come in and pay from dollar one? Should the Federal contribution, that is, 90 percent of the damages, come in on the first dollar or should it come in on the first dollar after a deductible? Under the House Republican Committee on Rules bill, that 90 percent Federal payment will come in on dollar one. Ours would come in the first dollar after \$5 billion. That is a very important issue, and we should be allowed a discrete vote on that.

Mr. SESSIONS. Mr. Speaker, it is a delight and a pleasure to yield 7 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary. As my colleagues have heard me detail earlier, he is one of three of the brightest minds in the Republican Conference, including the gentleman from Louisiana (Mr. BAKER) and the gentleman from Ohio (Mr. OXLEY).

Mr. SENSENBRENNER. Mr. Speaker, I thank the fourth bright mind of the gentleman from Texas (Mr. SESSIONS) for his compliments, and I rise in support of the rule and in support of H.R. 3210. I wish to compliment the gentleman from Ohio (Mr. OXLEY) for his vigorous work on this difficult issue.

I am particularly supportive of the litigation management provisions in H.R. 3210 which will benefit all people in all industries that fall victim to terrorist attacks of a catastrophic nature. Any bill that fails to limit potentially infinite liability for terrorist-caused litigation would fail to recognize the obvious. Traditional tort rules are designed to address slip-and-fall cases caused by banana peels, not terrorists; and while banana peels may be accidents waiting to happen, terrorists are suicidal killers plotting the deaths of thousands of innocents and the destruction of billions of dollars of property.

Under this legislation, if the Secretary of the Treasury determines that one or more acts of terrorism have occurred, an exclusive Federal cause of action kicks in for lawsuits arising out of, relating to, or resulting from the acts of terrorism; and the lawsuit must be heard by a Federal court or courts selected by the Judicial Panel on Multidistrict Litigation. These claims in Federal court are subject to limits on punitive damages and attorneys' fees. Defendants are only liable for noneconomic damage in direct proportion to their responsibility for the harm, and damage awards to plaintiffs must be offset by any collateral source compensation received by the plaintiff.

By enacting these provisions to cover terrorist-inspired litigation, individuals and businesses will be protected by Congress from potentially limited liability and bankrupting litigation. Also under these provisions, the size of damage awards for which the United States taxpayer will have to provide up-front sums to cover would be reduced, just as the Federal Tort Claims Act's limits on punitive damages and attorneys' fees limit damages and litigation that will result in money taken from the U.S. Treasury.

□ 1130

These provisions protect the American taxpayer. Those opposed to them wish to turn the key to the United States Treasury over to the plaintiffs' bar.

Existing tort rules do not properly apply when the primary cause of injury is a suicidal fanatic motivated by a deep hatred of America. These are not garden variety slip-and-fall or auto accident cases, and this Congress has already recognized this key distinction in passing the liability protection provisions governing lawsuits relating to the September 11 attacks.

As a result of the Aviation Security Act conference report, as well as the Air Transportation Safety and Systems Stabilization Act, September 11-related lawsuits against air carriers, air manufacturers, owners and operators of airports, State port authorities, and persons with property interests in the World Trade Center must be heard in Federal court in New York; and the total damages against these potential defendants, should they be found liable, are capped at the limits of the insurance coverage they had on September 11.

Let this be clear, that what is proposed in the litigation management provisions of this bill the House has already approved in both the Aviation Security Act and in the Air Transportation Safety and Systems Stabilization Act. So Members have already voted for this once and twice.

In addition to these provisions, the Airline Security Act that originally passed the House also limited punitive damages and attorney's fees, and required that damage awards to plaintiffs be offset by any collateral source compensation received by the plaintiffs.

The litigation management provisions of H.R. 3210 would similarly benefit victims of future terrorist attacks. If these same provisions are not extended to private businesses which might be attacked in the future, the mom-and-pop store down the street will have to invest scarce resources to turn itself from a corner shop into a fortified bunker designed to withstand foreign attacks to avoid potentially infinite liability, or pay through the nose in higher insurance premiums because the risks are higher and their exposure is greater.

Furthermore, without the litigation management provisions in H.R. 3210, no

limits would be placed on the fees of attorneys bringing terrorist-caused cases against Americans and their businesses, and ultimately against the taxpayers, under this bill.

Reasonable limits on attorney's fees serve the same purpose behind restrictions on permanent damages and joint and several liability. They maximize the funds available to large numbers of victims when there are only limited resources available for compensation. Such protections are more important than ever in the context of the terrorist attacks causing large-scale losses. Again, the litigation management provisions in this bill will spread the wealth out to more victims, rather than having one or two large awards ending up bankrupting the pot of money available.

The 1993 World Trade Center bombing killed six people, yet resulted in 500 lawsuits by 700 individuals, businesses, and insurance companies. Damages claimed amounted to \$500 million. Eight years later, these cases are only now just getting to trial, and hundreds of plaintiffs have yet to receive a cent in compensation.

By providing reasonable limits on potentially infinite liability and consolidating all cases in one or a few Federal forums, victims of terrorism will recover more quickly and more equitably because a few enormous awards in one court will not bankrupt a responsible party before another court can consider arguments of others who may have stronger claims against the same party.

I urge all Members to support these vitally important provisions, which ensure equitable compensation to victims while protecting the American economy and the American taxpayer.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Mr. Speaker, I rise in opposition to a rule I consider fundamentally unfair. The previous speaker addressed one of the major issues that I wanted to address in an amendment I had offered and asked the Committee on Rules to make in order, and that is to have some limitation on punitive damages and provide for consolidation of lawsuits, but not to enter into tort revision.

Unfortunately, some of my friends have seen the opportunity to use this as a locomotive today to go to one of their favorite topics, and that is, tort revision in the country. I think that is unfortunate because the history and the process of this legislation was initially handled by the Committee on Financial Services for the sole purpose of trying to bring together the entire Congress with a bipartisan effort to accomplish something that would allow the economy to have terrorist insurance and to have a reinsurance industry that could be vital, and could be kept in the private sector until we straighten out the problems and the new issues created by the terrorist attack on September 11.

I thought we had moved a great deal along that line during the committee operations, but since that time the bill has been taken and fundamentally changed, and made a vehicle to carry everyone else's desire to change fundamental existing law in the United States.

I recognize the fair right of all individuals to disagree with the evolution of tort law responsibility in the United States over the last 200 years, and it may be subjected to change. This body is the place that should consider that issue. It should not consider that issue at this time when we have a very limited period of time to get a comprehensive reinsurance bill passed so the economy can be stabilized for the next year or two, so that American businesses can get the insurance they need against terrorism, and so that the rate can be reasonable.

What we have here is a political response: taking a very highly emotional and disagreeable issue on the two sides of this aisle, and I may say, Members on both sides in different proportions, and inserting it in this bill, which will ultimately say this bill cannot be passed by the Senate, will not be passed by the Senate, and I think puts at risk the fact that we may have reinsurance legislation in this session, and as a result, could materially destabilize the economy of the United States over the next year or two.

That is unfortunate that some of us have given in to our basic weaknesses and have gone to our ideology, rather than to the interests of the people of the United States and the economy of the United States.

I hope my predictions are wrong. I hope we can get terrorist reinsurance put through this Congress before we adjourn. But if we do not, if we do not, it will really be as a result of tort law revision that has been inserted into this bill that prevents the passage of this type of legislation in the waning days of this session.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is obvious we disagree on this. But for someone to stand up in this body and argue that because of what we are going to do here today, it would encumber the Senate and ultimately would mean that this bill could not be passed, I simply disagree with that.

The Senate, the other body, has an opportunity to debate this issue, to bring forth their bill, and then for the conference committee, not the other body to feel like they have been put upon, but for the conference committee to be the body to determine what the final outcome will be. That is what the process should be.

I am proud of what this bill stands for, and I think we are doing the right thing.

Mr. Speaker, I yield 2 minutes to the gentleman from Utah (Mr. CANNON).

(Mr. CANNON asked and was given permission to revise and extend his remarks.)

Mr. CANNON. Mr. Speaker, I thank the gentleman for yielding time to me.

I rise today in support of the rule and the underlying legislation. The rule provides for the continued availability of insurance against terrorism risks, and addresses multiple insurance and liability issues arising out of the September 11 attacks.

This is a good rule that incorporates changes made by the Committee on Financial Services and the Committee on Ways and Means and the Committee on the Judiciary to the original bill. I would like to speak about some of those important provisions that fell within the Committee on the Judiciary jurisdiction.

First, by working with the gentleman from Ohio (Chairman OXLEY) and the gentleman from Wisconsin (Chairman SENSENBRENNER), we were able to expand language in the original bill dealing with the use of frozen terrorist assets to compensate victims of terrorism.

This change to language offered by the gentleman from North Carolina (Mr. WATT) brings the bill into line with an amendment I offered earlier, in earlier legislation, that was accepted by the Committee on the Judiciary this fall. It was also language that was approved by the House on suspension in the 106th Congress.

The provision in the bill today will allow equal access to the frozen assets of terrorists, terrorist organizations, and terrorist sponsor-states for American victims of international terrorism who obtain judgments against those terrorist parties.

In addition, the Committee on the Judiciary added important litigation management provisions to deal with the legal aftermath of a major terrorist attack. This is a commonsense recognition that major terrorist attacks are not garden variety tort cases, and that there is a compelling national interest in setting rules and limits for how lawsuits arising from such attacks proceed. Exposing American citizens and insurers to unlimited liability in multiple judicial forums for the terrible acts of madmen is a recipe for a financial crisis.

This Congress overwhelmingly recognized the same principle when we limited airline liability for the September 11 attacks and set them back on a sound financial footing. We need to do the same today for insurers, and equally important, to the insured.

I would like to thank again the gentleman from Ohio (Chairman OXLEY), the gentleman from Wisconsin (Chairman SENSENBRENNER), the gentleman from New York (Mr. FOSSELLA), and the gentleman from North Carolina (Mr. WATT), for all their efforts on these issues.

I urge my colleagues to support the rule and the bill today. By providing partial Federal coverage for acts of terrorism, setting reasonable limits and procedures for lawsuits arising from such acts, and allowing victims to go

directly after the frozen assets of terrorists and their sponsors, we can help our Nation and economy move forward.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY), a member of the committee.

(Mrs. MALONEY of New York asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY of New York. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, I rise in opposition to the rule for the reasons outlined by the gentleman from New York (Mr. LAFALCE) and the gentleman from Pennsylvania (Mr. KANJORSKI) for not allowing substantive amendments and for fundamentally changing the work product of the Committee on Financial Services.

But Mr. Speaker, the issue of terror insurance may affect our national economy more immediately and more drastically than any tax or spending bill that Congress considers in the next decade. Without Federal intervention in the terror insurance market, our economy will face a sudden, massive credit crunch after the first of the year. Nowhere will this impact be more serious than in the district I represent in New York City.

Even if Congress passed a perfect bill, I am sure that insurance rates are going to go up and availability shortages will be a fact of life next year, especially in New York.

The New York State insurance commissioner will have to be especially vigilant next year to make sure that rates remain affordable and products are available. The restrictions on victim rights in the majority bill deserve their own vote as an amendment separate from the substance of this bill. This effort to limit the access to the State courts and restrict individuals' access to the civil courts is simply an act of the majority's long-advocated partisan agenda. This bill is too important to play politics, and these provisions have no place in this debate.

Insurance coverage is vital to our economy. Without a safety net for catastrophe, businesses simply will not do business, they will not employ people, and they will not meet consumer needs.

While the industry should be complimented for quickly moving to cover the \$50 billion to \$70 billion in losses from the World Trade Center, the reinsurance industry, which buys risk from property and casualty writers, is unable to cover massive future events.

Without reinsurance, we face a domino effect. Property and casualty insurance will be unwilling to write policies. Without property and casualty coverage, banks will refuse to lend money for major capital improvements or real estate projects.

Mr. SESSIONS. Mr. Speaker, I yield 1½ minutes to the gentleman from Columbus, Indiana (Mr. PENCE), of the Committee on the Judiciary.

Mr. PENCE. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, as a member of the Committee on the Judiciary and also as a former trial attorney, I rise in strong support of the rule and the underlying legislation.

Mr. Speaker, in the antiterrorism measures recently passed by Congress, legal reforms were an integral part of shaping bills that provide the President with the necessary means to combat evil. Legal reform is equally important to the measure before us today in this Chamber, terrorism risk protection.

Mr. Speaker, the existing legal system is simply not designed to rectify attempts by international terrorists to murder thousands of innocent Americans or obstruct our economy.

□ 1145

We need look no further than the 1993 bombing at the World Trade Center for proof. In that heinous crime 6 Americans were killed, but 500 lawsuits were filed claiming more than \$500 million in damages. These cases are only coming to trial today, over 7 years later, and many plaintiffs have yet to receive a dime in compensation.

Mr. Speaker, our current legal system is inadequate to deal with this very present threat against our people. The current legal system pits victim against victim and encourages overreaching by the colleagues in my former profession and, even worse, could result in putting hundreds of millions of dollars into the deep pockets of attorneys' fees instead of addressing real losses by Americans.

Mr. Speaker, my colleagues can understand the urgent need for legal reform in the matter of risk protection. I applaud the gentleman from Ohio (Mr. OXLEY) and his colleagues for their hard work in creating a pro-consumer, pro-taxpayer solution as read in H.R. 3210, and I urge my colleagues to support the rule and the bill.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 1 minute to the gentleman from Missouri (Mr. GEPHARDT), the minority leader.

(Mr. GEPHARDT asked and was given permission to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Speaker, I rise to ask Members to vote no on the previous question so an amendment can be offered to include worker relief in the base bill. It had been more than 2 months when we passed the bill to help the airlines, since the Speaker promised to bring up a bill soon to address the critical issue of worker relief.

It has been now more than 2 months. We have taken up all kinds of appropriation bills. We have taken up all kinds of other legislation. We have dealt in two instances with the airline industry, all of which we needed to do, and I am not opposed to the basic idea of doing something about insurance and the real estate industry. I understand the problems that the commit-

tees tried to deal with, and I am sympathetic with trying to do something about it.

I am opposed to some of the matters that got freighted on to this bill, and so I am going to vote, if this bill survives the process, because of what has been put in it with regard to civil justice system.

The basic idea of dealing with the insurance industry is a sound idea. What I am unwilling to do and I think a lot of us are unwilling to do is to take up one more bill to deal with one more industry without finally dealing with the most important problem that faces us as a country today, and that is the thousands of people that have become unemployed in America who have no income, no health insurance, and no ability to deal with the problems they now face.

I have thought a lot about it. Why are we constantly dealing with other matters before we deal with the most important matter in front of us? I have finally come to the conclusion that it is a result of the fact that we personally are not facing these problems. We intellectually know that people out there are hurting, but I guess we are not hurting. We are all employed. We all have health insurance. We just do not get it.

I was asked recently how the people in St. Louis, who I represent, were dealing with the anthrax attacks here in Washington, and I have talked obviously with my constituents a lot about what was happening here in Washington with anthrax, and they understood it intellectually, but they did not understand it the way I understood it. The analogy I have used is, it is one thing to have your aunt or uncle diagnosed with cancer. It is another thing when you are diagnosed with cancer. It takes on a new meaning.

We have thousands of people in this country who have no unemployment insurance, and they are unemployed. Probably today about 40 percent of the unemployed do not even qualify for unemployment insurance because of the changes that have been made in the laws across the country in the last years. And none of them have the money, even if they get unemployment insurance at 6- or 7- or \$500 a month, or \$300 a month, none of them can afford their COBRA health insurance, none of them.

Just imagine in your own family, if your income had been wiped out, you were not going to get a check at the end of the month, and you lost your health insurance, what happens to your kids? What if your kids get sick? What are you going to do?

That is the bill we ought to have on the floor today, and we are unwilling to continue taking up bill after bill, as necessary and as important it may be, until we deal with this single most important issue that faces the American people.

Vote no on the previous question. Vote against the rule, and let us come

back on this floor today or tomorrow and deal with the most important problem facing this country. We may not understand it because it does not affect us, but I can assure my colleagues it affects thousands of people in districts across this country. Let us come back and do the right thing.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BENTSEN).

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Speaker, one of the other speakers on the other side said this was a fair rule and a fair process. There ain't nothing fair about this rule. If my colleagues want to know where the fair process was, it was in the Committee on Financial Services where, under the gentleman from Ohio (Mr. OXLEY) and the gentleman from Louisiana (Mr. BAKER), we debated and crafted a very good bill. In fact, I was one of the original cosponsors, along with the gentleman from North Dakota (Mr. POMEROY) of the underlying bill.

Somewhere from the Committee on Financial Services to the House floor, as often happens around this place, the bill changed greatly in scope.

What I am concerned about is we had a chance to do something that we really need to do the easy way, get a bill passed in a very temporary nature where the government intervenes in the markets and basically gets into the reinsurance business; and instead we have decided to pick the hard way and add what is called legal reform.

This bill is not about reform. This bill is about avoiding defaults on virtually every major development loan that is out in the country today. It is about stopping, or not having new projects being stopped. And here is what is going to happen, because I do have a little experience in this, and I do not think all the Members do. All the lawyers do.

We are worried about the trial lawyers. We have need to be worried about the bank lawyers out there, because what they are going to do when we do not pass this bill, when the other body kills it because we are getting down off a rabbit trail on this thing, is the reinsurance companies are not going to write any new policies. So the bank lawyers are going to go pull down the documents for all the deals for all the buildings that are going to be done. And they are going to go down to the section on insurance and the covenants that are there, and they are going to say, okay, you are in technical default, ACME Development Corp. And ACME Bank is going to call ACME Development Corp. and say, you have 45 days to cure this default and if you do not cure this default, then we are going to put the deal in default and we are either going to call your loan or you will have to renegotiate your loan.

If we go read the Wall Street Journal today, we will read about Enron Corp. which is based in my home city. They

have huge loans out with some of the big money center banks. They are probably not going to get repaid. We have a credit crunch going on in the economy right now, and now we want to have an insurance crunch occur. That is the hard way to do things.

We fixed the problem in the committee. We passed, in a bipartisan vote, the Bentsen amendment that made sure that the taxpayer would not be on the hook for punitive or noneconomic damages. But what we also said was the defendant, the building owner, the airline owner, if they had liability, if they had negligence, even in a terrorist attack, if they had locked the exit door, if they had not had proper exits and there was liability, that they would have that liability if there was negligence; but the taxpayers would not have that liability.

We solved the problem in a temporary nature in what is otherwise I think is a very good bill. But for some reason, as is always the case around here, we decide to do it the hard way rather than the easy way. And someday we will do it the easy way. But what I am worried about is it is going to be January when we are doing it the easy way, and we have caused all this problem by trying to put ideological changes in a bill that has nothing to do with that.

I hope we defeat the previous question, defeat the rule, and let us get a good bill like we started with in a very bipartisan fashion.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Oregon, (Ms. HOOLEY).

Ms. HOOLEY of Oregon. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I rise in opposition to this rule. Earlier this week, the National Bureau of Economic Research announced the U.S. economy had been in recession since last March. This is not really shocking news for Oregon. Over the last year our economy has been battered, and right now we have the highest unemployment rate of any State outside of Alaska.

Yesterday the Feds announced economic growth across the United States is continuing to lag despite our best efforts of slashing taxes and cutting interest rates. Well, in about 7 weeks, about 70 percent of reinsurance contracts will expire. The unavailability of terrorism coverage for commercial businesses could have devastating results for businesses and consumers.

For the past several weeks the Committee on Financial Services worked to bring a bill to the floor that actually stood a chance of passing. In normal times it would take years, if not decades, to find a workable solution to this problem. Yet we were able to negotiate, we were able to pass a bill by voice vote, a bipartisan bill, to get us where we needed to be.

Unfortunately, we find ourselves in a familiar place, a place that mocks our legislative process. Out of the clear

blue sky, a half hour before the Committee on Rules met yesterday, a new bill was introduced. No committee hearings, no work sessions, no mark-ups. A new bill. Not only did it shred the bill which came out of the Committee on Financial Services, it comes to the floor of the House loaded with legal reform, something that has no bearing whatsoever on the health of our economy.

Someone once again decided that politics were more important than the good of business, the good of consumers and the good of the Nation. This is no laughing matter and this should not be business as usual.

Even as I speak, primary insurance companies have started filing petitions with State regulators, seeking to exclude terrorism from commercial and personal policies. Do we really expect banks to loan cash to businesses who are not insured against acts of terror?

Mr. Speaker, I stand here able and willing to reach across a political divide to bring a bill to the floor which makes sense, which will have a positive effect on our economy. But until then, I have no other choice than to oppose the rule, the underlying bill, and urge my colleagues to support the LaFalce-Kanjorski substitute.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I want to begin by commending the Committee on Financial Services leadership, the gentleman from Ohio (Chairman OXLEY) and the gentleman from Louisiana (Mr. BAKER), the subcommittee chairman, as well as the ranking members, the gentleman from New York (Mr. LAFALCE) and the gentleman from Pennsylvania (Mr. KANJORSKI). This committee has done a very serious effort at trying to address an urgent problem.

We must act. We simply must act. Those are the words of the gentleman from Louisiana (Chairman BAKER) to the Committee on Rules yesterday in describing the urgency of moving this legislation.

Well, what a shame, what an incredible shame that majority leadership would then stomp all over the work product brought out of the Committee on Financial Services to address this issue by drafting onto the bill an unrelated, partisan, highly ideological agenda.

Sometimes we just need to put our partisan roles aside and deal in a bipartisan way to address the concerns of this Nation, especially the urgent needs of this Nation. There was no need to make a political issue out of this. Both sides recognize the need to act, both sides can find an agreement in terms of how to get this terrorism coverage out there through this Federal legislation.

Instead, the majority leadership dramatically complicates this whole effort to address and get enacted legislation in the few remaining weeks.

My friend, the gentleman from Ohio (Chairman OXLEY) has described this as a fair and equitable rule. What is fair and equitable about a rule that prohibits us from offering an amendment that would restore his own work product, the Committee on Financial Services' work product, in place of the new language dropped on the bill by majority leadership? We wanted to get this and get it right.

I used to be an insurance commissioner. I can tell you, this is a very technically demanding, tricky piece of work we are attempting to do here, and to sidetrack the whole discussion by slapping the red herring of tort reform unnecessarily onto this legislation detracts considerably from our efforts and our ability to get this right.

□ 1200

This was a time when the House could have provided leadership to the Senate by passing a bill setting the framework for how this tort reform could have been established. We could improve this today significantly if the rule would allow us to put on the bill the committee's own work products.

Reject this rule. We need to do a better job.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Unfortunately, Mr. Speaker, this bill has become an attempt to rewrite the rules of our civil justice system. And I think it is important to note that statements by Members in the majority on the Committee on the Judiciary would suggest, and I know it was not their intention, but would suggest that the Committee on the Judiciary had hearings on this particular bill. Well, I think it is important that everyone in this Chamber and the American people should clearly understand that there were no hearings on this bill before the Committee on the Judiciary.

Now, no one objects to responsible measures that help ensure the availability of insurance against future acts of terrorism. Indeed, given the collapse of the reinsurance market for terrorism coverage, it is incumbent upon us to respond. But the manager's amendment that we are considering today is not a responsible measure. It transfers to the taxpayers the risk of losses, which the insurance industry has said it is willing and able to absorb; and it asks the public to assume this huge contingent liability without imposing any obligation on insurers to provide affordable coverage to those who need it.

But the worst feature of the legislation is one which has nothing whatsoever to do with stabilizing the insurance market. Section 15 of the bill would limit relief of the victims of terrorist attack by immunizing wrongdoers in advance from the consequences of their own wanton and

reckless acts. This sweeping provision would prohibit the courts from awarding punitive damages; it would eliminate joint and several liability for economic damages; require courts to reduce damage awards by the amounts received from life insurance or other collateral sources; and waive prejudgment interests, even in those egregious cases, for example, where private airport security contractors who wantonly, recklessly, or maliciously hire convicted felons, who fail to perform required background checks, or who fail to check for weapons.

Now, nobody wants to hold parties responsible if they bear no blame. But this bill lets them off the hook even if they knowingly engage in conduct that puts Americans at risk.

It is interesting to note, Mr. Speaker, that the bill would also place a cap on attorneys' fees, making it harder for victims to pursue meritorious claims in a court. But the caps apply just to plaintiffs' attorneys. Corporate defendants remain free to hire the most expensive lawyers they can find.

Mr. Speaker, it is hard to see these provisions as anything other than a tax-free gift for corporations and an attempt to rewrite the rules of our civil justice system. I urge defeat of the previous question and the rule.

Ms. SLAUGHTER. Mr. Speaker, I have one speaker remaining. How much time do I have?

The SPEAKER pro tempore (Mr. SHIMKUS). The gentlewoman from New York (Ms. SLAUGHTER) has 6 minutes remaining, and the gentleman from Texas (Mr. SESSIONS) has 6½ minutes remaining.

Ms. SLAUGHTER. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. GEORGE MILLER).

(Mr. George Miller of California asked and was given permission to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I was hoping that we would have a bill today that we could support, because I think the committee, on the underlying bill on insurance protection for the real estate industry and for the insurance companies and others, is on the right track. Yet we find this bill is substantially now loaded down with a whole series of tort reforms, without hearings, as many of my colleagues have alluded to here, and now threatens to delay, if not make impossible, the passage of this legislation.

I also, though, want to raise some questions with respect to the legislation as we continue the consideration. I would refer Members of the House to the Wall Street Journal of November 15, an article on the insurance companies that points out that the market has taken a somewhat different picture of the insurance industry than the insurance industry is presenting to the Congress of the United States. The title of the article is, "Insurance Com-

panies Benefit From September 11, Still Seek Federal Aid."

The article talks about raising premiums 100 percent, or 400 percent in some instances. It also makes it very clear that the insurance companies see this as an opportunity. A number of memos sent back and forth in Marsh & McLennan and other large insurance companies have made it clear the time is now to fully exploit the opportunity that was presented by September 11 in terms of creating new companies, creating new entities, and going after new capital.

In an effort to raise a billion dollars in new capital within a few days after September 11, in an insurance industry that is seriously in trouble supposedly, what they are telling us in Washington, they were so oversubscribed they had to turn people away. Other entities then came in, and they raised about \$4 billion in new capital. Many of the companies have sold additional stock that have been subscribed to by very, very reputable investors that have decided that this is a good take.

On the date of that article the insurance company stocks were up about 7 percent. What is going on here? They are running in and frightening the banks and frightening the real estate industry, everybody else, raising their premiums; and they know on the other end they are going to get Federal protection. As the article points out, they know they have an ability now to raise premiums up to 400 percent, to limit their liability; and the payouts will be taken on the other end.

That is why I think this committee is on the right track with the suggestion that we are prepared to help them out, but we also think there ought to be some payback. Because, again, the article makes it very clear, and the financing of this industry makes it very clear that even with the huge payouts they will experience from September 11 their reserves are sufficient. Over time, and hope to God we do not have other terrorist activities, those reserves will be built up. The premiums will be raised.

We may have a catastrophic event, we may have to step in, but the nature of the industry is they have the ability to pay the taxpayer back. There are others who want to suggest that \$10 billion and the industry is off the hook, or that we pick up all of the cost. I think we have to be very careful about how we approach this and we recognize the real financial capacity of this industry.

They are running around telling people they are not going to rewrite the insurance. That is not what they are telling other people where they know they can extract the dollars. There may be some people that cannot afford this coverage. That is a different issue. But, clearly, this industry is rapidly rebuilding its reserves, rapidly rebuilding its premium base, rapidly rebuilding its revenues and its capital.

That is what is going on on Wall Street, that is what is going on in the

American marketplace, and they are running around Washington with a tin cup suggesting, in many instances, that we should pick up all this liability as a result of a terrorist attack.

I think the committee is on the right track. Unfortunately, this bill now has been saddled with a whole series of issues that threaten to bring down its consideration by both bodies.

I would also raise the point raised by the minority leader that, once again, here we are bailing out an industry that obviously is exuding a great market force at this very time; and yet we have hundreds of thousands of families that have lost their livelihood, that have no market force, have no ability to make their mortgage payments; and this Congress is about to leave town, about to adjourn.

In spite of the representations of the President of the United States that he was going to have money, that money was taken away last night for unemployment insurance. That money was taken away from the States that could help pay people's health insurance. That was a Presidential program that was destroyed last night. The Speaker said he was going to work with the minority leader to help people put out of work in the airline industry and elsewhere because of September 11. Nothing has happened on that front.

So what we find here is that the majority party is keeping from us any consideration of help for those people who, as a result of September 11, lost their employment, or those people who lost their employment before September 11 but now see their opportunities greatly diminished. We are going to do nothing for those people. Yet we are here, after the airline industry, and now with the insurance industry. Clearly, this Congress can see its way to help the most unfortunate people in our society and not make them further victims of the attack on September 11.

Mr. Speaker, I submit for the RECORD the full newspaper article I referred to earlier.

[From the Wall Street Journal, Nov. 15, 2001]

INSURANCE COMPANIES BENEFIT FROM SEPT. 11, STILL SEEK FEDERAL AID  
(By Christopher Oster)

For Marsh & McLennan Cos., the Sept. 11 attacks have meant two very different things.

One is personal loss. The world's largest insurance brokerage lost 295 employees who worked at the World Trade Center. "It was very painful for us, agonizing for loved ones and close friends," Jeffrey W. Greenberg, Marsh's chairman and chief executive, told employees at a memorial service in St. Patrick's Cathedral in New York on Sept. 28.

But in the days after the attacks, even as the company was sorting out who was safe and who had perished, it quickly became clear that Sept. 11 presented a tremendous business opportunity for Marsh and other strong players in the industry.

Within days of the twin towers' destruction, Mr. Greenberg and top lieutenants began planning to form a new subsidiary to sell insurance to corporate customers at sharply higher rates than were common before Sept. 11. Marsh also accelerated plans to



launch a new consulting unit to capitalize on heightened corporate fears of terrorism. Vice Chairman Charles A. Davis says the company is merely meeting new marketplace demands. "There is a financial reward for doing that," he says.

Unlike airlines, which are reeling as travelers hesitate to fly, insurers have seen improved financial prospects since Sept. 11. Insurers expect to have to pay out \$40 billion to \$70 billion in claims related to the attacks. That sounds daunting, but in fact, it is manageable for an industry that collectively has \$300 billion in capital.

Moreover, in response to Sept. 11, insurers are already raising prices by 100% or more on some lines of commercial and industrial insurance. Nearly all such lines are seeing rate increases of more than 20%. For much of the 1990s, carriers had engaged in a price war, keeping premiums relatively low. The prospect of large payouts related to the attacks gave the industry grounds for demanding substantial increases.

Sept. 11 payouts will hurt insurers' balance sheets for a number of quarters. The higher rates they are introducing are expected to last for years.

Insurance stocks have jumped 7% since the attacks, outpacing the broader market, and the atmosphere in the industry is one of eager anticipation. Marsh set out to raise about \$1 billion in outside money to capitalize its new company. Investors volunteered six times that much, and dozens had to be turned away.

Amid these signs of robust health, however, the industry is stressing potential disaster as it pressures Congress for emergency aid. By the end of December, lawmakers are expected to approve legislation under which the government could have to pick up billions of dollars in claims related to future terror assaults in the U.S.

This federal backing would have tremendous financial value to insurers in the event of another disaster. And it would have an immediate impact, too, emboldening the industry to sell new terrorism coverage, for which it will charge higher premiums. Carriers collect their money now, while the government would help pay any claims later.

Even consumer advocates say newly recognized dangers warrant some sort of broader government role in insurance. But these advocates say the changed terror calculus doesn't justify a wave of steep rate increases for policies unrelated to terrorism—especially since the government is taking on the additional risk. "It's very opportunistic" of the industry, says Robert Hunter, insurance director for Consumer Federation of America, a Washington, D.C., advocacy group.

In the weeks after Sept. 11, newspapers carried numerous advertisements touting insurers' intent to pay disaster claims promptly. Less well known is how these companies plan to recoup much of the money they will be sending to policyholders.

The decade-long premium price war had been ending before the attacks, as weaker insurers collapsed or retrenched and stronger ones began gradually to charge more. Now, faced with payouts related to Sept. 11, the healthier companies are demanding that their customers share the pain by paying bigger premiums. Some insurance companies are so confident in this strategy that they are expanding operations. Since Sept. 11, at least seven insurers have sold additional shares of stock. An additional six, including Marsh, have formed new companies.

Among the new units is a Bermuda-based carrier put together by American International Group Inc. Chubb Corp. and investment bank Goldman Sachs Group Inc. State Farm Mutual Automobile Insurance Co. and RenaissanceRe Holdings Ltd. are creating

another one. Since Sept. 11, insurers have raised a total of about \$4 billion in new capital, to which they are adding a modest amount of their own money. Deals valued at another \$14 billion are expected to be completed in coming months, according to industry analysis.

Since the attacks, aviation underwriters have raised premiums for airlines by 200% to 400%, according to insurance brokers. At the same time, the underwriters are cancelling parts of airlines' coverage for liability to third parties other than passengers in future terrorist acts.

U.S. airlines don't have to worry about these increases immediately. The airline-bailout bill Congress approved after Sept. 11 included provisions under which the federal government for six months will pay any increases in commercial insurance and cover airlines' potential third-party liability for terrorism. In the not-too-distant future, though, the airlines could collectively face billions of dollars in additional annual premiums.

#### NEW SURCHARGE

Led by giant AIG, insurers have offered airlines a new, more-expensive package to replace the rescinded terrorism coverage. The new price includes a \$3.10-per-passenger surcharge. Lacking the backing of the U.S. government, numerous foreign airlines are buying the new coverage, which is expected to boost insurers' revenue by a total of hundreds of millions of dollars a year.

Owners of New York trophy properties are seeing giant rate increases. Douglas Durst, a developer with large holdings in midtown Manhattan, including the 50-story Conde Nast building, says his insurance broker has told him that he will be lucky if his premiums increase by only 20% at renewal time in April. "There are [real estate] people who are seeing their rates double," Mr. Durst says.

Brookfield Properties Inc., which owns most of the World Financial Center complex adjacent to the World Trade Center, has said that insurers are cutting back on its terrorism coverage. Brookfield said its insurers agreed to cover its liability risk associated with future terrorist attacks but are refusing to reimburse it for property damage or the costs of business interruption. (The Wall Street Journal has offices in Brookfield's World Financial Center property.)

Medium-sized and small corporate policyholders are also seeing premiums jump. One week after the attacks, Industrial Risk Insurers, a unit of General Electric Co.'s Employers Reinsurance unit, told textile manufacturer Johnston Industries Inc. that it wouldn't renew Johnston's property-insurance policies, which expired Oct. 31. Bill Henry, a vice president at the Columbus, Ga., company, says it wound up paying \$1 million more to a European carrier for a year's coverage, ending in October 2002—a 150% increase. The limit of the new policy is only \$350 million, or half of what Johnston previously received from the GE insurance unit. For a company with annual revenue of about \$240 million, "it's a major blow," says Mr. Henry.

Dean Davison, a spokesman for the GE unit, confirms that it has discontinued many of its policies. But he adds that Sept. 11 merely hastened actions that had already been planned for later this year.

#### GOVERNMENT AID

While aggressively raising premiums, the insurance industry has been busy seeking relief in Washington. Ten days after the attacks, a delegation of chief executives, including AIG's Maurice R. Greenberg, the father of Marsh's Jeffrey Greenberg, descended on the capital to lobby President Bush and lawmakers.

The industry leaders sounded an alarm that reinsurance companies—which spread corporate risk by selling insurance policies to the insurance industry—were moving to cancel terrorism-related reinsurance coverage. The big primary carriers told the politicians they would eliminate almost all terrorism coverage unless the government stepped into the role of the reinsurers.

Without this coverage, many lenders would hesitate to finance everything from factories to new real estate development, the insurance executives warned their Washington hosts. Large areas of the economy could grind to a halt.

The pitch worked. Congress is now expected to approve a mechanism that will guarantee that if there are huge future terrorism liabilities, taxpayers will help pay them. A plan under consideration in the Senate would require the industry to pay the first \$10 billion in claims, with the government picking up 90% of any remaining amount. The House Financial Services Committee favors government loans to insurers to help pay future terrorism claims.

"This is not a bailout," says Democratic Sen. Christopher Dodd of Connecticut, home to several large carriers. Rather, the government is proposing to serve as a "backstop" to encourage underwriters to provide terrorism coverage, he says.

The legislation also gives carriers the confidence to sell some terrorism policies, for which they are charging much higher premiums. "In the absence of future terrorist attacks, such an approach could create 'windfall' profits for insurers, to the detriment of policyholders," says Fitch Inc., which provides investors with financial analysis of the insurance industry.

Marsh & McLennan sees vast opportunity in this fast-changing environment. The company is primarily an insurance broker, not an underwriter. As a result, it has limited exposure to Sept. 11 property and liability claims. It took a \$173 million charge for the third quarter, which ended Sept. 30, to cover costs related to the attacks. A big piece of that was for payments to families of its own injured and dead employees.

Marsh's Mr. Greenberg knows well the dangers of appearing opportunistic in the wake of catastrophe. He gained this experience after Hurricane Andrew hit Florida in 1992, which until Sept. 11 was the industry's costliest disaster. Then a vice president at his father's AIG, the younger Mr. Greenberg wrote an internal memo saying that Andrew was "an opportunity to get price increases now." After the memo was leaked to the media, Florida regulators imposed a moratorium on premium-rate increases.

This embarrassment didn't stop Jeffrey Greenberg, now 50 years old, and his subordinates at Marsh from swiftly scouring the post-Sept. 11 business landscape for new opportunities.

The World Trade Center attacks were a devastating blow to the company, which has its headquarters in midtown Manhattan. About 1,900 Marsh employees worked in the twin towers. Within an hour of the attacks, the company had set up a phone bank to assemble information about the missing. Counseling sessions and memorial services were held daily for weeks.

#### MODEST DISRUPTION

From a business perspective, the disaster caused only modest disruption for Marsh, which has 57,000 employees world-wide. On the evening of Sept. 11, Mr. Davis, Marsh's vice chairman and chief of its MMC Capital arm, sent a fax to Mr. Greenberg's home that accounted for the unit's employees—they were all safe—and suggested the formation of a new subsidiary that would underwrite corporate policies. "We were absolutely thinking about the impact [of the attacks] and

what the opportunities were in front of us," says Mr. Davis, who came to Marsh from Goldman Sachs three years ago.

At a Sept. 18 meeting, 20 executives from Marsh's operating companies discussed the new terrain in their industry. Participants noted the premium increases already being announced and cancellations of terrorism coverage. Policy-holder demands was as strong as ever, meaning prices could only rise.

There was strong support for Mr. Davis's idea for a new company. It wouldn't be the first time Marsh gave birth to an underwriter. In the mid-1980s, it launched Ace Ltd. and Exel Capital, now known as XL. Those moves came in response to some established insurers ceasing to write liability coverage in the wake of huge jury awards for asbestos-related illnesses and big judgments against corporate directors and officers. Both Ace and XL went on to become publicly traded. Marsh retains small stakes in them.

Marsh raised its initial fundraising plan for the new carrier by 50%, to \$1.5 billion. But that still wasn't enough to accommodate all of the investors lining up for a piece of the action. GE's GE Asset Management unit and TIAA-CREF, the national teachers' pension-fund manager, were among those allowed to buy stakes. Many others were turned away.

As the investor list was being winnowed, Mr. Greenberg was stirring another pot. He called L. Paul Bremer, a former U.S. ambassador at large for counterterrorism, who had joined Marsh a year earlier. "Funny you should ask," Mr. Bremer says he responded to Mr. Greenberg's query about new business opportunities.

Mr. Bremer had been working on a plan for a crisis-consulting practice for several months. "It was clear to both of us that he should accelerate the introduction of that practice," Mr. Greenberg says.

On Oct. 11, Marsh announced the formation of a new consulting unit, with Mr. Bremer at its head. Two weeks later, Marsh unveiled a partnership between its new unit and Versar Inc., a counterterrorism-service provider. The partnership will assess chemical and bioterrorism risks for corporate clients.

**MR. SESSIONS.** Mr. Speaker, I yield 5 minutes to the gentleman from Louisiana (Mr. BAKER), chairman of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, one of two gentlemen who have worked diligently to see to it that this is a good bill, the other being the chairman of the full Committee on Financial Services, the gentleman from Ohio (Mr. OXLEY).

Mr. BAKER. Mr. Speaker, I thank the gentleman for his courtesy and generosity with the time.

I wish to extend my appreciation and commend the chairman of the Committee on Financial Services, the gentleman from Ohio (Mr. OXLEY), for his perspicacious leadership on this matter; to the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for his visionary legal acumen; and to the gentleman from New York (Mr. LA-FALCE) and the gentleman from Pennsylvania (Mr. KANJORSKI) for their critical suggestions at important steps along the way to craft a proposal which, in essence, solves, to a great extent, the potential exposure for further liability as a result of future terrorist attacks.

I cannot, however, today stand without responding to the remarks of the minority leader who said, "We don't get it." I am appalled that in this instance, when faced with legislation of such magnitude, he would suggest that Members of Congress do not know people who are without medical insurance. I have a family member this morning in the hospital without private medical insurance. To suggest that there are those of us in Congress who do not know people who are unemployed, that we do not get it because we do not know the unemployed, I would just advise that in my extended family there have been people on unemployment through no fault of their own.

We are here today to respond to a crisis, a national crisis of proportion this Nation has never seen. The vision of the morning of September 11 will never vanish from our minds, and what are we to do in response to this? To say we should postpone, delay, or otherwise obfuscate the ability to respond to this crisis when it is so clear, I cannot conceive that any Member of this Congress, despite their objections to the elements contained in this legislation, would say no to this process. This is a process. We all know there will be a very difficult conference committee at which all of these issues will be visited at length.

And let us speak to the one point of contention which brings us to this difficult moment, that is of liability reform. This House has adopted the provisions contained in the proposal before us today not once but twice. This House. I would point to the fact that the Price-Anderson Act was renewed by this Congress by a voice vote last week, which contains similar provisions.

Some have said we should not buy this pig in a poke because we do not know what is in it. I would point out this Congress has adopted the Swine Flu Act, which has the same liability provisions that this act contains.

There is no legitimate platform from which a Member can stand on this floor and say we should not act. Member after Member has said the base elements of this legislation are, indeed, acceptable to respond to the crisis we potentially face. But if we do not act, the concerns expressed for those unemployed and uninsured will only be aggravated, to a great extent, because there will be more unemployed and uninsured as economic opportunity is snatched away from the American economy by our failure to act.

Let us make this clear: this is not an insurance bailout. I do not care if an insurance company makes a profit or not. That is not my job. I do not care whether a trial lawyer gets his 30 percent cut off an unfortunate victim as a result of loss. That is not my problem. What I care about is how American taxpayer resources are used to meet a crisis of this magnitude, and to ensure that every penny extended in times of crisis are repaid to the American taxpayer.

That is what this bill does. It is an extraordinary first step. It is to say we will respond timely and appropriately. But when an insurance company is making a \$10 or \$20 or \$30 billion annual profit, they are going to pay us back. Now, what is wrong with that? And my colleagues are going to tell me today that they do not want to act to preclude the possibility of economic calamity because we have a dispute whether the trial lawyers get 20 percent or a third or half?

We will hash that out in conference committee. We will, in all likelihood, have a bill my colleagues can support with enthusiasm. But to say no today is to walk away from our responsibility as a Member of the United States Congress to respond to terrorist assaults on the United States sovereign Nation.

Did the firefighters, responding to the call on September 11, check their employment forms or see what possibility there might be for some liability provision? Did they think about what wage they were going to get paid? No. They responded. They acted. There was a crisis, and they put their lives on the line. We are not even close to considering such a heroic act. We are simply being asked to be stewards of the American taxpayers' resources and to provide for a method of response should, should, some untoward heinous act occur in the future.

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To fail to take this modest step would be a serious disappointment to the American taxpayer. I hope this House can rise above that.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am going to call a vote on the previous question and ask for its defeat; and if it is defeated, I am going to offer an amendment to the rule.

My amendment will make in order an amendment by the gentleman from New York (Mr. RANGEL) or his designee which would provide health and unemployment compensation relief to workers who have lost their jobs.

Mr. Speaker, nearly 3 months have passed since the tragic events of September 11, and since that time thousands and thousands of workers have lost their jobs, and they need relief. Their unemployment benefits will run out, and they have no health care. We passed an airline bailout the week after the terrorist attacks, and promises were made at that time by the Republican leadership that a worker relief package would follow the following the week. Today, weeks later, we are passing legislation that would provide relief to the insurance industry, still leaving no help for the workers. They desperately need our help, they need it now, and I urge a "no" vote on the previous question.

Mr. Speaker, I ask unanimous consent that the text of the amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. SHIMKUS). Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have heard a vigorous debate today about this issue. We have heard a good number of speakers say that we did it the hard way. They would have done it the easy way. I think they are right; we did do it the hard way. But I would like to be accused of doing it the right way, doing what is in the best interest of not only the taxpayer, but also in the best interest of people who have needs and who need to make sure that their insurance coverage is done right.

Mr. Speaker, Members have heard the debate on this side from some of our best and our brightest. The gentleman from Ohio (Chairman OXLEY), the gentleman from Wisconsin (Chairman SENSENBRENNER), and the gentleman from Louisiana (Chairman BAKER) talk about a very difficult issue, and they have delivered on that issue. They have worked with the White House and President Bush; and President Bush is proud of the work that they have done.

So whether it was done the hard way or the easy way, it did not matter to me and did not matter to us. We have done it the right way.

Mr. Speaker, I can proudly ask my colleagues to support not only this fair rule, but one which has the underlying legislation which is good for all of America and will ensure that the confidence and the stability of this country is held together. I am very proud of what we have done.

Mr. BAKER. Mr. Speaker, I congratulate and thank Mr. SESSIONS, Chairman DREIER and all the members of the Rules Committee for responding to the need to act swiftly on the Terrorism Risk Protection Act by crafting a fair rule that paves the way for our consideration of the Bill on the House floor today. I also wish to thank Chairman OXLEY for his leadership on this issue and to recognize the efforts of Ranking Members LAFALCE and KANJORSKI.

The attacks on New York City and Washington, D.C. on September 11, 2001, resulted in a large number of deaths and injuries, the destruction and damage to buildings, and the interruption of business operations. These consequences of the attacks were not only a human tragedy, they were also a financial disaster. The attacks inflicted possibly the largest losses ever incurred by insurers and reinsurers in a single day. Estimates of losses start at about \$40 billion and vary significantly upward from there. Fortunately, the insurance and reinsurance industry have the capital capacity to cover such losses and have committed to pay the losses due to the attacks.

However, with the events of September 11, 2001, there is great uncertainty from an underwriter's perspective. Commercial property and casualty insurance companies have little to no experience in underwriting for the types of terrorist attacks that we experienced in New York

City and Washington, D.C. The attacks set a new and very high level for potential severity. Additionally, there is an inability for underwriters to forecast the frequency or nature of future attacks. As a result of this uncertainty, many commercial property and casualty insurers and reinsurers have begun excluding terrorism risk coverage from their policies or providing very limited coverage at high costs.

The potential unavailability of terrorism risk coverage for businesses comes at precisely the time when there is the greatest demand for the insurance. Moreover, insurance coverage is almost universally a requirement of any commercial lending contract. Lenders will simply not provide financing for new or existing construction or other operations without certainty that the properties and businesses that they are funding have adequate insurance to protect the lenders' investment. Thus, the lack of available insurance for terrorism risk has adverse consequences that would spread throughout the entire economy and stifle if not halt its growth.

That is why I come before you today in strong support of H.R. 3210, the Terrorism Risk Protection Act. The temporary risk spreading program established by this Act is a bridge to allow the private market to develop the mechanisms to provide terrorism risk coverage at reasonable cost and sufficient levels, while guaranteeing that any federal assistance from the U.S. taxpayer in the interim is paid back by the insurance industry and those that benefit from the program.

I urge my fellow colleagues to support this rule and to vote yes on the bill to prevent any further slowdown of our dynamic national economy.

Mr. SENNIONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The material previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION FOR RULE ON H.R. 3210,  
TERRORISM RISK INSURANCE ACT

At the end of the resolution add the following new section:

“SEC 2. Notwithstanding any other provision of this resolution, it shall be in order without intervention of any point of order following disposition of the further amendment printed in the report to accompany the resolution to consider the further amendment printed in Section 3 of this resolution if offered by Representative Rangel or his designee. The amendment shall be considered as read; shall be debatable for one hour, equally divided between a proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question. The previous question shall be considered as ordered on the amendment.

SEC. 3. The text of the amendment is as follows:

AMENDMENT OFFERED BY MR. RANGEL

Insert at the end the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the “Fiscal Stimulus and Worker Relief Act of 2001”.

TITLE II—WORKER RELIEF

Subtitle A—Temporary Unemployment Compensation

Sec. 201. Short title.

Sec. 202. Federal-State agreements.

Sec. 203. Temporary Supplemental Unemployment Compensation Account.

Sec. 204. Payments to States having agreements under this subtitle.

Sec. 205. Financing provisions.

Sec. 206. Fraud and overpayments.

Sec. 207. Definitions.

Sec. 208. Applicability.

Subtitle B—Premium Assistance for COBRA Continuation Coverage

Sec. 211. Premium assistance for COBRA continuation coverage.

Subtitle C—Additional Assistance for Temporary Health Insurance Coverage

Sec. 221. Optional temporary medicaid coverage for certain uninsured employees.

Sec. 222. Optional temporary coverage for unsubsidized portion of COBRA continuation premiums.

TITLE II—WORKER RELIEF

Subtitle A—Temporary Unemployment Compensation

SEC. 201. SHORT TITLE.

This subtitle may be cited as the “Temporary Unemployment Compensation Act of 2001”.

SEC. 202. FEDERAL-STATE AGREEMENTS.

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this subtitle with the Secretary of Labor (hereinafter in this subtitle referred to as the “Secretary”). Any State which is a party to an agreement under this subtitle may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) IN GENERAL.—Any agreement under subsection (a) shall provide that the State agency of the State will make—

(A) payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law were applied with the modifications described in paragraph (2), and

(B) payments of temporary supplemental unemployment compensation to individuals who—

(i) have exhausted all rights to regular compensation under the State law,

(ii) do not, with respect to a week, have any rights to compensation (excluding compensation) under the State law of any other State (whether one that has entered into an agreement under this subtitle or otherwise) nor compensation under any other Federal law (other than under the Federal-State Extended Unemployment Compensation Act of 1970), and are not paid or entitled to be paid any additional compensation under any State or Federal law, and

(iii) are not receiving compensation with respect to such week under the unemployment compensation law of Canada.

(2) MODIFICATIONS DESCRIBED.—The modifications described in this paragraph are as follows:

(A) An individual shall be eligible for regular compensation if the individual would be so eligible, determined by applying—

(i) the base period that would otherwise apply under the State law if this subtitle had not been enacted, or

(ii) a base period ending at the close of the calendar quarter most recently completed before the date of the individual's application for benefits.

whichever results in the greater amount.

(B) An individual shall not be denied regular compensation under the State law's provisions relating to availability for work, active search for work, or refusal to accept work, solely by virtue of the fact that such individual is seeking, or available for, only part-time (and not full-time) work.

(C)(i) Subject to clause (ii), the amount of regular compensation (including dependents'

allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this subparagraph), plus an additional—

- (I) 25 percent, or
- (II) \$65,

whichever is greater.

(ii) In no event may the total amount determined under clause (i) with respect to any individual exceed the average weekly insured wages of that individual in that calendar quarter of the base period in which such individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter).

(c) **NONREDUCTION RULE.**—Under the agreement, subsection (b)(2)(C) shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation or regular compensation under the State law of that State has been modified in a way such that—

(1) the average weekly amount of regular compensation which will be payable during the period of the agreement (determined disregarding the modifications described in subsection (b)(2)) will be less than

(2) the average weekly amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on September 11, 2001.

(d) **COORDINATION RULES.**—

(1) **REGULAR COMPENSATION PAYABLE UNDER A FEDERAL LAW.**—The modifications described in subsection (b)(2) shall also apply in determining the amount of benefits payable under any Federal law to the extent that those benefits are determined by reference to regular compensation payable under the State law of the State involved.

(2) **TSUC TO SERVE AS SECOND-TIER BENEFITS.**—Notwithstanding any other provision of law, extended benefits shall not be payable to any individual for any week for which temporary supplemental unemployment compensation is payable to such individual.

(e) **EXHAUSTION OF BENEFITS.**—For purposes of subsection (b)(1)(B)(i), an individual shall be considered to have exhausted such individual's rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period, or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(f) **WEEKLY BENEFIT AMOUNT, TERMS AND CONDITIONS, ETC. RELATING TO TSUC.**—For purposes of any agreement under this subtitle—

(1) the amount of temporary supplemental unemployment compensation which shall be payable to an individual for any week of total unemployment shall be equal to the amount of regular compensation (including dependents' allowances) payable to such individual under the State law for a week for total unemployment during such individual's benefit year,

(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for temporary supplemental unemployment compensation and the payment thereof, except where inconsistent with the provisions of this subtitle or with the regulations or operating instructions of the Secretary promulgated to carry out this subtitle, and

(3) the maximum amount of temporary supplemental unemployment compensation

payable to any individual for whom a temporary supplemental unemployment compensation account is established under section 203 shall not exceed the amount established in such account for such individual.

**SEC. 203. TEMPORARY SUPPLEMENTAL UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) **IN GENERAL.**—Any agreement under this subtitle shall provide that the State will establish, for each eligible individual who files an application for temporary supplemental unemployment compensation, a temporary supplemental unemployment compensation account.

(b) **AMOUNT IN ACCOUNT.**—

(1) **IN GENERAL.**—The amount established in an account under subsection (a) shall be equal to the product obtained by multiplying an individual's weekly benefit amount by the applicable factor under paragraph (3).

(2) **WEEKLY BENEFIT AMOUNT.**—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment in such individual's benefit year.

(3) **APPLICABLE FACTOR.**—

(A) **GENERAL RULE.**—The applicable factor under this paragraph is 13, unless the individual's benefit year begins or ends during a period of high unemployment within such individual's State, in which case the applicable factor is 26.

(B) **PERIOD OF HIGH UNEMPLOYMENT.**—For purposes of this paragraph, a period of high unemployment within a State shall begin and end, if at all, in a way (to be set forth in the State's agreement under this subtitle) similar to the way in which an extended benefit period would under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, subject to the following:

(a) **IN GENERAL.**—Any State which desires to do so may enter into and participate in an agreement under this subtitle with the Secretary of Labor (hereinafter in this subtitle referred to as the "Secretary"). Any State which is a party to an agreement under this subtitle may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) **PROVISIONS OF AGREEMENT.**—

(1) **IN GENERAL.**—Any agreement under subsection (a) shall provide that the State agency of the State will make—

(A) payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law were applied with the modifications described in paragraph (2), and

(B) payments of temporary supplemental unemployment compensation to individuals who—

(i) have exhausted all rights to regular compensation under the State law,

(ii) do not, with respect to a week, have any rights to compensation (excluding extended compensation) under the State law of any other State (whether one that has entered into an agreement under this subtitle or otherwise) nor compensation under any other Federal law (other than under the Federal-State Extended Unemployment Compensation Act of 1970), and are not paid or entitled to be paid any additional compensation under any State or Federal law, and

(iii) are not receiving compensation with respect to such week under the unemployment compensation law of Canada.

(2) **MODIFICATIONS DESCRIBED.**—The modifications described in this paragraph are as follows:

(A) An individual shall be eligible for regular compensation if the individual would be so eligible, determined by applying—

(i) the base period that would otherwise apply under the State law if this subtitle had not been enacted, or

(ii) a base period ending at the close of the calendar quarter most recently completed before the date of the individual's application for benefits,

whichever results in the greater amount.

(B) An individual shall not be denied regular compensation under the State law's provisions relating to availability for work, active search for work, or refusal to accept work, solely by virtue of the fact that such individual is seeking, or available for, only part-time (and not full-time) work.

(C)(i) Subject to clause (ii), the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this subparagraph), plus an additional—

- (I) 25 percent, or
- (II) \$65,

whichever is greater.

(ii) In no event may the total amount determined under clause (i) with respect to any individual exceed the average weekly insured wages of that individual in that calendar quarter of the base period in which such individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter).

(c) **NONREDUCTION RULE.**—Under the agreement, subsection (b)(2)(C) shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a way such that—

(1) the average weekly amount of regular compensation which will be payable during the period of the agreement (determined disregarding the modifications described in subsection (b)(2)) will be less than

(2) the average weekly amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on September 11, 2001.

(d) **COORDINATION RULES.**—

(1) **REGULAR COMPENSATION PAYABLE UNDER A FEDERAL LAW.**—The modifications described in subsection (b)(2) shall also apply in determining the amount of benefits payable under any Federal law to the extent that those benefits are determined by reference to regular compensation payable under the State law of the State involved.

(2) **TSUC TO SERVE AS SECOND-TIER BENEFITS.**—Notwithstanding any other provision of law, extended benefits shall not be payable to any individual for any week for which temporary supplemental unemployment compensation is payable to such individual.

(e) **EXHAUSTION OF BENEFITS.**—For purposes of subsection (b)(1)(B)(i), an individual shall be considered to have exhausted such individual's rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period, or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(f) **WEEKLY BENEFIT AMOUNT, TERMS AND CONDITIONS, ETC. RELATING TO TSUC.**—For purposes of any agreement under this subtitle—

(1) the amount of temporary supplemental unemployment compensation which shall be payable to an individual for any week of total unemployment shall be equal to the amount of regular compensation (including

dependents' allowances) payable to such individual under the State law for a week for total unemployment during such individual's benefit year,

(2) the term and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for temporary supplemental unemployment compensation and the payment thereof, except where inconsistent with the provisions of this subtitle or with the regulations or operating instructions of the Secretary promulgated to carry out this subtitle, and

(3) the maximum amount of temporary supplemental unemployment compensation payable to any individual for whom a temporary supplemental unemployment compensation account is established under section 203 shall not exceed the amount established in such account for such individual.

**SEC. 203. TEMPORARY SUPPLEMENTAL UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this subtitle shall provide that the State will establish, for each eligible individual who files an application for temporary supplemental unemployment compensation, a temporary supplemental unemployment compensation account.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the product obtained by multiplying an individual's weekly benefit amount by the applicable factor under paragraph (3).

(2) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment in such individual's benefit year.

(3) APPLICABLE FACTORS.—

(A) GENERAL RULE.—The applicable factor under this paragraph is 13, unless the individual's benefit year begins or ends during a period of high unemployment within such individual's State, in which case the applicable factor is 26.

(B) PERIOD OF HIGH UNEMPLOYMENT.—For purposes of this paragraph, a period of high unemployment within a State shall begin and end, if at all, in a way (to be set forth in the State's agreement under this subtitle) similar to the way in which an extended benefit period would under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, subject to the following:

(i) To determine if there is a State "on" or "off" indicator, apply section 203(f) of such Act, but—

(I) substitute "5 percent" for "6.5 percent" in paragraph (1)(A)(i) thereof, and

(II) disregard paragraph (a)(A)(ii) thereof and the last sentence of paragraph (1) thereof.

(ii) To determine the beginning and ending dates of a period of high unemployment within a State, apply section 203(a) and (b) of such Act, except that—

(I) in applying such section 203(a), deem paragraphs (1) and (2) thereof to be amended by striking "the third week after", and

(II) in applying such section 203(b), deem paragraph (1)(A) thereof amended by striking "thirteen" and inserting "twenty-six" and paragraph (1)(B) thereof amended by striking "fourteenth" and inserting "twenty-seventh".

(4) RULE OF CONSTRUCTION.—For purposes of any computation under paragraph (1) (and any determination of amount under section 202(f)(1)), the modification described in section 202(b)(2)(C) (relating to increased bene-

fits) shall be deemed to have been in effect with respect to the entirety of the benefit year involved.

(c) ELIGIBILITY PERIOD.—An individual whose applicable factor under subsection (b)(3) is 26 shall be eligible for temporary supplemental unemployment compensation for each week of total unemployment in his benefit year which begins in the State's period of high unemployment and, if his benefit year ends within such period, any such weeks thereafter which begin in such period of high unemployment, not to exceed a total of 26 weeks.

**SEC. 204. PAYMENTS TO STATES HAVING AGREEMENTS UNDER THIS SUBTITLE.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this subtitle an amount equal to—

(1) 100 percent of any regular compensation made payable to individuals by such State by virtue of the modifications which are described in section 202(b)(2) and deemed to be in effect with respect to such State pursuant to section 202(b)(1)(A),

(2) 100 percent of any regular compensation—

(A) which is paid to individuals by such State by reason of the fact that its State law contains provisions comparable to the modifications described in section 202(b)(2)(A)-(B), but only

(B) to the extent that those amounts would, if such amounts were instead payable by virtue of the State law's being deemed to be so modified pursuant to section 202(b)(1)(A), have been reimbursable under paragraph (1), and

(3) 100 percent of the temporary supplemental unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) DETERMINATION OF AMOUNT.—Sums under subsection (a) payable to any State by reason of such State having an agreement under this subtitle shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subtitle for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(c) ADMINISTRATIVE EXPENSES, ETC.—There is hereby appropriated out of the employment security administration account of the Unemployment Trust Fund (as established by section 901(a) of the Social Security Act) \$500,000,000 to reimburse States for the costs of the administration of agreements under this subtitle (including any improvements in technology in connection therewith) and to provide reemployment services to unemployment compensation claimants in States having agreements under this subtitle. Each State's share of the amount appropriated by the preceding sentence shall be determined by the Secretary according to the factors described in section 302(a) of the Social Security Act and certified by the Secretary to the Secretary of the Treasury.

**SEC. 205. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act), and the Federal unemployment account (as established by section 904(g) of the Social Security Act), of the Unemploy-

ment Trust Fund shall be used, in accordance with subsection (b), for the making of payments (described in section 204(a)) to States having agreements entered into under this subtitle.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums described in section 204(a) which are payable to such State under this subtitle. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification by transfers from the extended unemployment compensation account (or, to the extent that there are insufficient funds in that account, from the Federal unemployment account) to the account of such State in the Unemployment Trust Fund.

**SEC. 206. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received any regular compensation or temporary supplemental unemployment compensation under this subtitle to which he was not entitled, such individual—

(1) shall be ineligible for any further benefits under this subtitle in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received any regular compensation or temporary supplemental unemployment compensation under this subtitle to which they were not entitled, the State shall require such individuals to repay those benefits to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such benefits was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any regular compensation or temporary supplemental unemployment compensation payable to such individual under this subtitle or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the regular compensation or temporary supplemental unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same

extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

#### SEC. 207. DEFINITIONS.

For purposes of this subtitle:

(1) IN GENERAL.—The terms “compensation”, “regular compensation”, “extended compensation”, “additional compensation”, “benefit year”, “base period”, “State”, “State agency”, “State law”, and “week” have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, subject to paragraph (2).

(2) STATE LAW AND REGULAR COMPENSATION.—In the case of a State entering into an agreement under this subtitle—

(A) “State law” shall be considered to refer to the State law of such State, applied in conformance with the modifications described in section 202(b)(2), subject to section 202(c), and

(B) “regular compensation” shall be considered to refer to such compensation, determined under its State law (applied in the manner described in subparagraph (A)), except as otherwise provided or where the context clearly indicates otherwise.

#### SEC. 208. APPLICABILITY.

(a) IN GENERAL.—An agreement entered into under this subtitle shall apply to weeks of unemployment—

(1) beginning after the date on which such agreement is entered into, and

(2) ending before January 1, 2003.

(b) SPECIFIC RULES.—Under such an agreement—

(1) the modification described in section 202(b)(2)(A) (relating to alternative base periods) shall not apply except in the case of initial claims filed after September 11, 2001,

(2) the modifications described in section 202(b)(2)(B)–(C) (relating to part-time employment and increased benefits, respectively) shall apply to weeks of unemployment (described in subsection (a)), irrespective of the date on which an individual's claim for benefits is filed, and

(3) the payments described in section 202(b)(1)(B) (relating to temporary supplemental unemployment compensation) shall not apply except in the case of individuals exhausting their rights to regular compensation (as described in clause (i) thereof) after September 11, 2001.

Subtitle B—Premium Assistance for COBRA Continuation Coverage

#### SEC. 211. PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Labor, shall establish a program under which premium assistance for COBRA continuation coverage shall be provided for qualified individuals under this section.

(b) DETERMINATION OF AMOUNT.—Sums under subsection (a) payable to any State by reason of such State having an agreement under this subtitle shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subtitle for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(c) ADMINISTRATIVE EXPENSES, ETC.—There is hereby appropriated out of the employment security administration account of the Unemployment Trust Fund (as established by section 901(a) of the Social Security Act) \$500,000,000 to reimburse States for the costs of the administration of agreements under this subtitle (including any improvements in technology in connection therewith) and to provide reemployment services to unemployment compensation claimants in States having agreements under this subtitle. Each State's share of the amount appropriated by the preceding sentence shall be determined by the Secretary according to the factors described in section 302(a) of the Social Security Act and certified by the Secretary to the Secretary of the Treasury.

#### SEC. 205. FINANCING PROVISIONS.

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act), and the Federal unemployment account (as established by section 904(g) of the Social Security Act), of the Unemployment Trust Fund shall be used, in accordance with subsection (b), for the making of payments (described in section 204(a)) to States having agreements entered into under this subtitle.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums described in section 204(a) which are payable to such State under this subtitle. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification by transfers from the extended unemployment compensation account (or, to the extent that there are insufficient funds in that account, from the Federal unemployment account) to the account of such State in the Unemployment Trust Fund.

#### SEC. 206. FRAUD AND OVERPAYMENTS.

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received any regular compensation or temporary supplemental unemployment compensation under this subtitle to which he was not entitled, such individual—

(1) shall be ineligible for any further benefits under this subtitle in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received any regular compensation or temporary supplemental unemployment compensation under this subtitle to which they were not entitled, the State shall require such individuals to repay those benefits to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such benefits was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any regular compensation or temporary supplemental unemployment compensation payable to such individual under this subtitle or from any un-

employment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individual received the payment of the regular compensation or temporary supplemental unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit from which such deduction is made.

(4) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

#### SEC. 207. DEFINITIONS.

For purposes of this subtitle:

(1) IN GENERAL.—The terms “compensation”, “regular compensation”, “extended compensation”, “additional compensation”, “benefit year”, “base period”, “State”, “State agency”, “State law”, and “week” have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, subject to paragraph (2).

(2) STATE LAW AND REGULAR COMPENSATION.—In the case of a State entering into an agreement under this subtitle—

(A) “State law” shall be considered to refer to the State law of such State, applied in conformance with the modifications described in section 202(b)(b), subject to section 202(c), and

(B) “regular compensation” shall be considered to refer such compensation, determined under its State law (applied in a manner described in subparagraph (A)),

except as otherwise provided or where the context clearly indicates otherwise.

#### SEC. 208. APPLICABILITY.

(a) IN GENERAL.—An agreement entered into under this subtitle shall apply to weeks of unemployment—

(1) beginning after the date on which such agreement is entered into, and

(2) ending before January 1, 2003.

(b) SPECIFIED RULES.—Under such an agreement—

(1) the modifications described in section 202(b)(2)(A) (relating to alternative base periods) shall not apply except in the case of initial claims filed after September 11, 2001.

(2) the modifications described in section 202(b)(2)(B)–(C) (relating to part-time employment and increased benefits, respectively) shall apply to weeks of unemployment (described in subsection (a)), irrespective of the date on which an individual's claim for benefits is filed, and

(3) the payments described in section 202(b)(1)(B) (relating to temporary supplemental unemployment compensation) shall not apply except in the case of individuals exhausting their rights to regular compensation (as described in clause (i) thereof) after September 11, 2001.

Subtitle B—Premium Assistance for COBRA Continuation Coverage

#### SEC. 211. PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the

Secretary of the Treasury, in consultation with the Secretary of Labor, shall establish a program under which premium assistance for COBRA continuation coverage shall be provided for qualified individuals under this section.

(2) **QUALIFIED INDIVIDUALS.**—For purposes of this section, a qualified individual is an individual who—

(A) establishes that the individual—

(i) on or after July 1, 2001, and before the end of the 1-year period beginning on the date of the enactment of this Act, became entitled to elect COBRA continuation coverage; and

(ii) has elected such coverage; and

(B) enrolls in the premium assistance program under this section by not later than the end of such 1-year period.

(b) **LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.**—Premium assistance provided under this subsection shall end with respect to an individual on the earlier of—

(1) the date the individual is no longer covered under COBRA continuation coverage; or

(2) 12 months after the date the individual is first enrolled in the premium assistance program established under this section.

(c) **PAYMENT, AND CREDITING OF ASSISTANCE.**—

(1) **AMOUNT OF ASSISTANCE.**—Premium assistance provided under this section shall be equal to 75 percent of the amount of the premium required for the COBRA continuation coverage.

(2) **PROVISION OF ASSISTANCE.**—Premium assistance provided under this section shall be provided through the establishment of direct payment arrangements with the administrator of the group health plan (or other entity) that provides or administers the COBRA continuation coverage. It shall be a fiduciary duty of such administrator (or other entity) to enter into such arrangements under this section.

(3) **PREMIUMS PAYABLE BY QUALIFIED INDIVIDUAL REDUCED BY AMOUNT OF ASSISTANCE.**—Premium assistance provided under this section shall be credited by such administrator (or other entity) against the premium otherwise owed by the individual involved for such coverage.

(d) **CHANGE IN COBRA NOTICE.**—

(1) **GENERAL NOTICE.**—

(A) **IN GENERAL.**—In the case of notices provided under section 4980B(f)(6) of the Internal Revenue Code of 1986 with respect to individuals who, on or after July 1, 2001, and before the end of the 1-year period beginning on the date of the enactment of this Act, become entitled to elect COBRA continuation coverage, such notices shall include an additional notification to the recipient of the availability of premium assistance for such coverage under this section.

(B) **ALTERNATIVE NOTICE.**—In the case of COBRA continuation coverage to which the notice provision under section 4980B(f)(6) of the Internal Revenue Code of 1986 does not apply, the Secretary of the Treasury shall, in coordination with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, assure provision of such notice.

(C) **FORM.**—The requirement of the additional notification under this paragraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(2) **SPECIFIC REQUIREMENTS.**—Each additional notification under paragraph (1) shall include—

(A) the forms necessary for establishing eligibility under subsection (a)(2)(A) and enrollment under subsection (a)(2)(B) in connection with the coverage with respect to each covered employee or other qualified beneficiary;

(B) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with the premium assistance; and

(C) the following statement displayed in a prominent manner:

“You may be eligible to receive assistance with payment of 75 percent of your COBRA continuation coverage premiums for a duration of not to exceed 12 months.”.

(3) **NOTICE RELATING TO RETROACTIVE COVERAGE.**—In the case of such notices previously transmitted before the date of the enactment of this Act in the case of an individual described in paragraph (1) who has elected (or is still eligible to elect) COBRA continuation coverage as of the date of the enactment of this Act, the administrator of the group health plan (or other entity) involved or the Secretary of the Treasury (in the case described in the paragraph (1)(B)) shall provide (within 60 days after the date of the enactment of this Act) for the additional notification required to be provided under paragraph (1).

(4) **MODEL NOTICES.**—The Secretary shall prescribe models for the additional notification required under this subsection.

(f) **OBLIGATION OF FUNDS.**—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of premium assistance under this section.

(g) **PROMPT ISSUANCE OF GUIDANCE.**—The Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue guidance under this section not later than 30 days after the date of the enactment of this Act.

(h) **DEFINITIONS.**—In this section:

(1) **ADMINISTRATOR.**—The term “administrator” has the meaning given such term in section 3(16) of the Employee Retirement Income Security Act of 1974.

(2) **COBRA CONTINUATION COVERAGE.**—The term “COBRA continuation coverage” means continuation coverage provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), section 8905a of title 5, United States Code, or under a State program that provides continuation coverage comparable to such continuation coverage.

(3) **GROUP HEALTH PLAN.**—The term “group health plan” has the meaning given such term in section 9832(a) of the Internal Revenue Code of 1986.

(4) **STATE.**—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Subtitle C—Additional Assistance for Temporary Health Insurance Coverage  
**SEC. 221. OPTIONAL TEMPORARY MEDICAID COVERAGE FOR CERTAIN UNINSURED EMPLOYEES.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, with respect to any month before the ending month, a State may elect to provide, under its medicaid program under title XIX of the Social Security Act, medical assistance in the case of an individual—

(1)(A) who has become totally or partially separated from employment on or after July 1, 2001, and before the end of such ending month; or

(B) whose hours of employment have been reduced on or after July 1, 2001, and before the end of such ending month;

(2) who is not eligible for COBRA continuation coverage; and

(3) who is uninsured.

(b) **LIMITATION OF PERIOD OF COVERAGE.**—Assistance under this section shall end with respect to an individual on the earlier of—

(1) the date the individual is no longer uninsured; or

(2) 12 months after the date the individual is first determined to be eligible for medical assistance under this section.

(c) **SPECIAL RULES.**—In the case of medical assistance provided under this section—

(1) the Federal medical assistance percentage under section 1905(b) of the Social Security Act shall be the enhanced FMAP (as defined in section 2105(b) of such Act);

(2) a State may elect to apply alternative income, asset, and resource limitations and the provisions of section 1916(g) of such Act, except that in no case shall a State cover individuals with higher family income without covering individuals with a lower family income;

(3) such medical assistance shall not be provided for periods before the date the individual becomes uninsured;

(4) a State may elect to make eligible for such assistance a spouse or children of an individual eligible for medical assistance under paragraph (1), if such spouse or children are uninsured;

(5) individuals eligible for medical assistance under this section shall be deemed to be described in the list of individuals described in the matter preceding paragraph (1) of section 1905(a) of such Act; and

(6) the Secretary of Health and Human Services shall not count, for purposes of section 1108(f) of the Social Security Act, such amount of payments under this section as bears a reasonable relationship to the average national proportion of payments made under this section for the 50 States and the District of Columbia to the payments otherwise made under title XIX for such States and District.

(d) **DEFINITION.**—For purposes of this subtitle:

(1) **UNINSURED.**—The term “uninsured” means, with respect to an individual, that the individual is not covered under—

(A) a group health plan (as defined in section 2791(a) of the Public Health Service Act),

(B) health insurance coverage (as defined in section 2791(b)(1) of the Public Health Service Act), or

(C) a program under title XVIII, XIX, or XXI of the Social Security Act, other than under such title XIX pursuant to this section.

For purposes of this paragraph, such coverage under subparagraph (A) or (B) shall not include coverage consisting solely of coverage of excepted benefits (as defined in section 2791(c) of the Public Health Service Act).

(2) **COBRA CONTINUATION COVERAGE.**—The term “COBRA continuation coverage” means coverage under a group health plan provided by an employer pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or section 8905a of title 5, United States Code.

(3) **STATE.**—The term “State” has the meaning given such term for purposes of title XIX of the Social Security Act.

(4) **ENDING MONTH.**—The term “ending month” means the last month that begins before the date that is 1 year after the date of the enactment of this Act.

(e) **EFFECTIVE DATE.**—This section shall take effect upon its enactment, whether or not regulations implementing this section are issued.

(B) **ALTERNATIVE NOTICE.**—In the case of COBRA continuation coverage to which the notice provision under section 4980B(f)(6) of the Internal Revenue Code of 1986 does not apply, the Secretary of the Treasury shall, in coordination with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, assure provision of such notice.

(C) **FORM.**—The requirement of the additional notification under this paragraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(2) **SPECIFIC REQUIREMENTS.**—Each additional notification under this paragraph (1) shall include—

(A) the forms necessary for establishing eligibility under subsection (a)(2)(A) and enrollment under subsection (a)(2)(B) in connection with the coverage with respect to each covered employee or other qualified beneficiary;

(B) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with the premium assistance; and

(C) the following statement displayed in a prominent manner:

“You may be eligible to receive assistance with payment of 75 percent of your COBRA continuation coverage premiums for a duration of not to exceed 12 months.”

(3) **NOTICE RELATING TO RETROACTIVE COVERAGE.**—In the case of such notices previously transmitted before the date of the enactment of this Act in the case of an individual described in paragraph (1) who has elected (or is still eligible to elect) COBRA continuation coverage as to the date of the enactment of this Act, the administrator of the group health plan (or other entity) involved or the Secretary of the Treasury (in the case described in the paragraph (1)(B)) shall provide (within 60 days after the date of the enactment of this Act) for the additional notification required to be provided under paragraph (1).

(4) **MODEL NOTICES.**—The Secretary shall prescribe models for the additional notification required under this subsection.

(f) **OBLIGATION OF FUNDS.**—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal government to provide for the payment of premium assistance under this section.

(g) **PROMPT ISSUANCE OF GUIDANCE.**—The Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue guidance under this section not later than 30 days after the date of the enactment of this Act.

(h) **DEFINITIONS.**—In this section:

(1) **ADMINISTRATOR.**—The term “administrator” has the meaning given such term in section 3(16) of the Employee Retirement Income Security Act of 1974.

(2) **COBRA CONTINUATION COVERAGE.**—The term “COBRA continuation coverage” means continuation coverage provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), section 8905a of title 5, United States Code, or under a State program that provides continuation coverage comparable to such continuation coverage.

(3) **GROUP HEALTH PLAN.**—The term “group health plan” has the meaning given such term in section 9832(a) of the Internal Revenue Code of 1986.

(4) **STATE.**—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Subtitle C—Additional Assistance for Temporary Health Insurance Coverage  
**SEC. 221. OPTIONAL TEMPORARY MEDICAID COVERAGE FOR CERTAIN UNINSURED EMPLOYEES.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, with respect to any month before the ending month, a State may elect to provide, under its medicaid program under title XIX of the Social Security Act, medical assistance in the case of an individual—

(1)(A) who has become totally or partially separated from employment on or after July 1, 2001, and before the end of such ending month; or

(B) whose hours of employment have been reduced on or after July 1, 2001, and before the end of such ending month;

(2) who is not eligible for COBRA continuation coverage; and

(3) who is uninsured.

(b) **LIMITATION OF PERIOD OF COVERAGE.**—Assistance under this section shall end with respect to an individual on the earlier of—

(1) the date the individual is no longer uninsured; or

(2) 12 months after the date the individual is first determined to be eligible for medical assistance under this section.

(c) **SPECIAL RULES.**—In the case of medical assistance provided under this section—

(1) the Federal medical assistance percentage under section 1905(b) of the Social Security Act shall be the enhanced FMAP (as defined in section 2105(b) of such Act);

(2) a State may elect to apply alternative income, asset, and resource limitations and the provisions of section 1916(g) of such Act, except that in no case shall a State cover individuals with higher family income without covering individuals with a lower family income;

(3) such medical assistance shall not be provided for periods before the date the individual becomes uninsured;

(4) a State may elect to make eligible for such assistance a spouse or children of an individual eligible for medical assistance under paragraph (1), if such spouse or children are uninsured;

(5) individuals eligible for medical assistance under this section shall be deemed to be described in the list of individuals described in the matter preceding paragraph (1) of section 1905(a) of such Act; and

(6) the Secretary of Health and Human Services shall not count, for purposes of section 1108(f) of the Social Security Act, such amount of payments under this section as bears a reasonable relationship to the average national proportion of payments made under this section for the 50 States and the District of Columbia to the payments otherwise made under title XIX for such States and District.

(d) **DEFINITIONS.**—For purposes of this subtitle:

(1) **UNINSURED.**—The term “uninsured” means, with respect to an individual, that the individual is not covered under—

(A) a group health plan (as defined in section 2791(a) of the Public Health Service Act),

(B) health insurance coverage (as defined in section 2791(b)(1) of the Public Health Service Act), or

(C) a program under title XVIII, XIX, or XXI of the Social Security Act, other than under such title XIX pursuant to this section.

For purposes of this paragraph, such coverage under subparagraph (A) or (B) shall not

include coverage consisting solely of coverage of excepted benefits (as defined in section 2791(c) of the Public Health Service Act).

(2) **COBRA CONTINUATION COVERAGE.**—The term “COBRA continuation coverage” means coverage under a group health plan provided by an employer pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or section 8905a of title 5, United States Code.

(3) **STATE.**—The term “State” has the meaning given such term for purposes of title XIX of the Social Security Act.

(4) **ENDING MONTH.**—The term “ending month” means the last month that begins before the date that is 1 year after the date of the enactment of this Act.

(e) **EFFECTIVE DATE.**—This section shall take effect upon its enactment, whether or not regulations implementing this section are issued.

(f) **LIMITATION OF ELECTION.**—A State may not elect to provide coverage under this section unless the State elects to provide coverage under section 222.

**SEC. 222. OPTIONAL TEMPORARY COVERAGE FOR UNSUBSIDIZED PORTION OF COBRA CONTINUATION PREMIUMS.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, with respect to COBRA continuation coverage provided for any month through the ending month, a State may elect to provide payment of the unsubsidized portion of the premium for COBRA continuation coverage in the case of any individual—

(1)(A) who has become totally or partially separated from employment on or after July 1, 2001, and before the end of the ending month; or

(B) whose hours of employment have been reduced on or after July 1, 2001, and before the end of such ending month; and

(2) who is eligible for, and has elected coverage under, COBRA continuation coverage.

(b) **LIMITATION OF PERIOD OF COVERAGE.**—Premium assistance under this section shall end with respect to an individual on the earlier of—

(1) the date the individual is no longer covered under COBRA continuation coverage; or

(2) 12 months after the date the individual is first determined to be eligible for premium assistance under this section.

(c) **FINANCIAL PAYMENT TO STATES.**—A State providing premium assistance under this section shall be entitled to payment under section 1903(a) of the Social Security Act with respect to such assistance (and administrative expenses relating to such assistance) in the same manner as such State is entitled to payment with respect to medical assistance (and such administrative expenses) under such section, except that, for purposes of this subsection, any reference to the Federal medical assistance percentage shall be deemed a reference to the enhanced FMAP (as defined in section 2105(b) of such Act). The provisions of subsection (c)(6) of section 221 shall apply with respect to this section in the same manner as it applies under such section.

(d) **UNSUBSIDIZED PORTION OF PREMIUM FOR COBRA CONTINUATION COVERAGE.**—For purposes of this section, the term “unsubsidized portion of premium for COBRA continuation coverage” means that portion of the premium for COBRA continuation coverage for which there is no financial assistance available under 211.

(e) **EFFECTIVE DATE.**—This section shall take effect upon its enactment, whether or not regulations implementing this section are issued.



(f) LIMITATION ON ELECTION.—A State may not elect to provide coverage under this section unless the State elects to provide coverage under section 221.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 220, nays 204, not voting 9, as follows:

[Roll No. 460]

YEAS—220

Aderholt	Fossella	Lucas (OK)
Akin	Frelinghuysen	Manzullo
Armey	Gallegly	McCrary
Bachus	Ganske	McHugh
Baker	Gekas	McInnis
Ballenger	Gibbons	McKeon
Barr	Gilchrest	Mica
Bartlett	Gillmor	Miller, Dan
Barton	Gilman	Miller, Gary
Bass	Goode	Miller, Jeff
Bereuter	Goodlatte	Moran (KS)
Biggert	Goss	Morella
Bilirakis	Graham	Myrick
Blunt	Granger	Nethercutt
Boehler	Graves	Ney
Boehner	Green (WI)	Northup
Bonilla	Greenwood	Norwood
Bono	Grucci	Nussle
Boozman	Gutknecht	Osborne
Brady (TX)	Hall (TX)	Ose
Brown (SC)	Hansen	Otter
Bryant	Hart	Oxley
Burr	Hastings (WA)	Paul
Burton	Hayes	Pence
Buyer	Hayworth	Peterson (PA)
Callahan	Hefley	Petri
Calvert	Herger	Pickering
Camp	Hilleary	Pitts
Cannon	Hobson	Platts
Cantor	Hoekstra	Pombo
Capito	Horn	Portman
Castle	Hostettler	Pryce (OH)
Chabot	Houghton	Putnam
Chambliss	Hulshof	Radanovich
Coble	Hunter	Ramstad
Collins	Hyde	Regula
Combest	Isakson	Rehberg
Cox	Issa	Reynolds
Crane	Istook	Riley
Crenshaw	Jenkins	Rogers (KY)
Culberson	Johnson (CT)	Rogers (MI)
Cunningham	Johnson (IL)	Rohrabacher
Davis, Jo Ann	Johnson, Sam	Ros-Lehtinen
Davis, Tom	Jones (NC)	Roukema
Deal	Keller	Royce
DeLay	Kelly	Ryan (WI)
DeMint	Kennedy (MN)	Ryan (KS)
Diaz-Balart	Kerns	Saxton
Doolittle	King (NY)	Schaffer
Dreier	Kingston	Schrock
Duncan	Kirk	Sensenbrenner
Dunn	Knollenberg	Sessions
Ehlers	Kolbe	Shadegg
Ehrlich	LaHood	Shaw
Emerson	Largent	Shays
English	Latham	Sherwood
Everett	LaTourette	Shimkus
Ferguson	Leach	Shuster
Flake	Lewis (CA)	Simmons
Fletcher	Lewis (KY)	Simpson
Foley	Linder	Skeen
Forbes	LoBiondo	Smith (MI)

Smith (NJ)	Thornberry
Smith (TX)	Thune
Souder	Tiahrt
Stearns	Tiberi
Stump	Toomey
Sununu	Trafficant
Sweeney	Upton
Tancredo	Vitter
Tauzin	Walden
Taylor (NC)	Walsh
Terry	Wamp
Thomas	Watkins (OK)

NAYS—204

Abercrombie	Hastings (FL)	Nadler
Ackerman	Hill	Napolitano
Allen	Hilliard	Neal
Andrews	Hinchey	Oberstar
Baca	Hinojosa	Obey
Baird	Hoeffel	Oliver
Baldacci	Holden	Ortiz
Baldwin	Holt	Owens
Barcia	Honda	Pallone
Barrett	Hooley	Pascarell
Becerra	Hoyer	Pastor
Bentsen	Inslee	Payne
Berkley	Israel	Pelosi
Berman	Jackson (IL)	Peterson (MN)
Berry	Jackson-Lee	Phelps
Bishop	(TX)	Pomeroy
Blagojevich	Jefferson	Price (NC)
Blumenauer	John	Rahall
Boniior	Johnson, E. B.	Rangel
Borski	Jones (OH)	Reyes
Boswell	Kanjorski	Rivers
Boucher	Kaptur	Rodriguez
Boyd	Kennedy (RI)	Roemer
Brady (PA)	Kildee	Ross
Brown (FL)	Kilpatrick	Roybal-Allard
Brown (OH)	Kind (WI)	Rush
Capps	Klecza	Sabo
Capuano	Kucinich	Sanchez
Cardin	LaFalce	Sanders
Carson (OK)	Lampson	Sandlin
Clay	Langevin	Sawyer
Clayton	Lantos	Schakowsky
Clement	Larsen (WA)	Schiff
Clyburn	Larson (CT)	Scott
Condit	Lee	Serrano
Conyers	Levin	Sherman
Costello	Lewis (GA)	Shows
Coyne	Lipinski	Skelton
Cramer	LoFgren	Slaughter
Crowley	Lowey	Smith (WA)
Cummings	Lucas (KY)	Snyder
Davis (CA)	Luther	Soils
Davis (FL)	Lynch	Spratt
Davis (IL)	Maloney (CT)	Stark
DeGette	Maloney (NY)	Stenholm
Delahunt	Markey	Strickland
DeLauro	Mascara	Stupak
Deutsch	Matheson	Tanner
Dicks	Matsui	Tauscher
Dingell	McCarthy (MO)	Taylor (MS)
Doggett	McCarthy (NY)	Thompson (CA)
Dooley	McCollum	Thompson (MS)
Doyle	McDermott	Thurman
Edwards	McGovern	Tierney
Engel	McIntyre	Towns
Eshoo	McKinney	Turner
Etheridge	McNulty	Udall (CO)
Evans	Meehan	Udall (NM)
Farr	Meek (FL)	Velazquez
Fattah	Meeke (NY)	Viscosky
Filner	Menendez	Walters
Frank	Millender-Watt (NC)	Watson (CA)
Gephardt	McDonald	Watt (NC)
Gonzalez	Miller, George	Waxman
Gordon	Mink	Weiner
Green (TX)	Mollohan	Woolsey
Gutierrez	Moore	Wu
Hall (OH)	Moran (VA)	Wynn
Harman	Murtha	

NOT VOTING—9

Carson (IN)	DeFazio	Quinn
Cooksey	Ford	Rothman
Cubin	Frost	Wexler

□ 1246

Messrs. HONDA, OBEY, BARRETT of Wisconsin, RUSH and WU and Ms. WOOLSEY changed their vote from “yea” to “nay.”

Mr. BACHUS and Mr. TANCREDO changed their vote from “nay” to “yea.”

So the previous question was ordered. The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HANSEN). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. SLAUGHTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 216, noes 202, not voting 15, as follows:

[Roll No. 461]

AYES—216

Aderholt	Goodlatte	Paul
Akin	Goss	Pence
Armey	Graham	Peterson (PA)
Bachus	Granger	Petri
Baker	Graves	Pickering
Ballenger	Green (WI)	Pitts
Barr	Greenwood	Platts
Bartlett	Grucci	Pombo
Barton	Gutknecht	Portman
Bass	Hansen	Pryce (OH)
Bereuter	Hart	Putnam
Bilirakis	Hastings (WA)	Ramstad
Blunt	Hayes	Regula
Boehler	Hayworth	Rehberg
Boehner	Hefley	Reynolds
Bonilla	Herger	Riley
Bono	Hilleary	Rogers (KY)
Boozman	Hobson	Rogers (MI)
Brady (TX)	Hoekstra	Rohrabacher
Brown (SC)	Hostettler	Ros-Lehtinen
Bryant	Houghton	Roukema
Burr	Hulshof	Royce
Burton	Hunter	Ryan (WI)
Buyer	Isakson	Ryan (KS)
Callahan	Issa	Saxton
Calvert	Jenkins	Schaffer
Camp	Johnson (CT)	Schrock
Cannon	Johnson (IL)	Sensenbrenner
Cantor	Johnson, Sam	Sessions
Capito	Jones (NC)	Shadegg
Castle	Keller	Shaw
Chabot	Kelly	Shays
Chambliss	Kennedy (MN)	Sherwood
Coble	Kerns	Shuster
Collins	King (NY)	Simmons
Combest	Kingston	Simpson
Cox	Kirk	Skeen
Crane	Knollenberg	Smith (MI)
Crenshaw	Kolbe	Smith (NJ)
Culberson	LaHood	Smith (TX)
Cunningham	Largent	Souder
Davis, Jo Ann	Latham	Stearns
Davis, Tom	LaTourette	Stump
Deal	Leach	Sununu
DeLay	Lewis (CA)	Sweeney
DeMint	Lewis (KY)	Tancredo
Diaz-Balart	Linder	Tauzin
Doolittle	LoBiondo	Taylor (NC)
Dreier	Lucas (KY)	Terry
Duncan	Lucas (OK)	Thomas
Dunn	Manzullo	Thornberry
Ehlers	McCrery	Thune
Ehrlich	McHugh	Tiahrt
Emerson	McInnis	Tiberi
English	McKeon	Toomey
Everett	Mica	Trafficant
Ferguson	Miller, Dan	Upton
Flake	Miller, Gary	Vitter
Fletcher	Miller, Jeff	Walden
Foley	Moran (KS)	Walsh
Forbes	Morella	Wamp
	Myrick	Watts (OK)
	Nethercutt	Weldon (FL)
	Ney	Weldon (PA)
	Northup	Weller
	Norwood	Whitfield
	Nussle	Wicker
	Osborne	Wilson
	Oxley	Wolf
		Young (AK)
		Young (FL)

NOES—202

Abercrombie	Harman	Nadler
Ackerman	Hastings (FL)	Napolitano
Allen	Hill	Neal
Andrews	Hilliard	Oberstar
Baca	Hinchev	Obey
Baird	Hinojosa	Olver
Baldacci	Hoefel	Ortiz
Baldwin	Holden	Owens
Barcia	Holt	Pallone
Barrett	Honda	Pascarell
Becerra	Hookey	Pastor
Bentsen	Hoyer	Payne
Berkley	Inslee	Pelosi
Berman	Israel	Peterson (MN)
Berry	Istook	Phelps
Bishop	Jackson (IL)	Pomeroy
Blagojevich	Jackson-Lee	Price (NC)
Blumenauer	(TX)	Rahall
Bonior	Jefferson	Rangel
Borski	John	Reyes
Boswell	Johnson, E. B.	Rivers
Boucher	Jones (OH)	Rodriguez
Boyd	Kanjorski	Roemer
Brady (PA)	Kaptur	Ross
Brown (FL)	Kennedy (RI)	Roybal-Allard
Brown (OH)	Kildee	Rush
Capps	Kilpatrick	Sabo
Capuano	Kind (WI)	Sanchez
Cardin	Kucinich	Sanders
Carson (OK)	LaFalce	Sandlin
Clay	Lampson	Sawyer
Clayton	Langevin	Schakowsky
Clement	Larsen (WA)	Schiff
Clyburn	Larsen (CT)	Scott
Condit	Lee	Serrano
Conyers	Levin	Sherman
Costello	Lewis (GA)	Shows
Coyne	Lipinski	Skelton
Cramer	Lofgren	Slaughter
Crowley	Lowey	Smith (WA)
Cummings	Luther	Snyder
Davis (CA)	Lynch	Solis
Davis (FL)	Maloney (CT)	Spratt
Davis (IL)	Maloney (NY)	Stark
DeGette	Markey	Stenholm
Delahunt	Mascara	Strickland
DeLauro	Matheson	Stupak
Deutsch	Matsui	Tanner
Dicks	McCarthy (MO)	Tauscher
Doggett	McCarthy (NY)	Taylor (MS)
Dooley	McCollum	Thompson (CA)
Doyle	McDermott	Thompson (MS)
Edwards	McGovern	Thurman
Engel	McIntyre	Tierney
Eshoo	McKinney	Towns
Etheridge	McNulty	Turner
Evans	Meehan	Udall (CO)
Farr	Meek (FL)	Udall (NM)
Fattah	Meeks (NY)	Velazquez
Filner	Menendez	Vislosky
Frank	Millender-	Waters
Gephardt	McDonald	Watson (CA)
Gonzalez	Miller, George	Watt (NC)
Gordon	Mink	Waxman
Green (TX)	Mollohan	Weiner
Gutierrez	Moore	Woolsey
Hall (OH)	Moran (VA)	Wu
Hall (TX)	Murtha	Wynn

NOT VOTING—15

Carson (IN)	Ford	Quinn
Cooksey	Frost	Radanovich
Cubin	Horn	Rotman
DeFazio	Klecza	Watkins (OK)
Dingell	Lantos	Wexler

□ 1255

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. OXLEY. Mr. Chairman, pursuant to House Resolution 297, I call up the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 297, the bill is considered read for amendment.

The text of H.R. 3210 is as follows:

H.R. 3210

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Terrorism Risk Protection Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Designation of Administrators.
- Sec. 4. Submission of premium information to Administrator.
- Sec. 5. Triggering determination and covered period.
- Sec. 6. Federal cost-sharing for commercial insurers.
- Sec. 7. Assessments.
- Sec. 8. Terrorism loss repayment surcharge.
- Sec. 9. Administration of assessments and surcharges.
- Sec. 10. Reserve for terrorism coverage under commercial lines of business.
- Sec. 11. State preemption.
- Sec. 12. Consistent State guidelines for coverage for acts of terrorism.
- Sec. 13. Consultation with State insurance regulators and NAIC.
- Sec. 14. Sovereign immunity protections.
- Sec. 15. Study of potential effects of terrorism on life insurance industry.
- Sec. 16. Definitions.
- Sec. 17. Extension of program.
- Sec. 18. Regulations.

**SEC. 2. CONGRESSIONAL FINDINGS.**

The Congress finds that—

(1) the terrorist attacks on the World Trade Center and the Pentagon of September 11, 2001, resulted in a large number of deaths and injuries, the destruction and damage to buildings, and interruption of business operations;

(2) the attacks have inflicted possibly the largest losses ever incurred by insurers and reinsurers;

(3) while the insurance and reinsurance industries have committed to pay the losses arising from the September 11 attacks, the resulting disruption has created widespread market uncertainties with regard to the risk of losses arising from possible future terrorist attacks;

(4) such uncertainty threatens the continued availability of United States commercial property casualty insurance for terrorism risk at meaningful coverage levels;

(5) the unavailability of affordable commercial property and casualty insurance for terrorist acts threatens the growth and stability of the United States economy, including impeding the ability of financial services providers to finance commercial property acquisitions and new construction;

(6) in the past, the private insurance markets have shown a remarkable resiliency in adapting to changed circumstances;

(7) given time, the private markets will diversify and develop risk spreading mechanisms to increase capacity and guard against possible future losses incurred by terrorist attacks;

(8) it is necessary to create a temporary industry risk sharing loan program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks;

(9) such action is necessary to limit immediate market disruptions, encourage economic stabilization, and facilitate a transition to a viable market for private terrorism risk insurance; and

(10) in addition, it is necessary to repeal portions of the tax law which prohibit the insurance market from developing the necessary reserves to handle possible future losses due to acts of terrorism.

**SEC. 3. DESIGNATION OF ADMINISTRATORS.**

(a) **IN GENERAL.**—Not later than December 1, 2001, the President shall designate a Federal officer or officers to act as the Administrator or Administrators responsible for carrying out this Act and the responsibilities under this Act to be carried out by each such officer.

(b) **SENSE OF CONGRESS.**—It is the sense of the Congress that in determining the Administrator responsible for making any determinations, for purposes of this Act, as to whether a loss was caused by an act of terrorism and whether such loss was caused by one or multiple such events, pursuant to section 5(b), the President should consider the appropriate role of the Assistant to the President for Homeland Security.

**SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO ADMINISTRATOR.**

To the extent such information is not otherwise available to the Administrators, the appropriate Administrator may require each insurer to submit, to the appropriate Administrator or to the NAIC, a statement specifying the aggregate premium amount of coverage written by such insurer for properties and persons in the United States under each line of commercial property and casualty insurance sold by such insurer during such periods as the appropriate Administrator may provide.

**SEC. 5. TRIGGERING DETERMINATION AND COVERED PERIOD.**

(a) **IN GENERAL.**—For purposes of this Act, a “triggering determination” is a determination by the appropriate Administrator that the insured losses resulting from the event of an act of terrorism occurring during the covered period (as such term is defined in subsection (b)), or the aggregate insured losses resulting from multiple events of acts of terrorism all occurring during the covered period, meet the requirements under either of the following paragraphs:

(1) **INDUSTRY-WIDE LOSS TEST.**—Such industry-wide losses exceed \$1,000,000,000.

(2) **CAPITAL SURPLUS AND INDUSTRY AGGREGATE TEST.**—Such industry-wide losses exceed \$100,000,000 and some portion of such losses for any single commercial insurer exceed—

(A) 10 percent of the capital surplus of such commercial insurer (as such term is defined by the appropriate Administrator); and

(B) 10 percent of the commercial property and casualty premiums written by such commercial insurer;

except that this paragraph shall not apply to any commercial insurer that has been making commercial property and casualty insurance coverage available for less than 4 years as of the date of the determination under this subsection.

(b) **COVERED PERIOD.**—For purposes of this Act, the “covered period” is the period beginning on the date of the enactment of this Act and ending on January 1, 2003.

(c) **DETERMINATIONS REGARDING EVENTS.**—For purposes of subsection (a), the appropriate Administrator shall have the sole authority for determining whether—

(1) an occurrence or event was caused by an act of terrorism;

(2) insured losses from acts of terrorism were caused by one or multiple events or occurrences; and

(3) whether an act of terrorism occurred during the covered period.

**SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSURERS.**

(a) **IN GENERAL.**—Pursuant to a triggering determination, the appropriate Administrator shall provide financial assistance to

commercial insurers in accordance with this section to cover insured losses resulting from acts of terrorism, which shall be repaid in accordance with subsection (e).

(b) AMOUNT.—Subject to subsection (c), with respect to a triggering determination, the amount of financial assistance made available under this section to each commercial insurer shall be equal to 90 percent of the amount of the insured losses of the insurer as a result of the triggering event involved.

(c) AGGREGATE LIMITATION.—The aggregate amount of financial assistance provided pursuant to this section may not exceed \$100,000,000,000.

(d) LIMITATIONS.—The appropriate Administrator may establish such limitations as may be necessary to ensure that payments under this section in connection with a triggering determination are made only to commercial insurers that are not in default of any obligation under section 7 to pay assessments or under section 8 to collect surcharges.

(e) REPAYMENT.—Financial assistance made available under this section shall be repaid through assessments under section 7 collected by the appropriate Administrator and surcharges remitted to the appropriate Administrator under section 8. Any such amounts collected or remitted shall be deposited into the general fund of the Treasury.

(f) EMERGENCY DESIGNATION.—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this section as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

#### SEC. 7. ASSESSMENTS.

(a) IN GENERAL.—In the case of a triggering determination, each commercial insurer shall be subject to assessments under this section for the purpose of repaying financial assistance made available under section 6 in connection with such determination.

(b) AGGREGATE ASSESSMENT.—Pursuant to a triggering determination, the appropriate Administrator shall determine the aggregate amount to be assessed among all commercial insurers, which shall be equal to 90 percent of the lesser of—

(1) the amount of industry-wide losses resulting from the triggering event involved; and

(2) \$20,000,000,000.

(c) ALLOCATION OF ASSESSMENT.—

(1) IN GENERAL.—The appropriate Administrator shall allocate the aggregate assessment amount determined under subsection (b) among all commercial insurers. The portion of the aggregate assessment amount that is allocated as an assessment on each commercial insurer shall be based on the percentage, written by that insurer, of the aggregate written premium, for all commercial insurers, for the calendar year preceding the assessment.

(2) PAYMENT REQUIREMENT.—Upon notification by the appropriate Administrator of an assessment under this section, each commercial insurer shall be required to pay to the appropriate Administrator, in the manner provided under section 9 by the appropriate Administrator, the amount equal to the assessment on such commercial insurer (subject to the limitation under paragraph (3)).

(3) ANNUAL LIMITATION ON AMOUNT ALLOCATED TO EACH COMMERCIAL INSURER.—

(A) IN GENERAL.—Of any assessments under this section on a commercial insurer, the

portion required to be paid by any commercial insurer during a calendar year shall not exceed the amount that is equal to 3 percent of the aggregate written premium for such insurer for the preceding calendar year.

(B) MULTIPLE PAYMENTS.—If any amounts required to be repaid under this section for a calendar year are limited by operation of subparagraph (A), the appropriate Administrator shall provide that all such remaining amounts shall be reallocated among all commercial insurers (in the manner provided in paragraph (1)) over such immediately succeeding calendar years, and repaid over such years, as may be necessary to provide for full payment of such remaining amounts, except that the limitation under subparagraph (A) shall apply to the amounts paid in any such successive calendar years.

(C) ADMINISTRATIVE FLEXIBILITY.—

(i) TIMING OF ASSESSMENTS.—Assessments under this section in connection with a triggering determination shall be made, to the extent that the appropriate Administrator considers practicable and appropriate, at the beginning of the calendar year immediately following the triggering determination.

(ii) ESTIMATES AND CORRECTIONS.—If the appropriate Administrator makes an assessment at a time other than provided under clause (i), the appropriate Administrator may—

(1) require commercial insurers to estimate their aggregate written premiums for the year in which the assessment is made; and

(II) make a subsequent refund or require additional payments to correct such estimation at the end of the calendar year.

(4) DEFERRAL OF CONTRIBUTIONS.—The appropriate Administrator may defer the payment of part or all of the assessment required under paragraph (2) to be paid by a commercial insurer, but only to the extent that the appropriate Administrator determines that such deferral is necessary to avoid the likely insolvency of the commercial insurer.

#### SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.

(a) IMPOSITION AND COLLECTION.—If, pursuant to a triggering determination, the appropriate Administrator determines that the aggregate amount of industry-wide losses resulting from the triggering event involved exceeds \$20,000,000,000, the appropriate Administrator shall—

(1) establish and impose a policyholder premium surcharge, as provided under this section, on commercial property and casualty insurance written after such determination, for the purpose of repaying financial assistance made available under section 6 in connection with such triggering determination; and

(2) provide for commercial insurers to collect such surcharge and remit amounts collected to the appropriate Administrator.

(b) AMOUNT AND DURATION.—The surcharge under this section shall be established in such amount, and shall apply to commercial property and casualty insurance written during such period, as the appropriate Administrator determines is necessary to recover the aggregate amount of financial assistance provided under section 6 to cover insured losses resulting from the triggering event that exceed \$20,000,000,000.

(c) OTHER TERMS.—The surcharge under this section shall—

(1) be based on a percentage of the amount of commercial property and casualty insurance coverage that a policy provides; and

(2) be imposed with respect to all commercial property and casualty insurance coverage written during the period referred to in subsection (b).

#### SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SURCHARGES.

(a) MANNER AND METHOD.—The appropriate Administrator shall provide for the manner and method of carrying out assessments under section 7 and surcharges under section 8, including the timing and procedures of making assessments and surcharges, notifying commercial insurers of assessments or surcharge requirements, collecting payments from and surcharges through commercial insurers, and refunding of any excess amounts paid or crediting such amounts against future assessments.

(b) TIMING OF COVERAGES AND ASSESSMENTS.—The appropriate Administrator may adjust the timing of coverages and assessments provided under this Act to provide for equivalent application of the provisions of this Act to commercial insurers and policies that are not based on a calendar year.

(c) APPLICATION TO SELF-INSURANCE ARRANGEMENTS.—The appropriate Administrator may, in consultation with the NAIC, apply the provisions of this Act, as appropriate, to self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event and all of the provisions of this Act are applied uniformly to such entities.

(d) ADJUSTMENT.—The appropriate Administrator may adjust the assessments charged under section 7 or the percentage imposed under the surcharge under section 8 at any time, as the appropriate Administrator considers appropriate to protect the national interest, which may include avoiding unreasonable economic disruption or excessive market instability.

#### SEC. 10. RESERVE FOR TERRORISM COVERAGE UNDER COMMERCIAL LINES OF BUSINESS.

(a) IN GENERAL.—Section 832 of the Internal Revenue Code of 1986 (relating to insurance company taxable income) is amended by adding at the end the following new subsection:

“(h) TERRORISM RESERVE FOR COMMERCIAL LINES OF BUSINESS.—In the case of an insurance company subject to tax under section 831(a)—

“(1) INCLUSION FOR DECREASES, AND DEDUCTION FOR INCREASES, IN BALANCE OF RESERVE.—

“(A) DECREASE TREATED AS GROSS INCOME.—If for any taxable year—

“(i) the opening balance for the terrorism commercial business reserve exceeds

“(ii) the closing balance for such reserve, such excess shall be included in gross income under subsection (b)(1)(F).

“(B) INCREASE TREATED AS DEDUCTION.—If for any taxable year—

“(i) the closing balance for the terrorism commercial business reserve exceeds

“(ii) the opening balance for such reserve, such excess shall be taken into account as a deduction under subsection (c)(14).

“(2) TERRORISM COMMERCIAL BUSINESS RESERVE.—For purposes of this section, the term ‘terrorism commercial business reserve’ means amounts held in a segregated account (or other separately identifiable arrangement or account) which are set aside exclusively—

“(A) to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from declared terrorism losses under commercial lines of business, and

“(B) if so directed by the insurance commissioner of any State, to pay other claims as part of a plan of the company to avoid insolvency.

“(3) LIMITATION ON AMOUNT OF RESERVE.—

“(A) IN GENERAL.—If the closing balance of any terrorism commercial business reserve for any taxable year exceeds such reserve’s limit for such year—

“(i) such excess shall be included in gross income under subsection (b)(1)(F) for the following taxable year, and

“(ii) if such excess is distributed during such following taxable year, the opening balance of such reserve for such following taxable year shall be determined without regard to such excess.

“(B) RESERVE LIMIT.—

“(i) IN GENERAL.—For purposes of subparagraph (A), a reserve’s limit for any taxable year is such reserve’s allocable share of the national limit for the calendar year in which such taxable year begins.

“(ii) NATIONAL LIMIT.—The national limit is \$40,000,000,000 (\$13,340,000,000 for 2002).

“(iii) ALLOCATION OF LIMIT.—

“(I) IN GENERAL.—A reserve’s allocable share of the national limit for any calendar year is the amount which bears the same ratio to the national limit for such year as the company’s net written premiums for commercial lines of business bears to such net written premiums for all companies for commercial line of business.

“(II) EXCLUSION OF PREMIUMS FOR INSURANCE NOT COVERING DECLARED TERRORISM LOSSES AND FOR REINSURANCE.—Subclause (I) shall be applied without regard to premiums for insurance which does not cover declared terrorism losses and premiums for reinsurance.

“(III) DETERMINATION OF NET WRITTEN PREMIUMS.—Except as otherwise provided in this section, all determinations under this subsection shall be made on the basis of the amounts required to be set forth on the annual statement approved by the National Association of Insurance Commissioners.

“(iv) INFLATION ADJUSTMENT OF LIMIT.—In the case of any calendar year after 2002, the \$40,000,000,000 amount in clause (i) shall be increased by an amount equal to the product of—

“(I) such dollar amount, and

“(II) the cost-of-living adjustment determined under subsection (f)(3) for such calendar year, determined by substituting ‘calendar year 2001’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount after adjustment under the preceding sentence is not a multiple of \$1,000,000, such amount shall be rounded to the nearest multiple of \$1,000,000.

“(4) DECLARED TERRORISM LOSSES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘declared terrorism losses’ means, with respect to a taxable year—

“(i) the amount of losses and loss adjustment expenses incurred in commercial lines of business that are attributable to 1 or more declared terrorism events, plus

“(ii) any nonrecoverable assessments, surcharges, or other liabilities that are borne by the company and are attributable to such events.

“(B) DECLARED TERRORISM EVENT.—The term ‘declared terrorism event’ means any event declared by the President to be an act of terrorism against the United States for purposes of this section.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, and shall prescribe such regulations after consultation with the National Association of Insurance Commissioners.”

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 832(b) of such Code is amended by striking “and” at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting in lieu thereof “, and”, and by adding at the end the following new subparagraph:

“(F) each net decrease in reserves which is required by paragraph (1) or (3) of subsection

(h) to be taken into account under this subparagraph.”

(2) Subsection (c) of section 832 of such Code is amended by striking “and” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting in lieu thereof “; and”, and by adding at the end the following new paragraph:

“(14) each net increase in reserves which is required by subsection (h)(1) to be taken into account under this paragraph.”

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2001.

**SEC. 11. STATE PREEMPTION.**

(a) COVERED PERILS.—A commercial insurer shall be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under the regulations issued by the Administrators.

(b) RATE LAWS.—If any provision of any State law prevents an insurer from increasing its premium rates in an amount necessary to recover any assessments pursuant to section 7, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

(c) FILE AND USE.—With respect only to commercial property and casualty insurance covering acts of terrorism, any provision of State law that requires, as a condition precedent to the effectiveness of rates or policies for such insurance that is made available by an insurer licensed to transact such business in the State, any action (including prior approval by the State insurance regulator for such State) other than filing of such rates and policies and related information with such State insurance regulator is preempted to the extent such law requires such additional actions for such insurance coverage. This subsection shall not be considered to preempt a provision of State law solely because the law provides that rates and policies for such insurance coverage are, upon such filing, subject to subsequent review and action, which may include actions to disapprove or discontinue use of such rates or policies, by the State insurance regulator.

**SEC. 12. CONSISTENT STATE GUIDELINES FOR COVERAGE FOR ACTS OF TERRORISM.**

(a) SENSE OF CONGRESS REGARDING COVERED PERILS.—It is the sense of the Congress that—

(1) the NAIC, in consultation with the appropriate Administrator, should develop appropriate definitions for acts of terrorism and appropriate standards for making determinations regarding events or occurrences of acts of terrorism;

(2) each State should adopt the definitions and standards developed by the NAIC for purposes of regulating insurance coverage made available in that State;

(3) in consulting with the NAIC, the appropriate Administrator should advocate and promote the development of definitions and standards that are appropriate for purposes of this Act; and

(4) after consultation with the NAIC, the appropriate Administrator should adopt definitions for acts of terrorism and standards for determinations that are appropriate for this Act.

(b) INSURANCE RESERVE GUIDELINES.—

(1) SENSE OF CONGRESS REGARDING ADOPTION BY STATES.—It is the sense of the Congress that—

(A) the NAIC should develop appropriate guidelines for commercial insurers and pools regarding maintenance of reserves against the risks of acts of terrorism; and

(B) each State should adopt such guidelines for purposes of regulating commercial insurers doing business in that State.

(2) CONSIDERATION OF ADOPTION OF NATIONAL GUIDELINES.—Upon the expiration of the 6-month period beginning on the date of the enactment of this Act, the appropriate Administrator shall make a determination of whether the guidelines referred to in paragraph (1) have, by such time, been developed and adopted by nearly all States in a uniform manner. If the appropriate Administrator determines that such guidelines have not been so developed and adopted, the appropriate Administrator shall consider adopting, and may adopt, such guidelines on a national basis in a manner that would supercede any State law regarding maintenance of reserves against such risks.

(c) GUIDELINES REGARDING DISCLOSURE OF PRICING AND TERMS OF COVERAGE.—

(1) SENSE OF CONGRESS.—It is the sense of the Congress that the States should require, by laws or regulations governing the provision of commercial property and casualty insurance that includes coverage for acts of terrorism, that the price of any such terrorism coverage, including the costs of any terrorism related assessments or surcharges under this Act, be separately disclosed.

(2) ADOPTION OF NATIONAL GUIDELINES.—If the appropriate Administrator determines that the States have not enacted laws or adopted regulations adequately providing for the disclosures described in paragraph (1) within a reasonable period of time after the date of the enactment of this Act, the appropriate Administrator shall, after consultation with the NAIC, adopt guidelines on a national basis requiring such disclosure in a manner that supercedes any State law regarding such disclosure.

**SEC. 13. CONSULTATION WITH STATE INSURANCE REGULATORS AND NAIC.**

The Administrators shall consult with the State insurance regulators and the NAIC in carrying out this Act. The Administrators may take such actions, including entering into such agreements and providing such technical and organizational assistance to insurers and State insurance regulators, as may be necessary to provide for the distribution of financial assistance under section 6 and the collection of assessments under section 7 and surcharges under section 8.

**SEC. 14. SOVEREIGN IMMUNITY PROTECTIONS.**

(a) FEDERAL CAUSE OF ACTION FOR DAMAGES FROM TERRORIST ACTS RESULTING IN TRIGGERING DETERMINATION.—

(1) IN GENERAL.—If a triggering determination occurs requiring an assessment under section 7 or a surcharge under section 8, there shall exist a Federal cause of action, which shall be the exclusive remedy, for damages claimed pursuant to, or in connection with, any acts of terrorism that caused the insured losses resulting in such triggering determination.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—Pursuant to each triggering determination, the Judicial Panel on Multidistrict Litigation shall designate one or more district courts of the United States which shall have original and exclusive jurisdiction over all actions brought pursuant to this subsection that arise out of the triggering event involved.

(4) OFFSET FOR RELIEF PAYMENTS.—Any recovery by a plaintiff in an action under this subsection shall be offset by the amount, if any, received by the plaintiff from the United States pursuant to any emergency or disaster relief program, or from any other collateral source, for compensation of losses related to the act of terrorism involved.

(b) DAMAGES IN ACTIONS REGARDING INSURANCE CLAIMS.—In an action brought under this section for damages claimed by an insured pursuant to, or in connection with, any commercial property and casualty insurance providing coverage for acts of terrorism that resulted in a triggering determination:

(1) PROHIBITION OF PUNITIVE DAMAGES.—No punitive damages intended to punish or deter may be awarded.

(2) NONECONOMIC DAMAGES.—

(A) IN GENERAL.—Each defendant in such an action shall be liable only for the amount of noneconomic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the claimant.

(B) DEFINITION.—For purposes of subparagraph (A), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses of any kind or nature.

(c) RIGHT OF SUBROGATION.—The United States shall have the right of subrogation with respect to any claim paid by the United States under this Act.

(d) PROTECTIVE ORDERS.—The United States or any appropriate Administrator carrying out responsibilities under this Act may seek protective orders or assert privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

#### SEC. 15. STUDY OF POTENTIAL EFFECTS OF TERRORISM ON LIFE INSURANCE INDUSTRY.

(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this Act, the President shall establish a commission (in this section referred to as the “Commission”) to study and report on the potential effects of an act or acts of terrorism on the life insurance industry in the United States and the markets served by such industry.

(b) MEMBERSHIP AND OPERATIONS.—

(1) APPOINTMENT.—The Commission shall consist of 5 members, as follows:

(A) The appropriate Administrator, as designated by the President.

(C) 4 members appointed by the President, who shall be—

(i) a representative of direct underwriters of life insurance within the United States;

(ii) a representative of reinsurers of life insurance within the United States;

(iii) an officer of the NAIC; and

(iv) a representative of insurance agents for life underwriters.

(2) OPERATIONS.—The chairperson of the Commission shall determine the manner in which the Commission shall operate, including funding, staffing, and coordination with other governmental entities.

(c) STUDY.—The Commission shall conduct a study of the life insurance industry in the United States, which shall identify and make recommendations regarding—

(1) possible actions to encourage, facilitate, and sustain provision by the life insurance industry in the United States of coverage for losses due to death or disability resulting from an act or acts of terrorism, including in the face of threats of such acts; and

(2) possible actions or mechanisms to sustain or supplement the ability of the life insurance industry in the United States to cover losses due to death or disability resulting from an act or acts of terrorism in the event that—

(A) such acts significantly affect mortality experience of the population of the United States over any period of time;

(B) such losses jeopardize the capital and surplus of the life insurance industry in the United States as a whole; or

(C) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the life insurance industry in the United States to independently cover such losses.

(d) RECOMMENDATIONS.—The Commission may make a recommendation pursuant to subsection (c) only upon the concurrence of a majority of the members of the Commission.

(e) REPORT.—Not later than 120 days after the date of enactment of this Act, the Commission shall submit to the House of Representatives and the Senate a report describing the results of the study and any recommendations developed under subsection (c).

(f) TERMINATION.—The Commission shall terminate 60 days after submission of the report as provided for in subsection (e).

#### SEC. 16. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) IN GENERAL.—The term “act of terrorism” means any act that the appropriate Administrator determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the appropriate Administrator in consultation with the NAIC.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States;

(iii) is committed by a group of persons or associations who—

(I) are not a government of a foreign country or the de facto government of a foreign country; and

(II) are recognized by the Department of State or the appropriate Administrator as a terrorist group or have conspired with such a group or the group’s agents or surrogates; and

(iv) has as its purpose to overthrow or destabilize the government of any country or to influence the policy or affect the conduct of the government of the United States by coercion.

(2) APPROPRIATE ADMINISTRATORS.—The term “appropriate Administrator” means, with respect to any function or responsibility of the Federal Government under this Act, the Federal officer designated by the President pursuant to section 3 as responsible for carrying out such function or responsibility.

(3) AFFILIATE.—The term “affiliate” means, with respect to an insurer, any company that controls, is controlled by, or is under common control with the insurer.

(4) AGGREGATE WRITTEN PREMIUM.—The term “aggregate written premium” means, with respect to a year, the aggregate premium amount of all commercial property and casualty insurance coverage written during such year for persons or properties in the United States under all lines of commercial property and casualty insurance.

(5) COMMERCIAL INSURANCE.—The term “commercial insurance” means property and casualty insurance that is not insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, or other insurance for personal, family, or household needs.

(6) COMMERCIAL INSURER.—The term “commercial insurer” means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that is engaged in the business of providing commercial property and casualty insurance for

persons or properties in the United States. Such term includes any affiliates of a commercial insurer.

(7) COMMERCIAL PROPERTY AND CASUALTY INSURANCE.—The term “commercial property and casualty insurance” means property and casualty insurance that is commercial insurance.

(8) CONTROL.—A company has control over another company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the other company; or

(C) the appropriate Administrator determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the other company.

(9) COVERED PERIOD.—The term “covered period” has the meaning given such term in section 5(b).

(10) INDUSTRY-WIDE LOSSES.—The term “industry-wide losses” means the aggregate insured losses sustained by all insurers, from coverage written for persons or properties in the United States, under all lines of commercial property and casualty insurance.

(11) INSURED LOSS.—The term “insured loss” means any loss in the United States covered by commercial property and casualty insurance.

(12) INSURER.—The term “insurer” means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that is engaged in the business of providing property and casualty insurance for persons or properties in the United States. Such term includes any affiliates of an insurer.

(13) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners.

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

(A) loss of or damage to property;

(B) loss of income or extra expense incurred because of loss of or damage to property; and

(C) third party liability claims caused by negligence or imposed by statute or contract.

Such term does not include health or life insurance.

(15) STATE.—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(16) STATE INSURANCE REGULATOR.—The term “State insurance regulator” means, with respect to a State, the principal insurance regulatory authority of the State.

(17) TRIGGERING DETERMINATION.—The term “triggering determination” has the meaning given such term in section 5(a).

(18) TRIGGERING EVENT.—The term “triggering event” means, with respect to a triggering determination, the event of an act of terrorism, or the events of such acts, that caused the insured losses resulting in such triggering determination.

(19) UNITED STATES.—The term “United States” means, collectively, the States (as such term is defined in this section).

#### SEC. 17. EXTENSION OF PROGRAM.

(a) AUTHORITY.—If the appropriate Administrator determines that action under this

section is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, the appropriate Administrator may provide that the provisions of this Act shall continue to apply with respect to a period or periods, as established by the Administrator, that begin after the expiration of the covered period specified in section 5(b) and end before January 1, 2005.

(b) COVERED PERIOD.—If the appropriate Administrator exercises the authority under subsection (a), notwithstanding section 5(b) and section 16(9), the period or periods established by the appropriate Administrator shall be considered to be the covered period for purposes of this Act.

#### SEC. 18. REGULATIONS.

The appropriate Administrators shall issue any regulations necessary to carry out this Act.

The SPEAKER pro tempore. In lieu of the amendments recommended by the Committee on Financial Services and the Committee on Ways and Means printed in the bill, an amendment in the nature of a substitute consisting of the text of H.R. 3357 is adopted.

The text of the bill as amended pursuant to House Resolution 297 is as follows:

H.R. 3357

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Terrorism Risk Protection Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Authority of Secretary of the Treasury.
- Sec. 4. Submission of premium information to Secretary.
- Sec. 5. Initial and subsequent triggering determinations.
- Sec. 6. Federal cost-sharing for commercial insurers.
- Sec. 7. Assessments.
- Sec. 8. Terrorism loss repayment surcharge.
- Sec. 9. Administration of assessments and surcharges.
- Sec. 10. Application to self-insurance arrangements and offshore insurers and reinsurers.
- Sec. 11. Study of reserves for property and casualty insurance for terrorist or other catastrophic events.
- Sec. 12. State preemption.
- Sec. 13. Consistent State guidelines for coverage for acts of terrorism.
- Sec. 14. Consultation with State insurance regulators and NAIC.
- Sec. 15. Litigation management.
- Sec. 16. Study of potential effects of terrorism on life insurance industry.
- Sec. 17. Railroad and trucking insurance study.
- Sec. 18. Study of reinsurance pool system for future acts of terrorism.
- Sec. 19. Definitions.
- Sec. 20. Covered period and extension of program.
- Sec. 21. Regulations.

#### SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—  
(1) the terrorist attacks on the World Trade Center and the Pentagon of September 11, 2001, resulted in a large number of deaths and injuries, the destruction and damage to buildings, and interruption of business operations;

(2) the attacks have inflicted possibly the largest losses ever incurred by insurers and reinsurers in a single day;

(3) while the insurance and reinsurance industries have committed to pay the losses arising from the September 11 attacks, the resulting disruption has created widespread market uncertainties with regard to the risk of losses arising from possible future terrorist attacks;

(4) such uncertainty threatens the continued availability of United States commercial property and casualty insurance for terrorism risk at meaningful coverage levels;

(5) the unavailability of affordable commercial property and casualty insurance for terrorist acts threatens the growth and stability of the United States economy, including impeding the ability of financial services providers to finance commercial property acquisitions and new construction;

(6) in the past, the private insurance and reinsurance markets have shown a remarkable resiliency in adapting to changed circumstances;

(7) given time, the private markets will diversify and develop risk spreading mechanisms to increase capacity and guard against possible future losses incurred by terrorist attacks;

(8) it is necessary to create a temporary industry risk sharing program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks;

(9) such action is necessary to limit immediate market disruptions, encourage economic stabilization, and facilitate a transition to a viable market for private terrorism risk insurance;

(10) in addition, it is necessary promptly to conduct a study of whether there is a need for reserves for property and casualty insurance for terrorist or other catastrophic events; and

(11) terrorism insurance plays an important role in the efficient functioning of the economy and the financing of commercial property acquisitions and new construction and, therefore, the Congress intends to continue to monitor, review, and evaluate the private terrorism insurance and reinsurance marketplace to determine whether additional action is necessary to maintain the long-term stability of the real estate and capital markets.

#### SEC. 3. AUTHORITY OF SECRETARY OF THE TREASURY.

The Secretary of the Treasury shall be responsible for carrying out a program for financial assistance for commercial property and casualty insurers, as provided in this Act.

#### SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO SECRETARY.

To the extent such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit, to the Secretary or to the NAIC, a statement specifying the net premium amount of coverage written by such insurer under each line of commercial property and casualty insurance sold by such insurer during such periods as the Secretary may provide.

#### SEC. 5. INITIAL AND SUBSEQUENT TRIGGERING DETERMINATIONS.

(a) IN GENERAL.—For purposes of this Act, a “triggering determination” is a determination by the Secretary that an act of terrorism has occurred during the covered period and that the aggregate insured losses resulting from such occurrence or from multiple occurrences of acts of terrorism all occurring during the covered period, meet the requirements under either of the following paragraphs:

(1) INDUSTRY-WIDE TRIGGER.—Such industry-wide losses exceed \$1,000,000,000.

(2) INDIVIDUAL INSURER TRIGGER.—Such industry-wide losses exceed \$100,000,000 and some portion of such losses for any single commercial insurer exceed—

(A) 10 percent of the capital surplus of such commercial insurer (as such term is defined by the Secretary); and

(B) 10 percent of the net premium written by such commercial insurer that is in force at the time the insured losses occurred; except that this paragraph shall not apply to any commercial insurer that was not providing commercial property and casualty insurance coverage prior to September 11, 2001, unless such insurer incurs such losses under commercial property and casualty insurance providing coverage for acts of terrorism through a pool of reserves for terrorism risks that is not under the control of any commercial insurer.

(b) DETERMINATIONS REGARDING OCCURRENCES.—The Secretary, after consultation with the Attorney General of the United States and the Secretary of State, shall have the sole authority which may not be delegated or designated to any other officer, employee, or position, for determining whether—

(1) an occurrence was caused by an act of terrorism; and

(2) an act of terrorism occurred during the covered period.

#### SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSURERS.

(a) IN GENERAL.—Pursuant to a triggering determination, the Secretary shall provide financial assistance to commercial insurers in accordance with this section to cover insured losses resulting from acts of terrorism, which shall be repaid in accordance with subsection (e).

(b) AMOUNT.—

(1) INDUSTRY-WIDE TRIGGER.—Subject to subsections (c) and (d), with respect to a triggering determination under section 5(a)(1), financial assistance shall be made available under this section to each commercial insurer in an amount equal to the difference between—

(A) 90 percent of the amount of the insured losses of the insurer as a result of the triggering event involved; and

(B) \$5,000,000.

(2) INDIVIDUAL INSURER TRIGGER.—Subject to subsections (c) and (d), with respect to a triggering determination under section 5(a)(2), financial assistance shall be made available under this section, to each commercial insurer incurring insured losses as a result of the triggering event involved that exceed the amounts under subparagraphs (A) and (B) of such section, in an amount equal to the difference between—

(A) 90 percent of the amount of the insured losses of the insurer as a result of such triggering event; and

(B) the amount under subparagraph (B) of section 5(a)(2).

(3) ADDITIONAL AMOUNTS.—Subject to subsection (c), if the Secretary has provided financial assistance to a commercial insurer pursuant to paragraph (2) of this subsection and subsequently makes a triggering determination pursuant to section 5(a)(1), the Secretary shall provide financial assistance to such insurer in connection with such subsequent triggering determination (in addition to the amount of financial assistance provided to such insurer pursuant to paragraph (1) of this subsection) in the amount under section 5(a)(2)(B).

(c) AGGREGATE LIMITATION.—

(1) IN GENERAL.—The aggregate amount of financial assistance provided pursuant to this section may not exceed \$100,000,000,000.

(2) SENSE OF CONGRESS REGARDING SEVERE LOSSES.—It is the sense of the Congress that acts of terrorism resulting in insured losses

greater than \$100,000,000,000 would necessitate further action by the Congress to address such additional losses.

(d) **LIMITATIONS.**—The Secretary may establish such limitations as may be necessary to ensure that payments under this section in connection with a triggering determination are made only to commercial insurers that are not in default of any obligation under section 7 to pay assessments or under section 8 to collect surcharges.

(e) **REPAYMENT.**—Financial assistance made available under this section shall be repaid through assessments under section 7 collected by the Secretary and surcharges remitted to the Secretary under section 8. Any such amounts collected or remitted shall be deposited into the general fund of the Treasury.

(f) **EMERGENCY DESIGNATION.**—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this section as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

#### SEC. 7. ASSESSMENTS.

(a) **IN GENERAL.**—In the case of a triggering determination, each commercial insurer shall be subject to assessments under this section for the purpose of repaying a portion of the financial assistance made available under section 6 in connection with such determination.

(b) **AGGREGATE ASSESSMENT.**—Pursuant to a triggering determination, the Secretary shall determine the aggregate amount to be assessed under this section among all commercial insurers, which shall be equal to the lesser of—

(1) \$20,000,000,000; and

(2) the amount of financial assistance paid under section 6 in connection with the triggering determination.

The aggregate assessment amount under this subsection shall be assessed to commercial insurers through an industry obligation assessment under subsection (c) and, if necessary, the remainder shall be assessed through one or more financing assessments under subsection (d).

(c) **INDUSTRY OBLIGATION ASSESSMENTS.**—

(1) **IN GENERAL.**—Immediately upon the occurrence of a triggering determination, the Secretary shall impose an industry obligation assessment under this subsection on all commercial insurers, subject to paragraph (3).

(2) **AMOUNT.**—The aggregate amount of an industry obligation assessment in connection with a triggering determination shall be equal to—

(A) in the case of a triggering determination occurring during the covered period specified in section 20(a), the lesser of—

(i) the difference between (I) \$5,000,000,000, and (II) the aggregate amount of any assessments made by the Secretary pursuant to this section during the portion of such covered period preceding the triggering determination; and

(ii) the amount of financial assistance made available under section 6 in connection with the triggering determination; or

(B) such other aggregate industry obligation amount as may apply pursuant to subsection (g).

(3) **TIMING OF MULTIPLE ASSESSMENTS.**—

(A) **DELAYED IMPOSITION AND AGGREGATION OF ASSESSMENTS.**—In the case of any triggering determination occurring within 12 months of the occurrence of a previous trig-

gering determination, any industry obligation assessments under this subsection resulting from such subsequent determination shall be imposed upon the conclusion of the quarterly assessment period under subparagraph (B) during which such determination occurs.

(B) **QUARTERLY ASSESSMENT PERIOD.**—With respect to a subsequent triggering determination referred to in subparagraph (A), the quarterly assessment periods under this subparagraph are—

(i) the 3-month period that begins upon the imposition of the industry obligation assessment resulting from the triggering determination that—

(I) occurred most recently before such subsequent triggering determination; and

(II) did not occur within 12 months of the occurrence of any previous triggering determination; and

(ii) each successive 3-month period thereafter that begins during the covered period.

(d) **FINANCING ASSESSMENTS.**—

(1) **IN GENERAL.**—If the aggregate assessment amount in connection with a triggering determination exceeds the aggregate amount of the industry obligation assessment under subsection (c) in connection with the determination, the remaining amount shall be assessed through one or more, as may be necessary pursuant to paragraph (3), financing assessments under this subsection.

(2) **TIMING.**—A financing assessment under this subsection in connection with a triggering determination shall be imposed only upon the expiration of any 12-month period beginning after such determination during which no assessments under this section have been imposed.

(3) **LIMITATION.**—The aggregate amount of any financing assessments imposed under this subsection on any single commercial insurer during any 12-month period shall not exceed the amount that is equal to 3 percent of the net premium for such insurer for such period.

(e) **ALLOCATION OF ASSESSMENT.**—The portion of the aggregate amount of any industry obligation assessment or financing assessment under this section that is allocated to each commercial insurer shall be based on the ratio that the net premium written by such commercial insurer during the year during which the assessment is imposed bears to the aggregate written premium for such year, subject to section 9 and the limitation under subsection (d)(3) of this section.

(f) **NOTICE AND OBLIGATION TO PAY.**—

(1) **NOTICE.**—As soon as practicable after any triggering determination, the Secretary shall notify each commercial insurer in writing of an assessment under this section, which notice shall include the amount of the assessment allocated to such insurer.

(2) **EFFECT OF NOTICE.**—Upon notice to a commercial insurer, the commercial insurer shall be obligated to pay to the Secretary, not later than 60 days after receipt of such notice, the amount of the assessment on such commercial insurer.

(3) **FAILURE TO MAKE TIMELY PAYMENT.**—If any commercial insurer fails to pay an assessment under this section before the deadline established under paragraph (2) for the assessment, the Secretary may take either or both of the following actions:

(A) **CIVIL MONETARY PENALTY.**—Assess a civil monetary penalty pursuant to section 9(d) upon such insurer.

(B) **INTEREST.**—Require such insurer to pay interest, at such rate as the Secretary considers appropriate, on the amount of the assessment that was not paid before the deadline established under paragraph (2).

(g) **AGGREGATE INDUSTRY OBLIGATION AMOUNT FOR PROGRAM EXTENSION YEARS.**—If the Secretary exercises the authority under

section 20(b) to extend the covered period, the aggregate industry obligation amount for purposes of subsection (c)(2)(B) shall, in the case of a triggering determination occurring during the portion of the covered period beginning on the date referred to in section 20(a), be equal to the lesser of—

(1) the difference between (A) \$10,000,000,000, and (B) the aggregate amount of any assessments made by the Secretary pursuant to this section during the 12-month period preceding the triggering determination; and

(2) the amount of financial assistance made available under section 6 in connection with the triggering determination.

(h) **ADMINISTRATIVE FLEXIBILITY.**—

(1) **ADJUSTMENT OF ASSESSMENTS.**—The Secretary may provide for or require estimations of amounts under this section and may provide for subsequent refunds or require additional payments to correct such estimations, as appropriate.

(2) **DEFERRAL OF CONTRIBUTIONS.**—The Secretary may defer the payment of part or all of an assessment required under this section to be paid by a commercial insurer, but only to the extent that the Secretary determines that such deferral is necessary to avoid the likely insolvency of the commercial insurer.

(3) **TIMING OF ASSESSMENTS.**—The Secretary shall make adjustments regarding the timing and imposition of assessments (including the calculation of net premiums and aggregate written premium) as appropriate for commercial insurers that provide commercial property and casualty insurance on a non-calendar year basis.

#### SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.

(a) **DETERMINATION OF IMPOSITION AND COLLECTION.**—

(1) **IN GENERAL.**—If, pursuant to a triggering determination, the Secretary determines that the aggregate amount of financial assistance provided pursuant to section 6 exceeds \$20,000,000,000, the Secretary shall consider and weigh the factors under paragraph (2) to determine the extent to which a surcharge under this section should be established.

(2) **FACTORS.**—The factors under this paragraph are—

(A) the ultimate costs to taxpayers if a surcharge under this section is not established;

(B) the economic conditions in the commercial marketplace;

(C) the affordability of commercial insurance for small- and medium-sized business; and

(D) such other factors as the Secretary considers appropriate.

(3) **POLICYHOLDER PREMIUM.**—The amount established by the Secretary as a surcharge under this section shall be established and imposed as a policyholder premium surcharge on commercial property and casualty insurance written after such determination, for the purpose of repaying financial assistance made available under section 6 in connection with such triggering determination.

(4) **COLLECTION.**—The Secretary shall provide for commercial insurers to collect surcharge amounts established under this section and remit such amounts collected to the Secretary.

(b) **AMOUNT AND DURATION.**—Subject to subsection (c), the surcharge under this section shall be established in such amount, and shall apply to commercial property and casualty insurance written during such period, as the Secretary determines is necessary to recover the aggregate amount of financial assistance provided under section 6 in connection with the triggering determination that exceeds \$20,000,000,000.

(c) **PERCENTAGE LIMITATION.**—The surcharge under this section applicable to commercial property and casualty insurance coverage may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for such coverage.

(d) **OTHER TERMS.**—The surcharge under this section shall—

(1) be based on a percentage of the premium amount charged for commercial property and casualty insurance coverage that a policy provides; and

(2) be imposed with respect to all commercial property and casualty insurance coverage written during the period referred to in subsection (b).

(e) **EXCLUSIONS.**—For purposes of this section, commercial property and casualty insurance does not include any reinsurance provided to primary insurance companies.

**SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SURCHARGES.**

(a) **MANNER AND METHOD.**—

(1) **IN GENERAL.**—Except to the extent specified in such sections, the Secretary shall provide for the manner and method of carrying out assessments under section 7 and surcharges under section 8, including the timing and procedures of making assessments and surcharges, notifying commercial insurers of assessments and surcharge requirements, collecting payments from and surcharges through commercial insurers, and refunding of any excess amounts paid or crediting such amounts against future assessments.

(2) **EFFECT OF ASSESSMENTS AND SURCHARGES ON URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.**—In determining the method and manner of imposing assessments under section 7 and surcharges under section 8, including the amount of such assessments and surcharges, the Secretary shall take into consideration—

(A) the economic impact of any such assessments and surcharges on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

(B) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

(C) the various exposures to terrorism risk for different lines of commercial property and casualty insurance.

(b) **TIMING OF COVERAGES AND ASSESSMENTS.**—The Secretary may adjust the timing of coverages and assessments provided under this Act to provide for equivalent application of the provisions of this Act to commercial insurers and policies that are not based on a calendar year.

(c) **ADJUSTMENT.**—The Secretary may adjust the assessments charged under section 7 or the percentage imposed under the surcharge under section 8 at any time, as the Secretary considers appropriate to protect the national interest, which may include avoiding unreasonable economic disruption or excessive market instability and avoiding undue burdens on small businesses.

(d) **CIVIL MONETARY PENALTY.**—

(1) **IN GENERAL.**—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any commercial insurer that the Secretary determines, on the record after opportunity for a hearing—

(A) has failed to pay an assessment under section 7 in accordance with the requirements of, or regulations issued, under this Act;

(B) has failed to charge, collect, or remit surcharges under section 8 in accordance with the requirements of, or regulations issued under, this Act;

(C) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts; or

(D) has otherwise failed to comply with the provisions of, or the regulations issued under, this Act.

(2) **AMOUNT.**—The amount under this paragraph is the greater of \$1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this Act or the regulations issued under this Act, such amount in dispute.

**SEC. 10. APPLICATION TO SELF-INSURANCE ARRANGEMENTS AND OFFSHORE INSURERS AND REINSURERS.**

(a) **SELF-INSURANCE ARRANGEMENTS.**—The Secretary may, in consultation with the NAIC, apply the provisions of this Act, as appropriate, to self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event and all of the provisions of this Act are applied uniformly to such entities.

(b) **OFFSHORE INSURERS AND REINSURERS.**—The Secretary shall ensure that the provisions of this Act are applied as appropriate to any offshore or non-admitted entities that provide commercial property and casualty insurance.

**SEC. 11. STUDY OF RESERVES FOR PROPERTY AND CASUALTY INSURANCE FOR TERRORIST OR OTHER CATASTROPHIC EVENTS.**

(a) **IN GENERAL.**—The Secretary of the Treasury shall conduct a study of issues relating to permitting property and casualty insurance companies to establish deductible reserves against losses for future acts of terrorism, including—

(1) whether such tax-favored reserves would promote (A) insurance coverage of risks of terrorism, and (B) the accumulation of additional resources needed to satisfy potential claims resulting from such risks,

(2) the lines of business for which such reserves would be appropriate, including whether such reserves should be applied to personal or commercial lines of business,

(3) how the amount of such reserves would be determined,

(4) how such reserves would be administered,

(5) a comparison of the Federal tax treatment of such reserves with other insurance reserves permitted under Federal tax laws,

(6) an analysis of the use of tax-favored reserves for catastrophic events, including acts of terrorism, under the tax laws of foreign countries, and

(7) whether it would be appropriate to permit similar reserves for other future catastrophic events, such as natural disasters, taking into account the factors under the preceding paragraphs.

(b) **REPORT.**—Not later than 4 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study under subsection (a), together with recommendations for amending the Internal Revenue Code of 1986 or other appropriate action.

**SEC. 12. STATE PREEMPTION.**

(a) **COVERED PERILS.**—A commercial insurer shall be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under this Act or under any regulations issued by the Secretary.

(b) **RATE LAWS.**—If any provision of any State law prevents an insurer from increas-

ing its premium rates in an amount necessary to recover any assessments pursuant to section 7, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

(c) **FILE AND USE.**—

(1) **IN GENERAL.**—With respect only to commercial property and casualty insurance covering acts of terrorism, any provision of State law that requires, as a condition precedent to the effectiveness of rates or policies for such insurance that is made available by an insurer licensed to transact such business in the State, any action (including prior approval by the State insurance regulator for such State) other than filing of such rates and policies and related information with such State insurance regulator is preempted to the extent such law requires such additional actions for such insurance coverage.

(2) **SUBSEQUENT REVIEW AUTHORITY.**—Paragraph (1) shall not be considered to preempt a provision of State law solely because the law provides that rates and policies for such insurance coverage are, upon such filing, subject to subsequent review and action, which may include actions to disapprove or discontinue use of such rates or policies, by the State insurance regulator.

(3) **TREATMENT OF PRIOR REVIEW PROVISIONS.**—Any authority for prior review and action by a State regulator preempted under paragraph (1) shall be deemed to be authority to conduct a subsequent review and action on such filings.

**SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE FOR ACTS OF TERRORISM.**

(a) **SENSE OF CONGRESS REGARDING COVERED PERILS.**—It is the sense of the Congress that—

(1) the NAIC, in consultation with the Secretary, should develop appropriate definitions for acts of terrorism that are consistent with this Act and appropriate standards for making determinations regarding occurrences of acts of terrorism;

(2) each State should adopt the definitions and standards developed by the NAIC for purposes of regulating insurance coverage made available in that State;

(3) in consulting with the NAIC, the Secretary should advocate and promote the development of definitions and standards that are appropriate for purposes of this Act; and

(4) after consultation with the NAIC, the Secretary should adopt further definitions for acts of terrorism and standards for determinations that are appropriate for this Act.

(b) **INSURANCE RESERVE GUIDELINES.**—

(1) **SENSE OF CONGRESS REGARDING ADOPTION BY STATES.**—It is the sense of the Congress that—

(A) the NAIC should develop appropriate guidelines for commercial insurers and pools regarding maintenance of reserves against the risks of acts of terrorism; and

(B) each State should adopt such guidelines for purposes of regulating commercial insurers doing business in that State.

(2) **CONSIDERATION OF ADOPTION OF NATIONAL GUIDELINES.**—Upon the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall make a determination of whether the guidelines referred to in paragraph (1) have, by such time, been developed and adopted by nearly all States in a uniform manner. If the Secretary determines that such guidelines have not been so developed and adopted, the Secretary shall consider adopting, and may adopt, such guidelines on a national basis in a manner that supersedes any State law regarding maintenance of reserves against such risks.

(c) **GUIDELINES REGARDING DISCLOSURE OF PRICING AND TERMS OF COVERAGE.**—



(1) SENSE OF CONGRESS.—It is the sense of the Congress that the States should require, by laws or regulations governing the provision of commercial property and casualty insurance that includes coverage for acts of terrorism, that the price of any such terrorism coverage, including the costs of any terrorism related assessments or surcharges under this Act, be separately disclosed.

(2) ADOPTION OF NATIONAL GUIDELINES.—If the Secretary determines that the States have not enacted laws or adopted regulations adequately providing for the disclosures described in paragraph (1) within a reasonable period of time after the date of the enactment of this Act, the Secretary shall, after consultation with the NAIC, adopt guidelines on a national basis requiring such disclosure in a manner that supersedes any State law regarding such disclosure.

#### SEC. 14. CONSULTATION WITH STATE INSURANCE REGULATORS AND NAIC.

(a) IN GENERAL.—The Secretary shall consult with the State insurance regulators and the NAIC in carrying out this Act.

(b) FINANCIAL ASSISTANCE, ASSESSMENTS, AND SURCHARGES.—The Secretary may take such actions, including entering into such agreements and providing such technical and organizational assistance to insurers and State insurance regulators, as may be necessary to provide for the distribution of financial assistance under section 6 and the collection of assessments under section 7 and surcharges under section 8.

(c) INVESTIGATING AND AUDITING CLAIMS.—The Secretary may, in consultation with the State insurance regulators and the NAIC, investigate and audit claims of insured losses by commercial insurers and otherwise require verification of amounts of premiums or losses, as appropriate.

#### SEC. 15. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION FOR CLAIMS RELATING TO TERRORIST ACTS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary makes a determination pursuant to section 5(b) that one or more acts of terrorism occurred, there shall exist a Federal cause of action, which, except as provided in subsection (b), shall be the exclusive remedy for claims arising out of, relating to, or resulting from such acts of terrorism.

(2) EFFECT OF DETERMINATION.—A determination referred to in paragraph (1)—

(A) shall not be subject to judicial review;

(B) shall take effect upon its publication in the Federal Register; and

(C) shall be subject to such changes as the Secretary may provide in one or more later determinations made in accordance with the provisions of this paragraph.

(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(4) JURISDICTION.—For each determination under paragraph (1), the Judicial Panel on Multidistrict Litigation shall designate one or more district courts of the United States which shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) brought pursuant to this subsection. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(5) LIMITS ON DAMAGES.—In an action brought under this subsection for damages:

(A) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(B)(i) Each defendant in such an action shall be liable only for the amount of noneconomic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(ii) For purposes of clause (i), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(6) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this subsection shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of the acts of terrorism with respect to which the determination under paragraph (1) was made.

(7) ATTORNEY FEES.—Reasonable attorneys fees for work performed shall be subject to the discretion of the court, but in no event shall any attorney charge, demand, receive, or collect for services rendered, fees or compensation in an amount in excess of 20 percent of the damages ordered by the court to be paid pursuant to this section, or in excess of 20 percent of any court-approved settlement made of any claim cognizable under this section. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than 1 year, or both.

(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any person who—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism with respect to which a determination under subsection (a)(1) was made, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

(c) RIGHT OF SUBROGATION.—The United States shall have the right of subrogation with respect to any claim paid by the United States under this Act.

(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

(1) any party's contractual right to arbitrate a dispute; or

(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107-42; 49 U.S.C. 40101 note).

(e) SATISFACTION OF JUDGMENTS FROM FROZEN ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.—

(1) IN GENERAL.—Except as provided in paragraph (2), in every case in which a person obtains a judgment against a terrorist party on a claim for compensatory damages for an act of terrorism, or a claim for money damages brought pursuant to section 1605(a)(7) of title 28, United States Code, the frozen assets of that terrorist party, or any agency or instrumentality of that terrorist party, shall be available for satisfaction of the judgment, to the extent of any compensatory damages awarded in the judgment for which the terrorist party is liable.

(2) PRESIDENTIAL WAIVER.—

(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(B) A waiver under this paragraph shall not apply to—

(i) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

(ii) any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.

(3) DEFINITIONS.—In this subsection:

(A) The term “terrorist party” means a terrorist, a terrorist organization, or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(B) The term “frozen assets” means assets seized or frozen by the United States in accordance with law.

(C) The term “property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations” and the term “asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations” mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

#### SEC. 16. STUDY OF POTENTIAL EFFECTS OF TERRORISM ON LIFE INSURANCE INDUSTRY.

(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this Act, the President shall establish a commission (in this section referred to as the “Commission”) to study and report on the potential effects of an act or acts of terrorism on the life insurance industry in the United States and the markets served by such industry.

(b) MEMBERSHIP AND OPERATIONS.—

(1) APPOINTMENT.—The Commission shall consist of 7 members, as follows:

(A) The Secretary of the Treasury or the designee of the Secretary.

(B) The Chairman of the Board of Governors of the Federal Reserve System or the designee of the Chairman.

(C) The Assistant to the President for Homeland Security.

(D) 4 members appointed by the President, who shall be—

(i) a representative of direct underwriters of life insurance within the United States;

(ii) a representative of reinsurers of life insurance within the United States; and

(iii) an officer of the NAIC; and

(iv) a representative of insurance agents for life underwriters.

(2) OPERATIONS.—The chairperson of the Commission shall determine the manner in which the Commission shall operate, including funding, staffing, and coordination with other governmental entities.

(c) STUDY.—The Commission shall conduct a study of the life insurance industry in the

United States, which shall identify and make recommendations regarding—

(1) possible actions to encourage, facilitate, and sustain the provision, by the life insurance industry in the United States, of coverage for losses due to death or disability resulting from an act or acts of terrorism, including in the face of threats of such acts; and

(2) possible actions or mechanisms to sustain or supplement the ability of the life insurance industry in the United States to cover losses due to death or disability resulting from an act or acts of terrorism in the event that—

(A) such acts significantly affect mortality experience of the population of the United States over any period of time;

(B) such losses jeopardize the capital and surplus of the life insurance industry in the United States as a whole; or

(C) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the life insurance industry in the United States to independently cover such losses.

(d) **RECOMMENDATIONS.**—The Commission may make a recommendation pursuant to subsection (c) only upon the concurrence of a majority of the members of the Commission.

(e) **REPORT.**—Not later than 120 days after the date of enactment of this Act, the Commission shall submit to the House of Representatives and the Senate a report describing the results of the study and any recommendations developed under subsection (c).

(f) **TERMINATION.**—The Commission shall terminate 60 days after submission of the report pursuant to subsection (e).

#### **SEC. 17. RAILROAD AND TRUCKING INSURANCE STUDY.**

The Secretary of the Treasury shall conduct a study to determine how the Federal Government can address a possible crisis in the availability and affordability of railroad and trucking insurance by making such insurance for acts of terrorism available on commercially reasonable terms. Not later than 120 days after the date of the enactment of this Act the Secretary shall submit to the Congress a report regarding the results and conclusions of the study.

#### **SEC. 18. STUDY OF REINSURANCE POOL SYSTEM FOR FUTURE ACTS OF TERRORISM.**

(a) **STUDY.**—The Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General of the United States shall jointly conduct a study on the advisability and effectiveness of establishing a reinsurance pool system relating to future acts of terrorism to replace the program provided for under this Act.

(b) **CONSULTATION.**—In conducting the study under subsection (a), the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall consult with (1) academic experts, (2) the United Nations Secretariat for Trade and Development, (3) representatives from the property and casualty insurance industry, (4) representatives from the reinsurance industry, (5) the NAIC, and (6) such consumer organizations as the Secretary considers appropriate.

(c) **REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall jointly submit a report to the Congress on the results of the study under subsection (a).

#### **SEC. 19. DEFINITIONS.**

For purposes of this Act, the following definitions shall apply:

(1) **ACT OF TERRORISM.**—

(A) **IN GENERAL.**—The term “act of terrorism” means any act that the Secretary

determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary in consultation with the NAIC.

(B) **REQUIREMENTS.**—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States;

(iii) is committed by a person or group of persons or associations who are recognized, either before or after such act, by the Department of State or the Secretary as an international terrorist group or have conspired with such a group or the group’s agents or surrogates;

(iv) has as its purpose to overthrow or destabilize the government of any country, or to influence the policy or affect the conduct of the government of the United States or any segment of the economy of United States, by coercion; and

(v) is not considered an act of war, except that this clause shall not apply with respect to any coverage for workers compensation.

(2) **AFFILIATE.**—The term “affiliate” means, with respect to an insurer, any company that controls, is controlled by, or is under common control with the insurer.

(3) **AGGREGATE WRITTEN PREMIUM.**—The term “aggregate written premium” means, with respect to a year, the aggregate premium amount of all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance.

(4) **COMMERCIAL INSURER.**—The term “commercial insurer” means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurer.

(5) **COMMERCIAL PROPERTY AND CASUALTY INSURANCE.**—

(A) **IN GENERAL.**—The term “commercial property and casualty insurance” means insurance or reinsurance, or retrocessional reinsurance, for persons or properties in the United States against—

(i) loss of or damage to property;

(ii) loss of income or extra expense incurred because of loss of or damage to property;

(iii) third party liability claims caused by negligence or imposed by statute or contract, including workers compensation; or

(iv) loss resulting from debt or default of another.

(B) **EXCLUSIONS.**—Such term does not include—

(i) insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, or other insurance for personal, family, or household needs;

(ii) insurance for professional liability, including medical malpractice, errors and omissions, or directors’ and officers’ liability; or

(iii) health or life insurance.

(6) **CONTROL.**—A company has control over another company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the other company; or

(C) the Secretary determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the other company.

(7) **COVERED PERIOD.**—The term “covered period” has the meaning given such term in section 20.

(8) **INDUSTRY-WIDE LOSSES.**—The term “industry-wide losses” means the aggregate insured losses sustained by all insurers from coverage written under all lines of commercial property and casualty insurance.

(9) **INSURED LOSS.**—The term “insured loss” means any loss, net of reinsurance and retrocessional reinsurance, covered by commercial property and casualty insurance.

(10) **NAIC.**—The term “NAIC” means the National Association of Insurance Commissioners.

(11) **NET PREMIUM.**—The term “net premium” means, with respect a commercial insurer and a year, the aggregate premium amount collected by such commercial insurer for all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance by such commercial insurer, less any premium paid by such commercial insurer to other commercial insurers to insure or reinsure those risks.

(12) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(13) **STATE.**—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(14) **STATE INSURANCE REGULATOR.**—The term “State insurance regulator” means, with respect to a State, the principal insurance regulatory authority of the State.

(15) **TRIGGERING DETERMINATION.**—The term “triggering determination” has the meaning given such term in section 5(a).

(16) **TRIGGERING EVENT.**—The term “triggering event” means, with respect to a triggering determination, the occurrence of an act of terrorism, or the occurrence of such acts, that caused the insured losses resulting in such triggering determination.

(17) **UNITED STATES.**—The term “United States” means, collectively, the States (as such term is defined in this section).

#### **SEC. 20. COVERED PERIOD AND EXTENSION OF PROGRAM.**

(a) **COVERED PERIOD.**—Except to the extent provided otherwise under subsection (b), for purposes of this Act, the term “covered period” means the period beginning on the date of the enactment of this Act and ending on January 1, 2003.

(b) **EXTENSION OF PROGRAM.**—If the Secretary determines that extending the covered period is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, the Secretary may, subject to subsection (c), extend the covered period by not more than two years.

(c) **REPORT.**—The Secretary may exercise the authority under subsection (b) to extend the covered period only if the Secretary submits a report to the Congress providing notice of and setting forth the reasons for such extension.

#### **SEC. 21. REGULATIONS.**

The Secretary shall issue any regulations necessary to carry out this Act.

The **SPEAKER** pro tempore. After 1 hour of debate on the bill, as amended,

it shall be in order to consider a further amendment printed in House Report 107-304, if offered by the gentleman from New York (Mr. LAFALCE), or his designee, which shall be considered read and shall be debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Ohio (Mr. OXLEY) and the gentleman from New York (Mr. LAFALCE) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey (Mrs. ROUKEMA).

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker, I congratulate the chairman for his leadership on this issue, and strongly support the legislation.

Mr. Speaker, I rise in strong support of H.R. 3210, the Terrorism Risk Protection Act and want to commend Chairman OXLEY for his leadership on this important issue. The legislation that we are considering here today represents a balanced approach to a difficult problem. It not only will allow the industry to move forward in providing continued terrorist coverage but it will protect the American taxpayer.

While the industry is able to pay the \$40–\$50 billion in claims resulting from the September 11 attack, it will need our help to protect against future acts of terrorism. The insurance industry is a business of estimating risks on events that cannot be predicted with any certainty such as earthquakes, fires, hurricanes and floods. These types of events are priced according to history of catastrophic events over time. But the World Trade terrorist disaster has no precedents. There is no possible way to price for the likelihood of another occurrence or the size of the potential loss.

Consequently, it stands to reason that any future incident of like size could threaten the stability of the property/casualty market. In these uncertain times and given the magnitude of the September 11 event, reinsurance companies are skittish about providing terrorist coverage. If the reinsurance industry excludes terrorist coverage from its policies, the primary insurers will find it difficult to provide coverage without risking the financial health of their companies.

The lack of coverage has become an immediate issue for many companies that are subject to short-term cancellation provisions (including many aviation businesses) or that had October 1, 2001, renewal dates. It has the potential to become a nationwide crisis January 1, 2002, when most commercial policies are up for renewal. Companies may find terrorism

insurance impossible to buy. This could have a serious ripple effect on the mortgage and real estate industries.

Congress must head off this danger. The industry needs the certainty of this legislation to renegotiate their contracts prior to the January 2002 deadline.

The key elements of this bill includes provisions that are modeled after existing State risk-sharing insurance programs. The bill sets a trigger at \$100 million for small insurers and \$1 billion as an industry wide aggregate and provides a 90 percent Federal share with 10 percent individual company retention. Companies would be required to payback the first \$20 billion in losses through assessments and allowed to recoup subsequent losses through commercial policyholder surcharges.

Finally, this bill provides important liability reforms for private businesses that could be affected by future terrorist attacks. We need only look at the 1993 World Trade Center bombing to understand the need for these important reforms. The 1993 World Trade Center bombing resulted in 500 lawsuits by 700 individuals, businesses and insurance companies. Damages claimed amounted to \$550 million, and those cases are just now getting started. It is unthinkable that we would not provide innocent businesses protection against terrorist-inspired litigation. Businesses and property owners simply cannot guard against terrorist attacks seeking to cause mass destruction. This bill includes common sense reforms that will assure the continued availability of affordable insurance.

Let me remind my colleagues that provisions to limit punitive damages and attorneys fees were included in the Airline Security Act that originally passed the House with one distinct difference—H.R. 3210 does not cap damage awards. The litigation management provisions in H.R. 3210 would also benefit victims of future terrorist attacks.

H.R. 3210 represents a balanced approach that will give the insurance industry the short-term assistance they need and will protect the taxpaying consumer by asking that every dollar of assistance be repaid.

Mr. OXLEY. Mr. Speaker, I yield myself 5½ minutes.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, on September 11, the al Qaeda network began a war of terrorism against our Nation. The insidious attack was planned not only to kill Americans, but to disrupt our Nation's financial center. The September 11 attack caused greater insured losses than most of the recent top disasters combined, and, unfortunately, since that attack, the foreign reinsurance market has refused to provide further coverage for terrorism.

Without reinsurance for terrorism, primary insurers are not able to responsibly insure high level risks. In fact, they have been filing new policy forms to exclude terrorism coverage in almost every State of this Nation. Without insurance, many creditors will not lend for new projects, and many new businesses, projects, and buildings will simply never happen.

We cannot afford this significant economic disruption at a time of economic

sluggishness. I am confident that the private insurance sector will eventually adapt to the challenges of the new world, they always do. But 70 percent of commercial insurance policies will be renewed over the next 35 days, and if this Congress does not pass this legislation, many of those policies will not be renewed and our economy will be further injured. This is exactly the result that the terrorists were hoping for, and this is why it is absolutely imperative that the House act today to pass this bill.

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We crafted legislation in our committee to address this problem. Mr. Speaker, H.R. 3210 creates a temporary risk-spreading program which creates the strongest incentives for consumers to be able to obtain coverage with significant solvency protections to maintain a stable market. We created certainty in terrorist exposure for companies by spreading any terrorism risk across the industry with temporary Federal assistance. But the role of the Federal Government is limited to a helping hand up, not a hand out. Any assistance provided must be repaid by the industry over time.

We also based our bill on systems being used successfully in almost every single State today: the State insurance guarantee funds. These programs provide immediate liquidity up front to ensure that policyholders are paid, and then the costs are collected back from the industry as a whole. It is simple, it works, and we have the programs in place today we can build on.

This is not the approach favored by many in the industry that want free taxpayer money, but it is an approach supported by consumer and taxpayer groups as diverse as the Consumer Federation of America, Americans for Tax Reform, and Citizens Against Government Waste; and it is critical for the House to pass this legislation today to make a clear statement that we are going to protect the economy and we are going to do it in a way that will not put the American taxpayer on the hook or require future tax increases.

We need to get this legislation done today. Time is running out. We passed H.R. 3210 out of committee with 35 bipartisan cosponsors on a nearly unanimous voice vote. Since then, the only significant changes our committee has made were in response to our good-faith commitment to continue working to address Members' concerns, primarily to speed up the assessments and create more flexibility for rural areas and small towns.

The text made in order by the rule includes additional liability reforms placing limitations on punitive damages and trial lawyer fees for terrorist events. We have been working with Members' staffs in both parties and will continue to make improvements to the insurance provisions. But the minority is being given two opportunities to amend this bill; and once the

House works its will, we cannot allow a disagreement on lawyers' fees to sabotage what would otherwise be a bipartisan bill that is critical to our economy.

Mr. Speaker, I support limits on legal fees and other liability reforms to ensure that a future terrorist attack does not create a rush to the courthouse. I supported more limited reforms in the Committee on Financial Services. I will back the bill with or without the strengthened provisions. But we cannot let the fight over the trial lawyers undermine our critical responsibility to hold together our Nation's financial foundations. This bill is critical, and it must be sent to the President this year.

Mr. Speaker, H.R. 3210 is pro-consumer, pro-taxpayer, and pro-business. Regardless of whether Members choose to side with the trial lawyers or the liability reforms, we cannot let the terrorists win by disrupting our economy because we failed to do our job in passing this legislation.

I must point out the contributions of the gentleman from Louisiana (Mr. BAKER) to this bill which reflects many of his ideas and much of his energy as well. He, of course, chairs the appropriate subcommittee of our Committee on Financial Services. The gentleman from Alabama (Mr. BACHUS), the gentleman from Texas (Mr. BENTSEN), and many others on the Committee on Financial Services also deserve thanks for a great job on this bill. The gentleman from Connecticut (Mr. SHAYS), the gentleman from North Dakota (Mr. POMEROY), the gentleman from New York (Mr. FOSSELLA), and the gentleman from New York (Mr. GRUCCI) were early and enthusiastic supporters of our commonsense, pay-back-the-taxpayer approach.

Today it is time to put away egos and forget partisan blustering and special interest politics. It is time to help those Americans who are working to create jobs: the guy who is trying to buy a business, expand a manufacturing plant, or construct a new building.

The 9-11 attack is over, but the economic terrorism goes on and on unless we act. I strongly urge support for this important legislation.

Mr. Speaker, I also want to thank the Chairman of the Budget Committee, Mr. NUSSLE, for his assistance in moving this legislation to the floor quickly. I am inserting for the RECORD an exchange of letters regarding his committee's jurisdictional interest in this legislation.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE BUDGET,  
Washington, DC, November 26, 2001.

Hon. MICHAEL G. OXLEY,  
Chairman, Committee on Financial Services,  
Rayburn House Office Building, Wash-  
ington, DC.

DEAR CHAIRMAN OXLEY: I am writing regarding H.R. 3210, the "Terrorism Risk Protection Act" which was recently ordered reported by the Committee on Financial Services. As you know, the legislation includes provisions addressing the budgetary treatment of certain spending, a matter which

falls within the jurisdiction of the Committee on the Budget pursuant to rule X of the Rules of the House of Representatives.

Because of your ongoing willingness to work with the Committee on the Budget on this matter, and the need to move this legislation expeditiously, I will waive consideration of the bill by the Budget Committee. By agreeing to waive its consideration of the bill, the Budget Committee does not waive its jurisdiction over H.R. 3210. In addition, the Committee on the Budget reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on the Budget for conferees on H.R. 3210 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill. Thank you for your assistance in this matter.

Sincerely,

JIM NUSSLE,  
Chairman.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FINANCIAL SERVICES,  
Washington, DC, November 26, 2001.

Hon. JIM NUSSLE,  
Chairman, Committee on the Budget, Cannon  
House Office Building, Washington, DC.

DEAR CHAIRMAN NUSSLE: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 3210, the Terrorism Risk Protection Act.

I acknowledge your committee's jurisdictional interest in the provisions addressing the budgetary treatment of certain spending under the bill and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on the Budget with respect to its jurisdictional prerogatives on this or similar legislation and will support your request for conferees on those provisions. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

MICHAEL G. OXLEY,  
Chairman.

Mr. Speaker, I reserve the balance of my time.

Mr. LAFALCE. Mr. Speaker, I yield myself 5 minutes.

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Speaker, unfortunately the Republicans are snatching defeat from the jaws of victory. When we worked together, we produced a financial services modernization bill that had not been pulled off in 60 years, but it took true bipartisanship. Just a short time ago, a month or so ago, we worked together in a bipartisan manner. With total bipartisanship, we passed major anti money-laundering legislation, and we stood together with President Bush at the White House signing when he signed and gave the gentleman from Ohio (Mr. OXLEY) and myself pens, the pens he used to sign the PATRIOT bill. We could have done the same thing on terrorism insurance. I desperately wanted to. I tried to. We were rebuffed. They snatched defeat from the jaws of victory.

Why so? If the Republicans are victorious today, it is going to be a Pyrrhic victory, but there were certain things that were more important than a good victory. What was more important? Well, they had to include extraneous material within the bill, either because they were told to, or because it is part of a theological belief. And what is that? That we must restrict victims' rights. Forget all lawyers. We are talking about victims.

We are talking about the rights of victims to be able to obtain the redress that they have been able to pursue from 1776 to now, from the beginning of the Republic to the present. And those rights have evolved over 200-plus years in the several States where they have become the common law of the land, they have been codified in State law; and in one fell swoop we say, we eliminate all State causes of actions and there shall be one exclusive Federal cause of action, one exclusive Federal cause of action.

Now, we will look to State law for a little bit of guidance, but certainly not on the issue of damages. On damages, we will eviscerate their rights for economic damages, we will eviscerate their rights for noneconomic damages, we will eviscerate their rights, we will prohibit their rights, for punitive damages.

That is going to kill this bill, and that is going to greatly, greatly worsen our economy.

Mr. Speaker, they could take one of two approaches. They could say, let us take the best bill we could fashion in a bipartisan manner that might pass muster with the Senate and negotiate differences, send it to the President, or they could say, oh, my gosh, we have a majority of one Democrat in the Senate; therefore, the only approach we can take is to come up with the worst possible bill imaginable, pass that, because that will increase our negotiating leverage with the Senate. The worse our bill, the better our negotiating stance. That is what they have done.

This is not about passing a bill. They are not arguing the merits of this bill because they want to see it become the law of the land. They know it never will be. They just want to posture themselves, leverage, to get better leverage in negotiating with Senator DASCHLE, Senator DODD, Senator LEAHY, Senator HOLLINGS, et cetera.

In doing this, they are playing Russian roulette. Because what they are doing is they are permitting that Damoclean sword that is hanging over the economy, producing a chilling effect right now on the provision of credit to businessmen across America. They are permitting that Damoclean sword to fall come January 1, 2002. It is Russian roulette and it need not be.

We could pass a bill; we could pass the substitute that would go to the Senate and, with minor changes, be signed by President Bush next week and eliminate that Damoclean sword

that is hanging over the head of our economy.

Mr. Speaker, our Nation is faced with numerous economic dislocations as a result of the September 11 attacks. A case in point is the legitimate concern that the reinsurance market for terrorism coverage is evaporating and will force primary insurers to increase prices or withdraw coverage. This is not an industry problem. If industry cannot reinsure the risk of further terrorist attacks, it will either not offer terrorism coverage or price it out of the reach of most consumers. The consequences of such action for our economy and for consumers would be devastating, particularly given our current recession.

We must recognize that the crisis is only weeks away, as most policies are coming up for renewal on January 1, 2002. If businesses are forced to go without coverage, lenders will not lend because they require proof of insurance as part of the prudential credit decisions they make. Congress does not have the luxury of time to debate extraneous and controversial issues such as restrictions on victims' compensation while the health of our fragile economy hangs in the balance.

Since the markup of H.R. 3210 last month, I have repeatedly expressed my willingness to work with Mr. OXLEY and Mr. BAKER on devising a plan that I could support. The goal was to create a short-term solution that will keep terrorism insurance coverage against any future attacks available and affordable, until Congress can revisit the issue. The approach Mr. OXLEY devised was, in large part, reasonable and I could have supported it. However, because this bill is laden with extraneous provisions that limit victims rights and does not address some of the core issues that I believe are essential, I cannot embrace this legislation in its current form. It did not have to be this way.

First, H.R. 3210 does not impose an industry deductible. Instead, it creates a program under which the Federal Government finances industry losses from the first dollar and calls for those funds to be recouped over time through industry assessments and policy surcharges. Second, the bill does not require, by its terms, that property and casualty coverage be part of commercial property and casualty coverage, as it normally is now. Third, it egregiously limits victims rights by eliminating punitive damages, limits noneconomic damages, caps attorneys fees and creates a Federal cause of action. These provisions are extraneous, represent a wish list for those who have long wished to restrict the rights of victims in our civil justice system, alienate most Democrats and many Republicans here and in the Senate, and, therefore, imperils this legislation's ultimate enactment.

The advocates of radical tort reform in the White House and in the Republican leadership are using this terrorism risk bill to promote an aggressive antivictim agenda. Section 15 of the Armev bill, entitled "Litigation Management" may constitute the most radical and one-sided liability limitations ever. Even worse, the provision bears little relationship to the issue of insurance and is not even limited to cases involving insurance coverage.

The Republican bill diminishes the protections that Americans enjoy under state law by restricting the availability of noneconomic damages and by eliminating punitive damages. These limitations on damages apply not

only to insurance companies, but also to the wrongdoer, as well. Adoption of these provisions rewards wrongdoers at the expense of innocent victims of terrorist attacks. If an airport screening firm hires a known terrorist who allows a weapon to slip on board a plane, this bill would protect that company.

Punitive damages are rare and only awarded in the most egregious cases where a defendant willfully or intentionally disregards the safety of the American public. The elimination of punitive damages takes away incentives for businesses to do everything they can reasonably do to protect the American public.

Noneconomic damages are real damages. The loss of a limb, eyesight, constant pain and loss of a loved one are real life-altering events. Limiting their recovery harms the most severely injured victims and discriminates against children, the elderly, and homemakers, who do not receive much in the way of economic damages.

The Republican bill tries to limit victims' access to the civil justice system by capping the fees available to pay the victims' attorneys and threatens their attorneys with criminal sanctions for violations of the cap. This particular provision reveals the real motives of the proponents because the provisions does not impose any cap on the fees paid to defendants.

It bill takes away all judicial review relating to the issue of whether terrorism caused the injury, an unprecedented and very likely unconstitutional limitation on victim rights. It eliminates prejudgment interest, which takes away any incentive for negligent parties to reach settlements. It mandates collateral source, which forces victims to choose between seeking money from charities and pursuing a grossly negligent party in court, and permits wrongdoers to take advantage of life and health insurance policies purchased by the victim or the victim's employer.

The Republicans claim that the provisions are needed to protect the taxpayers from paying for excessive damages through the reinsurance mechanism. But, under the Republican bill every penny of assistance is recouped through assessments on the industry. If they were really concerned with limiting taxpayer exposure rather an aggressive and radical tort reform agenda, why is there no limitation on property damages under the bill? Does making a family whole means less to my colleagues than making a corporation whole for the loss of a luxurious building?

While I firmly believe these victim compensation restrictions have no place in this bill, we on our side sought to find some common ground on this tort reform issue, so we could report out a bill that is vitally important for the economic recovery of this Nation. We presented to the Rules Committee three amendments to modify the provision. But the Republican leadership was unwilling to give the House an opportunity to refine these provisions and reach a compromise on an issue that also has the Senate tied up in knots. Instead they insist on pursuing a radical, partisan agenda to limit the compensation needed to make the victims of terrorist attacks whole.

Later in this debate, Ranking Member KANJORSKI and I will offer a substitute which cures many of the defects of the Republican bill and presents this body with a clean piece of legislation that Members on both sides of the aisle can support.

First, my bill would require a real up-front deductible. The insurance industry would pay the first \$5 billion of insured losses in the first year, increasing to \$10 billion in the second and third years. Individual company liability would be capped at 7 percent of premiums. The insurance industry has made clear that it can afford a deductible of this magnitude and they were prepared to embrace it when it was under consideration in the Senate. The administration, too, supports such a deductible. It is a sensible mechanism that protects taxpayers and imposes underwriting discipline. It is a necessary part of any legislation that we ultimately send to the President.

At the same time, my bill maintains the sensible assessment provisions of the Oxley bill for losses in excess of the deductible, and imposes a discretionary surcharge on policyholders for losses above \$20 billion. I believe these provisions fairly protect the American taxpayer while not overly burdening industry.

Second, to prevent insurance companies from cherry-picking the safest properties and leaving sites which present greater risk uncovered, our substitute, unlike the Republican bill, would require that terrorism coverage be part of property and casualty coverage. This is essential to avoid a situation where insurers would only insure "good risks" and leave large portions of the economy uncovered. This provision would also eliminate any incentive for small businesses to opt out of insurance coverage.

Finally, my bill does not limit victims rights by denying them the legal redress that they deserve.

Although I cannot support the bill in its present form, I hope we can engage in a bipartisan, collaborative process going forward.

Despite our present differences, I do see common ground and I do see how we could meld our approaches. But if we are to get there, it will take respectful bipartisan dialog, not the gratuitous and unnecessary pushing of ideological agendas. We have little time, and a serious responsibility which we must meet quickly to protect our economy.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from Louisiana (Mr. BAKER), who has done extraordinary work in this regard.

Mr. BAKER. Mr. Speaker, I thank the gentleman for his leadership and his courtesy.

I think it appropriate at this point in our debate to talk simply about what is it that this bill does and on what issues are there agreement. It is very clear that through the extensive hearings and work of the committee that much agreement was reached. First, that if there is another unfortunate terrorist attack on this great Nation, that we should not let the secondary effect of that attack to bring terror to our national economy, and that we must respond quickly.

Some have criticized, for example, the concept of first-dollar participation at the moment the event occurs. There are other views that we should wait

until perhaps some \$5 billion of damages have been paid out by the industry before getting government involvement. In other words, after the terrorist event has occurred, let us make sure the economy suffers for a while before we respond. This bill takes a different approach and says, we should get that assistance immediately, not 6 months, not 60 days, but immediately upon validation that there has been an event for which there have been losses that can be substantiated.

Secondly, since we are providing this immediate assistance, there should be some guarantee that this is not viewed or, in practice, turns out to be a bailout of the insurance industry. So this bill provides for repayment. Yes, we have a crisis. Yes, there are people who are suffering. So we say, insurance company, go help the insureds. Make sure they get the funds necessary to repair those businesses, to get the economy going again, to make sure we do not have the unemployed or we do not have those who are without medical insurance because their company doors are closed. But when you are profitable and when you are making money, we expect you to give the taxpayers their money back. That is what this bill provides for. It is a new approach. We will help, but we expect you to be responsible when you are profitable.

We give the Secretary of the Treasury large discretion in how to implement the requirements of this legislation. If we find ourselves in the very unfortunate event after a terrorist attack that our general economic condition is poor, the Secretary of the Treasury may use his judgment as to when and how to recoup repayment to the taxpayer. But there is a guarantee that there will be a repayment to the taxpayer.

So first and foremost, there is bipartisan agreement that this legislation is not an industry bailout. It is necessary, an absolutely necessary step to maintenance of our economic survival.

Secondly, it is not going to be a gift, that this money will not go out the door of the United States Treasury never to be seen again.

Third, we act to help not only the big insurance companies; this proposal's effect is to help all insurance companies. It is true that the top 25 percent of all insurance companies out there write 94.6 percent of all property and casualty premiums in this country. There are very large companies providing the bulk of coverage in this country, but there are an extraordinarily large number of very small corporations that could not withstand \$5 billion industry-wide loss without going insolvent themselves. The bill provides immediate assistance for small companies. It provides immediate assistance for small businesses by not requiring terrorism insurance to be part of the property and casualty coverage. Why is that important?

Our bill provides that one can stipulate what the cost of the terrorism

component is separate from the underlying property and casualty bill. So if one is a business owner today who wants to make sure his property and casualty insurance premiums have not been jacked through the ceiling by some irresponsible insurance executive, one can look at what they paid last year and look at what they are asking to be paid this year, and then out over to one column to the side will be a little line that says "terrorism risk premium" and you can identify it. If you happen to be in Wyoming or on the great Gulf Coast of Mississippi or somewhere where you make the judgment that you do not wish to pay that terrorism premium, you do not have to. We do not believe we should dictate to every business owner in America, you must buy terrorism insurance regardless of what the cost may be, or what the risk may be to you. So we provide market opportunity. You can buy the property and casualty, you can buy the terrorism component from company A, you can buy property and casualty from company B, and the terrorism component from company C. It is free market at its best. It is a responsible solution to the problems we face.

Mr. Speaker, I urge the adoption of this proposal.

□ 1315

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), the distinguished ranking member of the subcommittee with jurisdiction on this issue.

Mr. KANJORSKI. Mr. Speaker, I thank the chairman for yielding time to me, and I will take a moment to congratulate the chairman of the committee, the gentleman from Ohio (Mr. OXLEY), and the chairman of the subcommittee, the gentleman from Louisiana (Mr. BAKER), for what I thought was a job well performed as far as moving a bill that could gain bipartisan support through the Committee on Financial Services.

Unfortunately, with heavy heart, the product that we are about to vote on on the floor today does not meet the standard that it met as it came out of the Committee on Financial Services. It has had added to it something called tort revision, tort reform, some sort of change.

To most people watching this debate today, they are going to say, what is all this thing about liability? We are in an emergency.

What it means, to say it simply, is there is an attempt here today with these new additions to change the history of responding to liability claims and civil procedures to settle those claims, and change significantly the history of the United States for 200 years by passing this legislation.

It is unnecessary. It is not only unnecessary, it is something the industry did not ask for. As a matter of fact, in discussions with the industry, they did

not even ask for support down to dollar one lost from terrorist events. They had represented themselves that they were perfectly able to handle as much as a \$10 billion terrorist attack on the United States without consequences.

What they asked us to do in the interim of a 2- to 3-year period would be to provide a mechanism that if a terrorist attack of the magnitude of September 11 occurred, there would be a mechanism in place that they could move quickly to resolve the problem and put the money back into the marketplace.

As a result of not having that mechanism, they are unable to sell policies now with terrorist insurance as part of the policy face and are asking the right to not write terrorism policy in this country. The reinsurance industry will not touch this until the experience table is established as to what rates they can set for terrorist insurance.

So what did the Committee on Financial Services start with? What did the White House request? What did the industry request? That we put together a stopgap measure to allow normal commerce to go on in the United States and have terrorist protection insurance in place over the next 3- to 5-year period so we would not stultify or have a disadvantageous result to the economy as a whole. I call it an economic stabilization bill, that is all it is, to show that the United States government, at a time of extreme need and under dangerous circumstances, can put the taxpayers of the United States in a supportive situation to a free market institution, but not interfering with the free market, encouraging the free market to come back and handle the insurance as it has in the past and will in the future, but for a period of 1 to 3 or 5 years, that the United States Government is in there to create a position that would help the insurance industry, the real estate industry, the financial services industry, but most of all, the economy of the United States.

That has not happened. The one major reason it has not happened, in spite of some of the changes, is the new additions on tort reform or tort revision are so onerous, so extreme, that we are asking the American people and this Congress to forget victims' rights, rights of plaintiffs, rights of complainants, and rights of injured people, and only taking care of the 25 largest companies in the United States who write 94 percent of the insurance.

If I wanted to be a demagogue, I could easily say it is a bailout of the insurance industry. But in my heart and mind, I know it is not that; and it is not intended to be that. If we could have passed the underlying bill, we would have had a very strong, bipartisan support to do that; and it could not have been categorized as a bailout of the insurance industry.

But it can clearly be labeled a locomotive for tort reform at the wrong time, at the wrong place, in the wrong bill.

I urge my colleagues to vote down the existing bill, unfortunately, taking some time to come back and work out another bill so we can go to conference and pass this important legislation.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from New York (Mrs. KELLY).

Mrs. KELLY. Mr. Speaker, I thank the gentleman from Ohio for yielding me the time.

Mr. Speaker, I rise today in strong support of the Terrorism Risk Protection Act. This legislation is essential to not just the insurance industry, but to the entire economy.

Businesses in America face a crisis this year, and they will face a crisis next year if we are unable to obtain commercial insurance coverage, which includes insurance against terrorism losses. Without this insurance coverage, businesses will be unable to obtain financing for new building projects, and an already weak economy will be served another harsh blow.

With the cowardly acts of September 11, our insurance industry faces a new reality which must be addressed as soon as possible. This is a reality in which an act of terrorism is a risk which requires insurance, the cost of which is impossible to predict, and hence, impossible for an insurance company to price.

Because of this, insurance companies are currently unable to offer coverage for impossible future terrorist acts. To prevent this crisis, TRPA would spread the risk for possible future acts out across the insurance industry, giving the industry time to develop their own mechanisms to cover risk for the future. TRPA is designed to provide only the necessary temporary stability to the insurance market and sunset shortly thereafter.

Unlike like some of the solutions put forward, TRPA does not put taxpayers' money at risk. All loans made under the act must be repaid. In addition, the triggers in the bill are low enough to ensure that small insurance companies remain competitive.

Finally, I want to assure my colleagues that the Committee on Financial Services' work on the issue only begins with this legislation. As the chairwoman of the oversight subcommittee, we will be vigorous in our follow-up on this crisis. We must ensure that we do all in our power to provide stability to the industry while we give the private market time to innovate and quickly establish a new market to cover potential terrorism loss.

TRPA is an excellent solution to this crisis and deserves our full support. I ask my colleagues on both sides of the aisle to join me in the strong support of this bill.

Mr. Speaker, obviously, I am pleased that the Financial Services Committee and this House have acted expeditiously on the terrorism reinsurance crisis, and that this legislation is being considered today. Today in this chamber, we are appropriately engaging in a

fierce debate over various aspects of how to make this legislation work for insurance consumers. We are debating federal backstops, mandates for coverage, tort reform, and all trying to do the best thing for the American economy—in the hope that this very complex and difficult issue can be resolved by the time Congress recesses for the year.

But I would appreciate the opportunity, Mr. Speaker, to take just one step back from this debate, and remind us all again why we are here. One of the persons who would have been intimately involved in the creation of a federal terrorism reinsurance program was Charlie McCrann. Charlie was a senior vice president at Marsh and McLennan, the world's largest commercial insurance brokerage firm, and his responsibilities included advocacy at both the state and federal levels. Charlie was a pivotal player on many of the issues surrounding insurance regulation over the years—from the product liability crisis of the 1980s, to the Dingell insurance solvency legislation in the 1990s, to our debates on agent/broker licensing reform as a part of Gramm-Leach-Bliley two years ago. As he spoke on behalf of the firm that sells more business insurance (and reinsurance) than any other firm in the world, this terrorism insurance coverage legislation would have been right down Charlie's alley. As always, he would have done everything in his power to make sure that we craft a bill that restores and calms the marketplace without overreaching.

On September 11, Charlie had arrived early to his office on the 100th floor of 1 World Trade Center. Like 294 of his colleagues at Marsh, he perished.

As a profile in the New York Times recently said of him, Charles Austin McCrann was a levelheaded, respected executive, devoted to his wife, Michelle, and children, Derek and Maxine. He was also a splendid attorney and representative of the insurance industry, through his earlier work at the New York Assembly's Insurance Committee, and at the law firm of LeBoeuf, Greene & McRae. At Marsh, where he served since 1979, in addition to his advocacy, he was a regulatory compliance officer, and was responsible for interpreting industry regulations and providing guidance on these regulations to Marsh's brokers throughout the country. He represented the National Association of Insurance Brokers and its successor organization, the Council of Insurance Agents and Brokers, before the National Association of Insurance Commissioners.

I could go on and on.

As a subcommittee chair on the Financial Services Committee, I mourn the fact that Charlie is not in this chamber today witnessing our spirited debate and our actions designed to assist the commercial insurance marketplace. And I hope that as this legislation continues to move through the legislative process, we will be mindful of the 500 employees of the world's two largest commercial insurance brokerages—Marsh and Aon—who lost their lives on that horrible day.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WATERS), the distinguished ranking member of the subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services.

Ms. WATERS. Mr. Speaker, I serve on the Committee on the Judiciary and

the Committee on Financial Services, both of which have worked very hard in a bipartisan manner to legislate cooperatively in the wake of the events of September 11.

Last month, the Committee on the Judiciary reported out the PATRIOT Act, the antiterrorism bill. The committee product was a true bipartisan effort and was reported out unanimously. That product was then abandoned in the Committee on Rules for a partisan, inferior product.

Similarly, this bill, H.R. 3210, the Terrorism Risk Protection Act, was reported out of the Committee on Financial Services by voice vote. The bill we are debating today is not the product of that committee's good work. It is, instead, a bill that does not contain a deductible for the insurance industry before government steps up to the plate; and even more disturbing, this necessary piece of legislation has become a vehicle for broad-based tort reform.

The Armeey substitute creates an exclusive Federal cause of action for lawsuits arising out of acts of terrorism, prohibits punitive damages, prohibits joint and several liability, limits attorney fees, and requires that any victim compensation shall be reduced by any amount the victim receives from other sources.

These tort reform provisions are broad and far-reaching. These provisions are an appalling attempt by anti-consumer legislators to use this bill to further their own agenda by changing the laws on victim compensation. They would never get away with this under normal circumstances, but these are not normal circumstances.

We have to respond quickly to the events of September 11, and we should do so in a bipartisan manner. I find it utterly shameful that certain Members see fit to exploit this terrible tragedy by using necessary legislation as a vehicle for special interest items.

Unfortunately, this crass opportunism is becoming the hallmark of this House. So far, we have seen attempts to load up bills that respond to this tragedy with all sorts of tax breaks and Christmas presents for corporate America, while we still have not taken care of the unemployed.

Mr. Speaker, this bill has been corrupted with these harsh limitations on victim compensation. These limitations are unrelated to the issue at hand and have no place in this bill. I urge my colleagues to oppose this legislation and support the LaFalce substitute, which contains no limitations on tort actions or recoveries.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 3 minutes to the gentlewoman from Illinois (Mrs. BIGGERT), a valued member of our committee.

Mrs. BIGGERT. Mr. Speaker, I thank the chairman for yielding me the time.

Mr. Speaker, the insured losses from September 11 attacks are expected to total more than \$70 billion, the largest insured catastrophic loss in history.

The good news is that the insurance industry is paying these claims and has stated that all claims will be paid expeditiously.

The bad news is that the insurance industry cannot withstand multiple events of this magnitude without harming all consumers. This is uncharted territory, and it will take some time for an efficient market for terrorism insurance to develop. That is why passage of H.R. 3210 is so important at this critical time.

For those who think that this bill applies only to the market for commercial insurance, they should think again. Right now there are more than 140 public self-insured risk pools operating in 41 States; and they, too, will be covered by this bill.

What are public, self-insured risk pools? They are the entities that provide coverage for those most often at the greatest risk: our firefighters and police officers, our children in schools, teachers, city workers, and many others.

In short, public self-insured risk pools provide an enormous cost saving to State and local taxpayers. When private insurance premiums are prohibitively expensive, these pools absorb the risk across their membership base. Failure to include public risk pools in this bill would have resulted in a dramatic increase in insurance premiums for those providing critical public service and, ultimately, for taxpayers.

I appreciate the strong support this provision received in the committee, especially from the gentleman from Ohio (Chairman OXLEY) and the subcommittee chairman, the gentleman from Louisiana (Mr. BAKER). I look forward to working closely with them to see that this provision is retained in the conference.

Finally, Mr. Speaker, I want to thank the leadership members of the Committee on Financial Services for including key litigation management provisions in this bill. Let us face it, there is no reasonable way for even the most responsible property owner or business to prepare for every conceivable attack by a terrorist. Yet under current law, they would be on the hook for 100 percent of such damages, facing total financial ruin.

This bill limits the potential liability by barring punitive damages and providing other protections if and when the Secretary of the Treasury determines that an act of terrorism has occurred.

Mr. Speaker, H.R. 3210 is a responsible approach to a very difficult situation. By demanding that every tax dollar is repaid, we will provide a helping hand, not a handout, to the insurance industry.

I urge my colleagues to support this legislation.

Mr. LAFALCE. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. WATT), a member of both the Committee on Financial Services and the Committee on the Judiciary.

Mr. WATT of North Carolina. Mr. Speaker, several days after the events of September 11, some of my insurance company representatives who are based in my district approached me and described what would become a very, very serious problem.

Essentially, they said that most of the reinsurance in this country, a lot of it is being done by off-shore reinsurers, and that those people were not going to reinsure against terrorism after the events of September 11.

It became obvious that there was a serious problem that would need to be addressed, and I committed to work to try to address that problem, both in the Committee on Financial Services and in the Committee on the Judiciary, both of which I am a member of.

We did that in the Committee on Financial Services. We reported out a bill that received virtual unanimous support. Unfortunately, just like the PATRIOT bill, the antiterrorism bill that the Committee on the Judiciary had reported out unanimously, the leadership got its hands on the product of our committee and rewrote the bill. They inserted provisions that had little, or nothing, I would submit, to do with the problem that the insurance companies had described to me in that initial meeting, the one dealing with reinsurance and the necessity for reinsurance.

□ 1330

This bill has been hijacked, unfortunately, the same way that the so-called PATRIOT bill was hijacked by the leadership, and provisions have been placed in this bill which actually just make it unsupportable.

We are going to have a serious problem if we do not get to a final product on this bill very soon. Insurance policies that are expiring and are having to be renewed will need terrorism coverage, and it is that kind of brinksmanship that I am concerned about; because as the ranking member has indicated, we have taken a situation which could have been resolved easily through bipartisan cooperation, that had been resolved through bipartisan cooperation on our Committee on Financial Services, and the leadership has decided that it would rather play political brinksmanship with this bill.

If a product is not delivered that is satisfactory before the end of this year, I hope that the American people will hold the people who are responsible for this brinksmanship responsible for their conduct, and I encourage my colleagues to vote against this bill today.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the gentleman from Ohio (Mr. OXLEY) for his hard work and leadership on this difficult issue.

Congress simply must act, before we adjourn, to avert an insurance coverage crisis caused by the increased risk of terrorism against the citizens

and businesses of this country. I think that statement is absolutely true. I am proud of the insurance industry and the way it has stood up to what is going to be a \$40 billion loss, but there is no question that they cannot do this again tomorrow.

Furthermore, we in our Nation need to figure out how we are going to share this new risk, because if we do not, the cities of America are going to be the victims. It is not going to be Torrington, Connecticut. It is not going to be Rutland, Vermont. It is going to be New York, Chicago, San Francisco, Los Angeles, Houston. Who in their right mind is going to pay the high premiums that will be charged of those who locate in New York? Every one of the big cities will be seen as the likely target for the next terrorist act, and so the premiums for businesses in our cities are going to skyrocket if we do not legislate now, do it right and follow it through over the next few years.

It is hard enough for the cities to attract businesses to them, because cities have so many burdens that often their taxes are high, their police problems are great, and so on and so forth. Now we are going to add to that the highest possible insurance premiums for those companies that are willing to headquarter in New York, Chicago, Los Angeles, and other big cities of America.

We would not do it intentionally, but that is going to be the unintended consequence of not handling this issue correctly. It will be the cities that hurt; not the towns, not the little cities, not all of America. We will put a death knell over economic activity in the big cities of our country.

So I urge support of this legislation.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. MALONEY), a member of the committee.

(Mrs. MALONEY of New York asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY of New York. Mr. Speaker, I thank the gentleman from New York (Mr. LAFALCE), the ranking member, for yielding me the time and for his leadership and hard work on this issue.

Our work today is not bailout of the insurance industry. We are simply working to keep our economy on track with a short-term program that addresses the new terrorist threat.

I believe the gentleman from New York's (Mr. LAFALCE) bill recognizes the importance of this potential insurance crisis to our country and the time-sensitive nature of the problem. With 70 percent of reinsurance contracts expiring at the end of the year, we have a limited time to act before the end of the year.

In the Committee on Financial Services, the gentleman from Ohio (Mr. OXLEY), the gentleman from Louisiana (Mr. BAKER), the gentleman from New York (Mr. LAFALCE) and the gentleman from Pennsylvania (Mr. KANJORSKI) understand the importance of this issue



and they have worked tirelessly to move the process forward.

I was particularly concerned with surcharges placed on future policyholders in the bill that the gentleman from Ohio (Mr. OXLEY) and the gentleman from Louisiana (Mr. BAKER) originally introduced. It is my belief that this language would have placed an undue burden on future policyholders just as they are trying to recover from the attack. Working together, we have reached a compromise on this issue, limiting future surcharges to 3 percent of premiums.

While we have reached agreement on many issues, I believe the approach taken in the Democratic substitute is superior to the bill that is the underlying one today. The goal of any bill should be to restore the availability and affordability of property and casualty insurance. Limiting the rights of potential plaintiffs is a peripheral issue. We are dealing with a crisis, and partisan legal reform issues have no role in protecting the viability of insurance markets.

We do not know where the next attack will be, but we can be pretty sure that right now terrorists are planning to strike again. Hopefully our increased security will thwart any attack, but now is not the time to prospectively limit the rights of individuals to make themselves whole if they are victims of a future attack.

To quote a letter from the Consumer Union, "Although individuals in businesses may be unable to prevent future terrorist attacks and are not directly responsible for those acts, they should be expected to take reasonable and measured actions to promote public safety."

I believe the legal limitations and the majority bill discourage such conduct. Furthermore, the LaFalce substitute is more taxpayer friendly by requiring the insurance industry to cover a deductible of \$5 billion in the first year and \$10 billion in the second. This industry is capable of covering this deductible and does not oppose this provision.

Every Member of this House owns an insurance policy and we all face deductibles. This bill to prevent an insurance crisis should not be any different.

Mr. Speaker, I rise in strong support of the LaFalce substitute.

Mr. Speaker, viewers of this debate should be clear.

Our work today is not a bailout of the insurance industry—we are simply working to keep our economy on track with a short-term program that address the new terrorist threat.

I believe Ranking Member LAFALCE's bill recognizes the importance of this potential insurance crisis to our country and the time sensitive nature of the problem.

With 70 percent of reinsurance contracts expiring at the end of the year we have a limited time to act before the end of the year and we have to get this right.

In the Financial Services Committee Chairmen OXLEY and BAKER and Ranking Members

LAFALCE and KANJORSKI understand the importance of this issue and have worked tirelessly to move the process forward.

I was particularly concerned with surcharges placed on future policy holders in the bill that Mr. OXLEY and BAKER originally introduced.

It is my belief that this language would have placed an undue burden on future policyholders just as they are trying to recover from an attack.

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To quote a letter that Consumers Union which was sent to Members yesterday, "Although individuals and businesses may be unable to prevent future terrorist attacks and are not directly responsible for those acts, they should be expected to take reasonable and measured actions to promote public safety."

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Unfortunately, I am fairly certain that businesses will pay billions more for insurance in New York in next year—even with Congressional intervention. As I have said, this increase could amount to a tax of billions of dollars on New York business.

I urge my colleagues not to tie outside issues to this legislation. It is too important. Support the clean LaFalce substitute.

Mr. OXLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Connecticut (Mr. SHAYS), a very valuable member of our committee.

Mr. SHAYS. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in strong support of the Terrorism Risk Protection Act. This bill creates a temporary industry risk-spreading program to provide a financial backstop for insurers in the event of losses from future terrorist attacks. It is not a bailout, and taxpayers will recoup every penny of assistance insurance companies receive.

It is critical for the Nation that terrorism insurance legislation be enacted

before January 1. This legislation is particularly critical for insurance companies and financial services. The impact of not enacting this legislation will significantly damage these vital industries and will have dire consequences as well for the real estate, energy, construction and transportation industries.

It is also clear our Nation's cities and metropolitan areas will be impacted the most for failing to act on this legislation. Time is quickly running out. The market for new commercial insurance contracts and renewals is already undergoing serious and potentially severe disruptions. Almost 70 percent of reinsurance policies expire on December 31, and virtually all reinsurers have said they will no longer provide terrorism insurance after that date.

This will create a chain reaction that will affect our entire economy. Without insurance, lenders will not lend and investors will not invest. The economic effects of inaction simply cannot be overstated.

To me, this is the true stimulus bill. We need to enact this bill. None of us can be sure when and where another terrorist act will occur, but it will occur. And we have the opportunity today to offer businesses, employers, and other economic activities across the country much needed protection.

Mr. Speaker, I urge my colleagues to vote for this legislation and help avoid an otherwise inevitable market dislocation and subsequent economic crisis. We need to enact this bill. I thank my chairman, the gentleman from Ohio (Mr. OXLEY) for acting so quickly to see that we will do that.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentleman from California (Ms. LEE), a distinguished member of the Committee on Financial Services.

Ms. LEE. Mr. Speaker, I want to thank the ranking member, the gentleman from New York (Mr. LAFALCE) for yielding me time.

Mr. Speaker, I am very disappointed in the process and also the content of this bill. Many important amendments, including those on tort reform and my consumer amendment on data disclosure, were not even allowed to be offered. At a time when thousands of men and women are losing their jobs and their health insurance, it is really a shame that we are again putting corporate interests before the interests of our workers.

Unemployment and health insurance benefits for those people who have lost their jobs should be our first priority.

On the content of this bill, the egregious tort reform provisions are reason enough to oppose it. Companies that do not take appropriate safety steps or do not act responsibly in the face of credible threats should not receive protection for their actions. If the owner of a building locks the emergency exit doors and a terrorist attack occurs there, that building owner must be held responsible for their negligent actions. This is just common sense.

Under the Republican bill, they could not be held responsible. Under the LaFalce substitute they would.

In terms of the process of this bill, I have tried to offer an amendment to require insurers to provide the same data, the same data, mind you, that banks currently provide on the race, ethnicity, gender and location of their policyholders to ensure that they are not discriminating against minority, women or low-income individuals. However, this very modest amendment was not even allowed by the Committee on Rules.

If we are to give billions of dollars to the insurance industry, we should at least have basic data to know if they are using those Federal dollars to engage in discriminatory practices. This is only fair.

It is time that this Congress really gets its priorities straight and supports the working men and women in our Nation. The tragic events of September 11 should not be used as an opportunity for corporate tax cuts and bailouts. Let us put first things first and make sure that our enhanced national security ensures economic security for those who so desperately need our assistance.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a valuable member of our committee.

Ms. HART. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I serve both on the Committee on Financial Services and on the Committee on the Judiciary and have certainly, like many Members who have spoken, spent some time on this issue and certainly understand the gravity of what we are doing here today, because in January, a little more than 30 days from now, 70 percent of the commercial insurance policies will be up for renewal.

Not only has the Committee on Financial Services received quite a bit of testimony that without legislation, commercial insurers will be unwilling to provide significant terrorism coverage, newspapers have been full of stories about companies finding terrorism coverage impossible to buy.

If businesses are unable to obtain insurance to cover their losses caused by future acts of terror, they will not only potentially be liable for significant damages any terrorist could cause, but they would also face significantly higher financing and other costs. This has the potential to wipe out any beneficial impact of an economic stimulus package that we hope will be passed and signed by the President.

In order to attract capital, companies have to convince investors that their money will not be wiped out. We take steps through this legislation to make sure that that is the case. This is not a bailout. This is a backstop. This is legislation that will give confidence back in your economy, confidence to investors.

It allows for exact pricing so that in the event of another terrorist attack,

the government would not only collect the amount of money it needs in accordance with this law, it prevents the creation of another mammoth government agency. In other words, we help finance money temporarily.

This is not giving money away. This is assistance to our economy. It is very important. Limiting the legal liability of these insurers by restricting punitive damages is a big part of it. It is very important. Terrorism is not the fault of insurers, it is the fault of the terrorists. It is important that we take into consideration the realities here.

Mr. Speaker, I appreciate the support of my colleagues, both the gentleman from Ohio (Mr. OXLEY) and the gentleman from Wisconsin (Mr. SENSENBRENNER). I urge support of the bill as it is, H.R. 3210.

□ 1345

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. INSLEE), a distinguished member of the committee.

Mr. INSLEE. Mr. Speaker, I speak vigorously against this bill because it is radically callous toward reform provisions, and let me explain how radical they are.

It seems to me that we have given a lot of at least lip service to the value of marriage on this floor in a lot of different debates, but look what this bill does. Take a situation where a wife lost her husband, firefighter in New York City. She has had the destruction of her relationship with her husband, she is a widow, and let us say this bill becomes law. If this bill becomes law, it says that the only value of that husband to that widow was the value of his paycheck.

This bill would destroy the ability that is now the case in 50 States in this country that when a widow loses her husband she would be entitled under American law to noneconomic damages. That is a sound policy, because many of us believe that a husband has a value to a wife that is greater than his paycheck. But the Republican proposal here is based on the proposition that the only meaningful value of a husband to a wife is what he brings home at the end of the month, and that the value of the relationship between a husband and wife is zero under the Republican bill. That is wrong. That is wrong.

The value of a relationship between a husband and wife is worthy of the respect of us individually and worthy of the respect of the American judicial system. This bill is wrong in eliminating that civil right. I think it is a sad day when terrorists get to destroy the civil right of an American to recognize the value of their spouse, which under the Republican bill my colleagues are doing. Frankly, I do not know if my colleagues intended to do it, but this bill accomplishes that end, and it is wrong.

But there is a second reason I speak against this bill, Mr. Speaker. If we

pass this bill, it will have been after we passed the airline bailout bill, or airline bill, whatever we want to call it, and did not give a dime to the workers, over 100,000 workers who have been laid off. Yet we now pass a bill to help the insurance industry, which I think is necessary, some bill, to help the insurance industry, but still without helping laid-off workers with a dime or a nickel.

I now have in the Puget Sound, or will have, 30,000 laid-off workers from the Boeing company alone as a result of this terrorist activity. And what has the Congress done? Nothing. Why do the big dogs always eat first in Congress? It is time to take care of working people. Defeat this bill.

Mr. OXLEY. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. GRUCCI), another valuable member of our committee.

Mr. GRUCCI. Mr. Speaker, I rise today to express my strong support for H.R. 3210, the Terrorist Risk Protection Act.

First, I would like to thank the gentleman from Ohio (Mr. OXLEY), the chairman of the Committee on Financial Services, and the gentleman from Louisiana (Mr. BAKER), chairman of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, the Republican leadership, and my colleagues on the Committee on Financial Services for their tireless efforts to negotiate a comprehensive package to prevent the disruption and destabilization of America's markets via the collapse of our insurance industry.

The horrifying events of September 11 have touched each and everyone's lives in so many ways. Our Nation will never again be the same. These events have introduced new problems for industries and small businesses, because reinsurers have been telling primary insurers that they will exclude terrorist coverage from their policies. Now, without the ability to insure properties against future terrorist attacks, financial institutions will be unable to provide loans, New York will be unable to rebuild, and everyday business transactions will be disrupted. If we permit this to happen, we let the terrorists win.

Time is running out. On December 31, 2001, 70 percent of these reinsurance policies will expire. New policies are currently being negotiated without these necessary legislative changes. We should have passed this critical legislation in time for these companies to provide 45-day notices. Well, we missed that deadline; and now we have only 32 calendar days, leaving us only 16 business days until the Christmas holiday. Speaking as a former small businessman, I can tell my colleagues that does not provide much time for effective business decision-making, particularly in light of our Nation's current economic conditions.

H.R. 3210 creates a temporary industry risk-spreading program to ensure

the continued availability of commercial property and casualty insurance and reinsurance for American consumers. The post-event assessment system provides an incentive to provide coverage, spreads out risk, prevents guessing at costs, and does not take money out of the economy. This requires that all of the Federal funds used to boost liquidity are paid back by the commercial industry/policyholders over time.

This is sound, effective, and timely legislation; and I urge my colleagues to join me in supporting this critical measure and in supporting the economic stabilization of our country.

Mr. LAFALCE. Mr. Speaker, I yield 5 minutes to the gentleman from North Dakota (Mr. POMEROY), a former insurance commissioner for that great State.

Mr. POMEROY. Mr. Speaker, I thank the gentleman for yielding me this time, and I commend him and the rest of the leadership of the committee, including Chairman OXLEY, ranking member LAFALCE, Subcommittee Chairman BAKER, and ranking member KANJORSKI for their really terrific work on this matter. This should be the finest hour for the Committee on Financial Services.

We have an issue where there is broad bipartisan agreement. We need to act. We need to act now. Because without enactment before we go home, there will be significant capacity consequences in the availability of coverage for terrorism. The ripple effect of that through the economy will be significant. And that is why we have to act.

Now, under these circumstances, committee leadership undertook this difficult assignment of creating some kind of public mechanism to wrap around the private insurance capacity to continue to insure this risk, a risk that has grown infinitely more grave and significant. Out of this long, rather intense legislative process came a bill that, after committee markup, passed by voice vote, virtually capturing all of the members of the committee.

Now, it was recognized by committee leadership not to be the perfect bill, that more work would be required; but it was the legislative format for the congressional response that, I believe, would have provided direction to the Senate and would have been the principal way in the end we enact this legislation. Well, what happened? This work product was taken away from the committee. It was ripped up and rewritten. It was wrecked and brought forward.

And the irony of ironies is that now the chairman of the Committee on Financial Services has to lead the debate for its enactment. I believe the committee leadership deserved better than this in light of the fair-minded effort they made to get a solution created.

There are two reasons to oppose this bill: substance and process. And the argument as to substance, I believe, has

been very well advanced by previous speakers; and I will not reiterate that part. But I do want to speak a bit on process.

This is one of the most technically difficult assignments this body has undertaken, and to do it in a tight time frame makes it particularly difficult. There are lots of ways that have been advanced in terms of how we construct this assistance to keep terrorism coverage available. The administration took a whack at it. They had one approach. A bipartisan effort between Senator DODD and Senator GRAMM in the Senate took another approach. Chairman BAKER worked with Chairman OXLEY to construct an approach that, in the end, was quite a bit like the approach taken by ranking members LAFALCE and KANJORSKI.

Out of all these approaches, none of them have the offending provisions slapped on in a kind of a haphazard, almost cavalier way by House majority leadership in bringing this form. What they have done is thrown a red herring into this whole debate as to how we construct the package.

I believe passage of this bill does not advance completion of the terrorism insurance assignment; I think it makes it even more difficult. Because rather than focusing on the technically demanding issues before us, we are also going to be debating unrelated, ideological points of agenda that really have no place, especially when considering the dwindling hours we have to get this bill into place.

I believe that, in the end, we have to act; but we can best act by rejecting the flawed proposal that has been put before us and going back to the committee, bring their bill forward to get this on the track that we need to go.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. CANTOR), a new member of our committee.

(Mr. CANTOR asked and was given permission to revise and extend his remarks.)

Mr. CANTOR. Mr. Speaker, I commend the gentleman from Ohio (Mr. OXLEY), chairman of the full committee; the gentleman from Louisiana (Mr. BAKER), chairman of the subcommittee; and the gentleman from New York (Mr. LAFALCE), ranking minority member, for bringing this most critical, critical bill to the floor.

As has been said before, on September 11, thousands of innocent Americans were killed in a savage terrorist attack that no one could ever have imagined. This catastrophe, though, also has left the American economy and American businesses with an insurance crisis. Seventy percent of insurance contracts in this country expire at year's end. As a small businessperson, I know that there are millions of individuals out there now receiving expiration notices not knowing what to do come year-end.

If we look at it, if there is no insurance, business owners across America,

both small and large, may all be in default of loan covenants which require collateral to be insured against terrorist strikes. Without this bill, there will be no such insurance.

Some individuals may fear the worst and close or put a halt to expansion plans. We can forget about growth in our cities and towns. What bank will loan money to build a shopping center or an office building without insurance to protect their investments in such a project? And then where will the jobs be without those projects?

H.R. 3210 addresses this impending crisis not by an industry bailout but by extending credit to cover claims associated with terrorist strikes akin to those on 9-11. Such loans will be repaid through industry assessments so that American taxpayers will remain whole. Mr. Speaker, I also commend both Chairman OXLEY and Chairman BAKER on the very innovative way that this bill tries to provide a resolution to this impending crisis. It does provide a fix.

And I would say we ought to support this bill because of the substance. There are no mandates on terrorism coverage, so, therefore, if there is a small business owner, let us say in Orange, Virginia, who has a small ice cream shop and chooses not to pay for that particular coverage because of the cost, that business owner ought not be made to do so. Yet the bill also provides for protection against those who may seek compensation in lawsuits against a terrorist strike.

Let us not put the bill on the American people; let us put the bill on the terrorists. It is the terrorists who were responsible for the strikes on 9-11 and will be responsible if it occurs in the future.

Mr. Speaker, I urge passage of the bill.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. SHERMAN), a distinguished member of the Committee on Financial Services.

Mr. SHERMAN. Mr. Speaker, I am sure you have visited Rayburn 2128, the room in which the Committee on Financial Services meets. It is a large and beautiful room, and I would propose that we make that room available to provide housing for the homeless. Because what went on in that room in crafting this bill has nothing to do with the bill that reaches the floor.

□ 1400

Mr. Speaker, if all of our financial services bills are to be written in the Committee on Rules on the third floor of this building, why must people sleep out in the cold when they could be provided housing in room 2128?

In fact, we are presented this bill on very short notice, basically 24 hours' notice, and it has so many changes from the bill that left our committee. One of the flaws in this bill is that it provides first dollar coverage with no deductible. What does this mean? It means that if there is a terrorist event

that causes a billion dollars in damage, less one penny, comes within 1 cent of causing a billion dollars of damage, the Federal Government does nothing.

But if instead the damage is a billion dollars, plus one penny, then the taxpayers come forward with \$900 million. Never has 1 cent mattered so much, and that is clearly absurd.

We need instead a bill that says that the first billion dollars is absorbed by the insurance and reinsurance industry, and only then should taxpayer dollars be involved. What, after all, is the insurance industry if it cannot absorb in total, with all of its companies and all of the reinsurance companies, a billion dollars in risk? If insurance companies cannot take the first billion of risk, then why do they exist? They are, after all, in the risk-sharing and risk-absorption business.

We need a bill. Many speakers who have come forward have explained why it is so important that we pass a bill so that those who own businesses are able to get terrorism insurance; or, rather, continue to get the kind of insurance that they have now without an exception for terrorist damage. That is why it is so important that those who want a bill vote for the Democratic substitute, because that is a bill that could be passed by both Houses, that is a bill that could be signed into law before we adjourn. That is serious economic policy.

Instead, we have a bill with loathsome, absurd, highly partisan, quote, tort-reform provisions; provisions which everyone knows cannot be passed on a bipartisan basis. I would point out that they deprive those that lose a child of any recourse at all, not one penny, to the parents who lose their child to terrorism.

Mr. OXLEY. Mr. Speaker, I reserve the balance of my time.

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is important legislation. It is legislation that I want to see enacted into law before we adjourn this year. But the substance of the bill before us and the procedure that we have used to get here is atrocious. It is not necessary to take away victims' rights. This bill does that. It does it in a very heavy-handed manner.

There ought to be a deductible. That is, the insurance industry should be paying the first dollar up to a certain amount and the Federal reimbursement payment should come in only after that. Their bill is grossly deficient in that respect.

Mr. LAFALCE. Mr. Speaker, I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation is absolutely necessary. That is why this committee is charged by the Speaker to produce a bill, and produced it in virtually record time. That is why during a day-long markup, it culminated in a voice vote for the legislation. And that is why, frankly, the substitute that is

going to be offered by the gentleman from New York (Mr. LAFALCE) contains 85–90 percent of the bill that came out of our committee.

Let us understand that most of this debate today, at least on the other side, has been about legal reforms, liability reforms, and not about the specific areas that were negotiated and worked on and I think is an excellent work product; and, in fact, solves the problem that all of us want to solve, and that is the availability of insurance to make certain that our economy continues to move forward. That is what all of us have as a goal.

As we pass this bill on to the other body, it is important that the House send a strong signal that we are prepared to meet that challenge. This legislation, this underlying legislation, is exactly what the patient needs to provide the kind of stability in the insurance market that all of us desire.

Make no mistake about it, this Congress will pass this legislation, this type of legislation, before we return home. We have no other choice, it seems to me. If we do not, we face political peril, should the economy start to unravel, with the unavailability of credit in this dynamic marketplace.

Mr. Speaker, my hat is off to all of those who participated in this great endeavor.

Mr. PAUL. Mr. Speaker, no one doubts that the government has a role to play in compensating American citizens who are victimized by terrorist attacks. However, Congress should not lose sight of fundamental economic and constitutional principles when considering how best to provide the victims of terrorist attacks just compensation. I am afraid that H.R. 3210, the Terrorism Risk Protection Act, violates several of those principles and therefore passage of this bill is not in the best interests of the American people.

Under H.R. 3210, taxpayers are responsible for paying 90 percent of the costs of a terrorist incident when the total cost of that incident exceeds a certain threshold. While insurance companies technically are responsible under the bill for paying back monies received from the Treasury, the administrator of this program may defer repayment of the majority of the subsidy in order to "avoid the likely insolvency of the commercial insurer," or avoid "unreasonable economic disruption and market instability." This language may cause administrators to defer indefinitely the repayment of the loans, thus causing taxpayers to permanently bear the loss. This scenario is especially likely when one considers that "avoid . . . likely insolvency, unreasonable economic disruption, and market instability" are highly subjective standards, and that any administrator who attempts to enforce a strict repayment schedule likely will come under heavy political pressure to be more "flexible" in collecting debts owed to the taxpayers.

The drafters of H.R. 3210 claim that this creates a "temporary" government program. However, Mr. Speaker, what happens in three years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will refuse to reauthorize this

"temporary" insurance program or provide some other form of taxpayer help to the insurance industry? I would like to remind my colleagues that the federal budget is full of expenditures for long-lasting programs that were originally intended to be "temporary."

H.R. 3210 compounds the danger to taxpayers because of what economists call the "moral hazard" problem. A moral hazard is created when individuals have the costs incurred from a risky action subsidized by a third party. In such a case individuals may engage in unnecessary risks or fail to take steps to minimize their risks. After all, if a third party will bear the costs of negative consequences of risky behavior, why should individuals invest their resources in avoiding or minimizing risk?

While no one can plan for terrorist attacks, individuals and businesses can take steps to enhance security. For example, I think we would all agree that industrial plants in the United States enjoy reasonably good security. They are protected not by the local police, but by owners putting up barbed wire fences, hiring guards with guns, and requiring identification cards to enter. One reason private firms put these security measures in place is because insurance companies provide them with incentives, in the form of lower premiums, to adopt security measures. H.R. 3210 contains no incentives for this private activity. The bill does not even recognize the important role insurance plays in providing incentives to minimize risks. By removing an incentive for private parties to avoid or at least mitigate the damage from a future terrorist attack, the government inadvertently increases the damage that will be inflicted by future attacks.

Instead of forcing taxpayers to subsidize the costs of terrorism insurance, Congress should consider creating a tax credit or deduction for premiums paid for terrorism insurance, as well as a deduction for claims and other costs borne by the insurance industry connected with offering terrorism insurance. A tax credit approach reduces government's control over the insurance market. Furthermore, since a tax credit approach encourages people to devote more of their own resources to terrorism insurance, the moral hazard problems associated with federally funded insurance is avoided.

The version of H.R. 3210 passed by the Financial Services committee took a good first step in this direction by repealing the tax penalty which prevents insurance companies from properly reserving funds for human-created catastrophes. I am disappointed that this sensible provision was removed from the final bill. Instead, H.R. 3210 instructs the Treasury Department to study the benefits of allowing insurers to establish tax-free reserves to cover losses from terrorist events. The perceived need to study the wisdom of cutting taxes while expanding the Federal Government without hesitation demonstrates much that is wrong with Washington.

In conclusion, Mr. Speaker, H.R. 3210 may reduce the risk to insurance companies from future losses, but it increases the costs incurred by American taxpayers. More significantly, by ignoring the moral hazard problem this bill may have the unintended consequence of increasing the losses suffered in any future terrorist attacks. Therefore, passage of this bill is not in the long-term interests of the American people.

Mr. GILMAN. Mr. Speaker, I rise today in strong support of H.R. 3210, the Terrorism Risk Protection Act.

This legislation addresses a critical need of the insurance industry, that has so far been overlooked by Congress in the wake of the events of September 11.

It is a common practice for companies that serve as primary insurers in the property and casualty field to take out secondary policies with other companies in order to cover themselves against the possibility of having to make large payouts on future claims.

In the wake of September 11, virtually all of the secondary insurers have announced that they will no longer cover acts of terrorism when the policies they have sold come up for renewal, effective January 1, 2002. The insurance industry estimates that approximately 70 percent of the secondary policies will expire at the end of the current year.

Unless Congress takes immediate action, primary insurers will not be able to offer coverage against terrorism in their property and casualty accounts. Under these circumstances any future successful terrorist attack would have a devastating impact on both the national economy and the local economy where the attack occurs.

This legislation enlists the Federal Government to serve as a stabilizing force in the insurance market, as well as a safety net to cushion the economic effects of future acts of terrorism. Under this bill, insurers would help create a pool from which funds could be drawn to help meet future payout contingencies.

In the case where an event causes payouts to exceed \$100 million, the Federal Government would step in and assume 90 percent of the burden with the remaining 10 percent coming from the industry. A similar program would be put in place for large companies for an event that exceeds \$20 billion in payout costs.

Mr. Speaker, it is imperative that Congress address this immediate need to head off what would be a catastrophic blow to the insurance industry. American businesses need to be reassured that the insurance industry is both financially sound and able to meet their coverage obligations in the new terror-prone world, since September 11.

Our country was in the midst of a recession when those barbaric acts of September 11 took place. We have all witnessed the resulting shock waves that were sent through the economy. Recent evidence suggests that we may finally be on the road to economic recovery. The resulting damage from a future act of terrorism against an uninsured business sector is too awful to contemplate.

Fortunately, this scenario is easily preventable and we in Congress must take the necessary steps to ensure that this future does not come to pass. Our swift passage of H.R. 3210 will serve that purpose.

I therefore strongly urge my colleagues to lend support to this vital measure.

Mr. BEREUTER. Mr. Speaker, this Member rises today to express his support for H.R. 3210, the Terrorism Risk Protection Act. This legislation will help ensure that businesses are able to acquire property and casualty insurance while still providing full taxpayer protection against terrorist losses.

This Member would like to thank the distinguished Chairman of the House Financial

Services Committee from Ohio (Mr. OXLEY) for both introducing this legislation and for his efforts in moving this legislation. Additional appreciation is expressed to the distinguished gentleman from Louisiana (Mr. BAKER) who played a crucial role in drafting this legislation. On most crucial parts of this legislation there was bipartisan cooperation and assistance led by the ranking minority member of the Committee, the distinguished gentleman from New York (Mr. LAFALCE).

The uncertainty caused by the terrorist events on September 11 have resulted in our attention to the possibility of severe future problems for the insurance industry and the insured, even a crisis, from additional severe terrorist attacks. To illustrate this, reinsurance companies provide insurance against massive losses for insurance companies. Many commercial reinsurance policies need to be renewed by a December 31 deadline of this year. Since this terrorist attack, many primary insurance companies, because they cannot receive reinsurance, have sent notice cancellations to businesses indicating that they will not receive coverage for losses caused by terrorist activities. If both small and large businesses are unable to receive insurance coverage for acts of terrorism by the end of the year, it will contribute to the further instability of the American economy. Insurance provides a very important element of the stability needed by businesses to continue functioning and investing, and for bankers to continue lending to businesses.

As a member of the House Financial Services Committee, which has jurisdiction over the important elements of the limited Federal role in commercial insurance, this Member supports this legislation for the following two reasons. First, obviously it helps ensure that commercial insurance continues to be available for businesses—and available at affordable costs. Second, it provides necessary taxpayer protections against possible severe terrorist losses to businesses.

Under this legislation, Federal assistance will be provided to those commercial insurers which have suffered a significant terrorist loss over a specific dollar threshold. The Secretary of the Treasury will determine if there has been an industry-wide loss to the commercial property and casualty insurance industry exceeding \$1 billion due to a terrorist act. In addition, the Secretary of the Treasury can also make a company-specific triggering determination if industry-wide losses exceed \$100 million and the portion of those losses for the insurer exceed both 10 percent of the company's capital surplus and net premiums.

If one of these thresholds is reached, the Federal Government will provide to each relevant insurance company 90 percent of the amount of insured terrorism losses minus \$5 million. This Federal cost-sharing is capped at \$100 billion.

Unlike the different Senate approaches which are being proposed, the House legislation requires the Federal assistance to be paid back in full by the insurance companies who suffered the terrorist loss. Under H.R. 3210, the relevant insurance companies will be required to pay assessments back to the Federal Government for up to \$20 billion of Federal assistance over a three year time period. Above this \$20 billion threshold, up to \$100 billion, in order to recoup the level of Federal assistance, the Secretary of the Treasury will impose a commercial policyholder surcharge.

Since the insurance companies are required to pay back the Federal Government for the exact level of Federal assistance through both assessments on the industry and/or commercial policyholder surcharges, this legislation ensures that taxpayers are not liable for the Federal cost-sharing. Therefore, this legislation is not an insurance company bailout; it protects the American taxpayer against a big hit while continuing to maintain insurability against terrorist attacks.

This legislation also protects taxpayers from punitive damages against insurance companies for terrorist losses in Federal court. Since the Federal Government is providing assistance to insurance companies in cases of significant terrorist losses, punitive damages against insurance companies could result in taxpayer liability. This legislation does not limit a plaintiff's right to hold a primary tortfeasor liable for a terrorist act. For my Nebraska constituents, it is important to note that punitive damages are not allowed under Nebraska state law in Nebraska state courts.

In conclusion, since this legislation balances the need of businesses to continue to receive commercial insurance against terrorist acts at affordable costs, with taxpayer liability protection, this Member urges his colleagues to support H.R. 3210.

Ms. HARMAN. Mr. Speaker, I rise in reluctant opposition to the Terrorism Risk Protection Act.

I do not disagree that the business of commercial insurance underwriting faces difficult times ahead as we confront the threat of terrorism against our homeland. But we have our priorities backward.

Insurance underwriters are not the only ones facing difficult times. Since September 11, hundreds of thousands of workers have lost their jobs because of the attacks and subsequent accelerated economic slowdown. Indeed, I have met on several occasions with hundreds of workers in California's 36th District whose livelihoods and futures were suspended when they were laid off following the attacks.

Many of these workers were directly employed in the aviation industry, which took a tremendous hit on September 11. Many thousands more were employed at Los Angeles International Airport and in the associated hospitality industry, which relies on business travelers and tourists. Hundreds more were affected as the consequences of September 11 rippled through the local economy.

Mr. Speaker, these individuals and their families are my top priorities. Last month I introduced legislation to give first preference to qualified laid-off aviation workers for the new airport security positions created by the Aviation Security Act. Regrettably, that bill languishes in the Transportation and Infrastructure Committee, though 44 of my colleagues recently joined me in writing Transportation Secretary Norm Mineta requesting that he incorporate this initiative in the regulations he issues to implement the new Airline Security Act.

Aiding unemployed workers can no longer take a back seat. Indeed, the House is still waiting for the Speaker of the House to fulfill the promise he made at the time of the Airline Bailout Bill to bring to the floor legislation providing relief to these individuals.

Until Congress and the Administration act to aid these unemployed workers, I cannot in

good conscience support a bill that addresses one more industry, however meritorious their claim.

Ms. SCHAKOWSKY. Mr. Speaker, I rise today in strong opposition to H.R. 3210, the Terrorism Risk Protection Act, and in support of the LaFalce substitute to that bill.

Once again, the House is being asked to consider legislation that purports to address a legitimate public need but which is cloaked in special interest giveaways that do harm to the public interest.

First, we acted to provide a \$15 billion airline bailout that did nothing to help laid-off airline workers, improve safety or even guarantee that funds would be reinvested in improving American airlines. Airline workers are still waiting for unemployment insurance compensation and health care benefits. The need to help airlines and their employees after the tragedies of September 11 was legitimate, but the legislation we passed was a special interest giveaway that failed to meet that need.

Second, we passed a so-called economic stimulus bill that will do little to stimulate the economy but instead includes tax breaks for the wealthy and for giant corporations, including refunds for taxes paid back to 1986 and incentives to invest overseas. And, again, the needs of laid-off workers and their families are ignored. We need to enact economic recovery measures, but the House-passed bill is largely a package of long-demanded tax breaks that will bring little, if any, benefit to the vast majority of American families and small businesses.

Today, we are being asked to pass the legislation that not only provides an unwarranted bailout to the insurance industry but actually takes away consumer protections by making it extremely difficult for those injured to seek full compensation. Again, there is a legitimate concern. Although no one denies that the insurance industry has sufficient revenues to meet its current obligations, there is a need to address the decision of reinsurance companies to stop providing terrorism risk coverage in the future. This problem would seem to demand a narrow, well-considered approach. But this vehicle has served as a magnet for companies that are trying to avoid responsibility by limiting their payout liabilities and by preventing injured consumers from getting their fair day in court.

As the Washington Post reported today, "The insurance industry's lobbying campaign for federal help covering future terrorism claims was in full swing last month when a group representing Lloyd's of London investors published a newsletter highlighting the 'historic opportunity' for insurers to make money after the September 11 attacks." This is not the history that we want to write here today.

In the event of future terrorist attacks, H.R. 3210 requires that U.S. taxpayers pay for 90 percent of all claims, including first dollar losses. It is simply outrageous that, as unemployed workers and their families are waiting for federal assistance, our first priority should be to bail out an insurance industry that is sitting on major reserves. The LaFalce substitute, unlike the underlying bill, would require that the industry pay a deductible of at least \$5 to \$10 billion annually. The LaFalce substitute not only protects U.S. taxpayers, it ensures that insurance companies will still have incentives to press their policyholders to act to improve safety and security. That is why

groups like Consumer Federation of America, the National Taxpayers Union, and Consumers Union oppose H.R. 3210 and support the LaFalce substitute.

Even more disturbing to me than the size of the potential bailout in H.R. 3210 is the assault on the rights of victims. There is no justification for taking away the rights of injured consumers or their families to seek redress through our civil justice system. There is no justification for immunizing companies from dangerous behavior. Yet, H.R. 3210 would do just that.

H.R. 3210 would prevent future juries from awarding punitive damages. These damages are extremely rare and used only where injuries are caused by recklessly dangerous and irresponsible conduct. Under H.R. 3210, a security firm that hires felons, a building owner who refuses to put in fire escapes, a construction firm that doesn't meet building codes, or a company that fails to provide escape procedures for persons with disabilities would be immunized from punitive damages.

H.R. 3210 also limits a jury's or judge's discretion to award non-economic damages. If we agree to this provision, we are saying that the loss of a child or husband and the inability to walk or have children are injuries that are not worthy of full compensation.

Finally, H.R. 3210 provides a one-sided and unfair limitation on victims by limiting attorney's fees. Defendants would, of course, be free to pay their attorneys whatever they wish. But plaintiffs, who usually rely on a contingency fee system because they lack the funds to pay up front lawyers' fees, are hampered. As a result, victims may find it difficult to find qualified attorneys to take what may be complicated and costly cases to prepare.

Unlike H.R. 3210, the LaFalce substitute leaves our civil justice system intact. It does not assault the rights of victims. And it leaves in place the potential for damages that will encourage firms to be as careful as possible in improving security and contingency plans.

We pray that we will not suffer from future terrorist attacks. But, as we mourn the victims of September 11, we must not take away the rights of any future victims or their families. Nor should we reduce the incentives on the insurance industry and other companies to do everything possible to prevent terrorist attacks or prepare safety measures in case they occur. By limiting insurance industry liability, shielding wrongdoers from liability, and reducing the ability of victims to recover for their losses, H.R. 3210 would do far more harm than good. It should be defeated.

Mr. CHAMBLISS. Mr. Speaker, I support H.R. 3210, the Terrorism Risk Protection Act. We worked hard to make sure that the taxpayers' money is protected and that we have taken care of the victims of terrorism.

The Terrorism Risk Protection Act is essential to America's economic security. Right now, we have a problem: small insurers can be overwhelmed by the cost of a terrorist attack; a major of insurance contracts will expire at the end of the year, destabilizing our economy if nothing is done; and currently, insurers have no incentive to "write in" terrorism coverage in their policies.

As Members of both parties have repeatedly pointed out, this bill protects every sector of the economy—every noninsurance worker and employer—by providing a temporary legislative backstop that will make it possible for Amer-

ican companies to gain the insurance they need to continue operating in the post-September 11 environment where threats of terrorism still exist.

The Terrorism Risk Protection Act is a very pro-taxpayer, pro-consumer proposal, which provides significant benefits to both commercial industry and policyholders, while requiring relatively little regulation.

By passing the Terrorism Risk Protection Act, today we greatly increase the capacity of insurers to offer terrorism coverage; we protect small and large policyholders insurers, while retaining incentives for risk management and efficient claims processing.

However, I do have reservations on expanding the scope of the punitive damages ban beyond simply the use of government funds by attaching tort reform language to this legislation. Instead of limiting punitive damages we should ensure that the wrongdoer bear the financial burden, not an insurance company or the taxpayer. I am concerned that the inclusion of punitive damage language would limit victims' rights by protecting companies that fail to implement appropriate safety measures or do not act responsibly in the face of credible threats. My preference would have been to pass a bill without attaching the tort reform measure.

We have worked hard over the past few days and weeks to avoid the possibility of any economic disruption that could result from a lack of available, affordable terrorism insurance. Today, I am proud to say that we have worked to help provide commercial insurance for terrorism and strengthen our economy by passing the Terrorism Risk Protection Act.

Mr. MENENDEZ. Mr. Speaker, we could have and should have a much stronger bill on the floor, both to protect our economy, and to protect the victims of terrorist attacks.

Given the extraordinary circumstances, it is reasonable to provide a Federal "backstop" to the insurance industry for terrorist attacks. Developers, builders, and the people they employ need to know that insurance is available—otherwise, important projects may come to a halt, American commerce will be hurt, and jobs will be lost. The problem is while the Republican bill provides a guarantee to the insurance industry, it does not in turn require that the industry provides the insurance when it is needed; the Democratic substitute does.

We also need to make sure that in the event of an attack, victims can go after any negligent parties. But the Republican bill severely limits victims' rights—even in cases where the negligence was willful. That is not, in my view, a defensible position.

Finally, while we are undertaking this important effort, we should also be doing much more for the many American workers who have already lost their jobs.

I support guaranteeing insurance against terrorism is readily available.

I support full victims' rights.

And it is because of my belief in those principles that I must oppose final passage, with the hope and trust that these deficiencies can be fixed in conference.

Mr. MALONEY of Connecticut. Mr. Speaker, I want to urge my colleagues to support final passage of this important legislation. I want to thank Ranking Member LAFALCE and Congressman KANJORSKI for all their hard work in bringing an economically vital issue to the top of Congress' agenda.

Finding a solution to the impending insurance crisis is vital to our long-term economic security. Unfortunately, the events of September 11 have made a substantial impact on the marketplace and we now face contracting insurance and reinsurance markets. This tightening could have a devastating effect on the economy, particularly with regard to real estate markets, small business lending, and urban development activities. Without insurance, banks will not lend money to developers, businesses will be unable to get financing for new projects, and credit will be scarce as investors will be unwilling to take on the additional risk of not having insurance. Providing a Federal backstop is critical to guaranteeing that insurance remains available.

Unfortunately, the bill before us today contains some very troubling provisions that would weaken our legal system of mutual responsibility. I want to make it clear that I will continue working to remove these overly broad and extreme provisions from this legislation. However, as insurance is the linchpin of our Nation's economic stability, we must act on this important issue. Our economy depends on it.

I look forward to working with my colleagues through conference as this bill moves forward. I am committed to developing a final legislative product that will provide our economy with the stability that insurance guarantees, without weakening our legal system of mutual responsibility.

Mr. BLUMENAUER. Mr. Speaker, I rise in opposition to this bill. I commend the Financial Services Committee on their hard work to reach a compromise on this important issue. To maintain stability within the insurance industry and the economy as a whole, it is essential that the Federal Government provide a backstop for losses due to potential acts of terrorism. It is too bad the Republican leadership and their Rules Committee are undercutting this work.

I will not vote for a bill in which the democratic process has once again been subverted in favor of a partisan maneuver. It risks needlessly delaying important relief that we could approve and have on the President's desk in a matter of hours. In fact, this is a continuation of a pattern that's moving beyond partisanship to a point where it is reckless. These bills have been twisted beyond recognition of any solution reached by the original bill. First it was the Airline Bailout, then the PATRIOT Act which passed out of the Judiciary Committee unanimously only to be substituted with a Republican alternative. The pattern continued with the Economic Stimulus package and the Airline Security bill. It is unconscionable that the Republican leadership continue to act in such a partisan manner to delay this legislation when it is critical that Congress act quickly and in a united fashion to stabilize our insurance industry and assure help to those in dire need.

H.R. 3210, as amended in the Rules Committee, attempts to force adoption of extraordinarily controversial changes in legal procedures that have nothing to do with preserving a market for terrorism insurance coverage. The end result is that the rights of victims and their families to recover fair compensation would be greatly limited in any future terrorist related incidents.

For instance, the bill seeks to ban punitive damages, which would shield all defendants,

not just insurers, even those who had been criminally negligent. As an example, this bill would protect a building owner from paying punitive damages who, despite numerous citations and warnings, refused to install emergency lighting and escape routes in his building. Residents and families of residents injured or killed during a terrorist attack as a result of the owner's disregard for State or local safety codes should be allowed to pursue their claims to the full extent of the law. The bill also limits the ability of victims to receive awards for noneconomic damages. These issues have no place in this urgent terrorism insurance bill. Because the Republican leadership will not allow a vote on a clean bill, I have no choice but to vote no. I will not support the continued actions of the Republican leadership to undercut the committee process that is essential to effective solutions.

Mr. BAKER. Mr. Speaker, as chairman of the House Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises, I rise in strong support of the bipartisan Terrorism Risk Protection Act. I also wish to thank Financial Services committee Chairman OXLEY for his leadership on this issue and to recognize the efforts of committee and subcommittee Ranking Members LAFALCE and KANJORSKI.

While economic uncertainty can lead to stock market volatility and wide fluctuations in value—a phenomenon we are now witnessing daily—uncertainty in the operation of a business can be downright halting or fatal. This is why insurance plays such a vital role in our economy, providing security in calamity and the promise of liquidity necessary for the smooth functioning of the wheels of commerce.

Fortunately, property-and-casualty insurers were able to cover obligations for the estimated \$40 billion in damages related to September 11. But that may not be the case should any subsequent and comparably costly events take place. Worse still, the availability and affordability of terrorism insurance itself will become increasingly less likely. The primary cause for the terrorism coverage crunch is the fact that reinsurance companies, which back up the insurers by helping them spread risk, say they will not renew terrorism-related coverage by December 31, when some 70 percent of policies expire.

Insurers and reinsurers cannot underwrite infinite risks with finite capital. Without the ability to spread risk through reinsurers, insurance companies face constraints against covering businesses against acts of terrorism. Here's the result, as one magazine recently put it: "With no coverage, lenders won't lend, builders won't build, and business will grind to a halt."

With an already weakened economy, many in Congress understand that, like it or not, the Federal Government must take action quickly to avert such a systemic catastrophe. But there have been differences over the scope and form of this government intervention in the marketplace, and, it now appears, over just how urgently action is needed.

The Financial Services Committee overwhelmingly passed the House's legislative response, H.R. 3210. Today I come before you to impress upon you the need for passage of this important bill and why, on three points in particular, it will be important for us to maintain the integrity of the bill.

Time is of the essence. Commercial property and casualty insurance is usually written on a 1- or 2-year basis, with approximately 70 percent of reinsurance contracts up for renewal on January 1, 2002. The potential unavailability of terrorism risk coverage for businesses comes at precisely the time of greatest demand for the insurance. Moreover, insurance coverage is almost universally a requirement of any commercial lending contract. Lenders will simply not provide financing for new or existing construction without certainty that the properties and businesses that they are funding have adequate insurance to protect the lenders' investment. Thus, the lack of available insurance for terrorism risk has adverse consequences that would spread throughout the entire economy and stifle its growth. There is a high probability that the economy as a whole would suffer tremendously without meaningful and affordable terrorism coverage.

To say that these policies expire on December 31 is not to say that we, as policymakers, have until that time to take decisive action. In fact, in many cases we have already crossed the threshold into that time when businesses begin their search and make their arrangements to secure coverage for next year. Even under normal circumstances this process, in itself, takes time, typically a month or even more. We have worked closely with the Financial Services Committee Democrats to address many of their concerns regarding the insurance mechanism established by the bill. Furthermore, we have cooperated with the other committees of jurisdiction, specifically, the Judiciary and Ways and Means Committees to ensure that this legislation represents the best efforts of this body as a whole. I believe that the Arney bill introduced today reflects this bipartisan achievement.

Unfortunately, the other Chamber of Congress has not even begun serious consideration of this issue. Already, with each passing day of congressional inactivity in providing assistance for the affordability and availability of terrorism insurance, we run the risk of being held accountable, and deservedly so, for fiddling while Rome burned.

We must limit government exposure to actual losses and provide timely and efficient adjudication of claims. Acts of terrorism give rise to very unique sets of facts and a complexity of interested parties that is uncommon in tort law. It is essential that the administration of the program established by this legislation is performed in a consistent and timely manner. Additionally, the exposure of the Federal Government as an insurer for anything other than actual losses should be avoided.

To these ends this bill creates an exclusive Federal cause of action and limits the venues in which claims can be brought. We do not want to see a situation like the 1993 World Trade Center bombing where cases are just now going to trial.

H.R. 3210 also prohibits claims for punitive damages arising out of terrorist acts and does not allow joint and several liability for noneconomic damages caused by terrorist acts.

The sovereign immunity provisions of this bill will help ensure the fair and prompt distribution of the enormous public and private resources that would be needed to respond to terrorist acts of any magnitude.

We must maintain provisions of repayment of taxpayer dollars. Unlike all other proposals,

H.R. 3210 protects taxpayers, requiring insurers, when they're again able to stand on their own two feet, to pay back over time whatever taxpayer dollars they received during their short-term time of need. Without this I personally don't see how any proposal could be called anything but a bailout—an open check-book, drawn out of taxpayer pockets.

Paying back government assistance is neither a liberal nor a conservative concept. Or more precisely, it's both liberal and conservative, because it values common sense and, above all, our common concerns of fairness for both consumers and taxpayers—two groups rarely, if ever, afforded the opportunity to skip out on their bills. Not surprisingly, both the Consumer Federation of America and the Citizens Against Government Waste, two prominent grass-roots advocacy groups, have come out in support of the “loan-based” over the “giveaway” approach to the insurance industry.

Changes in the Tax Code are our only mechanism to provide an exit strategy for taxpayers. Again, unlike other proposals, our bill points toward how—not just when—the Federal Government can end its market intervention. It includes a study of tax-free reserving of insurance funds for terrorism risk to assist the private market that, at the end of the day, will be made healthier, stronger, and more independent than it was when we began.

The reason we're in this bind to begin with, remember, is that reinsurance companies, mostly located offshore in Europe, will no longer make their pool of resources available for backing terrorism insurers. In the long run, the strongest answer to the reinsurance vacuum, and the surest way to avoid having the government serving that function indefinitely, is to take away the barriers that keep American insurers from filling it themselves. We can accomplish this quite easily by simply deferring taxation on reserves that insurance companies can set aside and build up exclusively for protection against future terrorist attacks.

Hardly a “tax break” for insurance companies, which wouldn't be able to use the money for any other purpose, it would serve as a catalyst and incentive for an industry to end its own dependence on government. What we certainly don't need is a situation in which taxpayers unendingly subsidize an industry while it continues posting very healthy profits.

And, if we have a plan that provides market stability without simply giving away the taxpayers' money—one that temporarily backs insurers without indefinitely bailing them out—what else, really, do we need?

Mr. KNOLLENBERG. Mr. Speaker, I would like to commend Chairman OXLEY and Subcommittee Chairman RICHARD BAKER for their hard work on this legislation.

As a former insurance agent and counselor, I understand the challenges the insurance industry faces after the tragic events of September 11. I believe this bill moves us in the right direction to reach a solution before the end of the year when most of the current policies expire.

Let's be clear—we are not bailing out the insurance industry. But we must be equally clear that, without action, companies and individuals will face skyrocketing premiums or have to buy policies that do not cover terrorist events. No action risks further harm to our economy.

This bill provides a federal risk-sharing loan program to ensure the liquidity to the industry.

The federal government will pay 90 percent of insurance claims once triggered by a terrorist event costing over \$100 million. However, it also provides flexibility to help smaller companies who take a significant loss but do not reach that trigger amount. These loans will be repaid over time by the industry, providing assistance but not a bailout. The loan program sunsets after 1 year so that Congress can revisit any unforeseen consequences of this bill and make further changes.

I think this bill is a good starting point, and we must get started. I urge my colleagues to pass this legislation and settle our differences with the Senate in Conference quickly so we can get something to the President before the end of the year.

Mr. ENGEL. Mr. Speaker, I rise today in support of the effort to provide the insurance industry a helping hand in the aftermath of the September 11th attacks. The insurance industry estimates that it will have approximately \$60 billion in claims as a direct result of these events. And though the industry has the available capital to cover these claims now, payment on future claims are in grave doubt. In fact, many insurance companies are considering dropping this product altogether. The damage to our Nation's economy if that were to happen would be grievous. Construction companies and building owners would not be able to get adequate insurance, which in turn would prevent them from being able to get access to bonds to build and renovate their structures.

Yet, what does the Majority bring to the floor today? Is it a bill that helps the insurance industry? Somewhat. What else does it do? The Republican majority is using this as a vehicle to advance one of its long held goals—tort reform. But, instead of having a full and just debate on tort reform, they are slipping provisions into a necessary and important bill.

And what do they do with these provisions? They once again tell the American people that the majority party believes people with lots of money are more important than the average American. This bill prevents non-economic damages from being awarded. If someone loses a spouse in a terrorist attack, all one can expect is remuneration for lost wages. But what about the other losses—such as companionship, emotional support, and parenting? Sorry, the majority says, you are out of luck there.

The insurance industry came to Congress with a sensible idea. It asked us to adopt a system similar to that of Britain by creating a terrorism reinsurance pool under which insurers voluntarily buy reinsurance coverage from the government, with pooled premiums being used to cover terrorism claims. Sounds pretty sensible to me. Instead, this bill creates a loan program—which might help, but certainly isn't the easiest or cleanest solution. If we can provide millions each year for the National Flood Insurance program, why can't we do the same for a terrorism reinsurance program.

Finally, my colleagues, I would like to take this opportunity to mention one thing that has come to my attention regarding the clean up of ground zero. The construction companies doing the clean up and removal presently have no indemnity for their work. In fact, they are still working without a written contract. Their workers are being exposed to an extremely hazardous working environment. If we are to provide liability protections to the airline

industry and the building owners, I urge my colleagues to move immediately to provide indemnity protections to the construction companies. If we don't, these companies are in danger of financial ruin and future incidents of terrorism will have a very different response from such companies.

So, my colleagues, let's get serious about solving these problems. Vote no on this bill and support real reinsurance reform.

Mrs. CHRISTENSEN. Mr. Speaker, I rise in support of the beleaguered workers of this country who have been doubly affected by both the recession that the experts now say that we have been in since last spring and the ripple effects of September 11.

According to the Department of Labor, 415,000 Americans lost their jobs in the month of October. Eight hundred people in my very small district of the U.S. Virgin Islands have lost their jobs in our tourism dependent district—an increase of over 150 percent over last year. Travel agents, airline workers, taxi drivers, chefs and hotel service employees will now face the holidays without jobs, without health and other benefits in an economy that will be slow to absorb them any where else.

Mr. Speaker, we were right to provide relief for the airlines, but we will be remiss if we do not see the individual lives that are affected by the loss of jobs in the downturn of our once thriving economy. It is also right that we provide assistance to the insurance industry in the wake of the September 11th attack. I oppose the Republican Leadership terrorism insurance relief bill, though because it added unnecessary and unrelated provisions to advance their partisan agenda on tort reform. I support the LaFalce Democratic substitute, which avoids dramatic premium increases for businesses and consumers but also insures that industry assumes their appropriate financial responsibility.

Mr. Speaker, let's do right by the working men and women of our country. Let's provide relief that will help them weather this storm until our economy rebounds.

Mr. SCOTT. Mr. Speaker, I rise in opposition to H.R. 3210.

H.R. 3210, in its present form, contains a litany of tort reform provisions that are necessary to achieve the basic purpose of this bill. This bill began as a bipartisan effort to provide a mechanism for addressing the insurance risk in connection with terrorist acts, but has ended up as yet another vehicle to enact a one-sided, tort reform agenda, which has failed every time it has been subjected to the regular, deliberative legislative process.

Under this bill, all victims of a future terrorist act will be required to bring their action in federal court. Once the Secretary of the Treasury makes a determination that a “terrorist act” occurred, then all claims with any relation to that terrorist act must be brought in federal court. There would be no opportunity for a victim to choose to bring an action in state court, even though the state court may otherwise have jurisdiction over the matter and even though the state court may be more convenient or more efficient. This process will cause unnecessary complications related to the statute of limitations, if suit is filed in the wrong court, and will present unnecessary questions related to what “related to terrorism” means in those cases in which terrorism might have a vague connection to the cause of action. For example, are cases involving failure to perform



in a contract dispute "related to terrorism" if the airline disruption after September 11 is alleged to be a factor? And if a questionable "related to terrorism" defense is offered, must the case be remanded to federal court?

Worse, this bill contains radical liability limitations that are not even limited to cases involving insurance coverage and includes other provisions that bear little relationship to the issue of insurance. For example, future victims of terrorism would be precluded from collecting punitive damages—even in cases where it can be shown that the most outrageous acts of gross negligence or intentional misconduct contributed to the act of terrorism.

This bill would also severely limit the ability of the victims of terrorism to collect non-economic damages. Non-economic damages include physical impairment, disfigurement and mental anguish, and these will be denied, whether insurance is available or not.

Further, this bill puts extreme and unprecedented limits on plaintiff's attorney's fees. In the bill which purports to assist insurance companies, it is important to note that insurance companies do not pay plaintiff's attorney's fees; those fees are paid by the plaintiff out of the recovery. Therefore, the amount the insurance company pays is not effected by the size of the attorney's fee. The only effect this provision might have on the insurance company is to deny some plaintiffs the ability to hire an attorney to bring a meritorious claim. Only meritorious claims will be effected, because most attorneys get nothing, if there is no recovery. It is also important to note that the bill does not limit defense attorney's fees—which the insurance companies do pay.

There is no good reason for including these extreme tort reform provisions that will limit the rights of victims in a bill which is supposed to be designed to address the capacity of insurers to provide coverage for risks from terrorism. I therefore urge my colleagues to vote against H.R. 3210 in its current form.

Mr. BENTSEN. Mr. Speaker, regrettably I rise today in opposition to H.R. 3210, the Terrorism Risk Protection Act. I am very concerned about tort provisions that were added to the bill by the House Rules Committee. As an original cosponsor of H.R. 3210, I am disappointed that the House Rules Committee acted to rewrite this bill.

I strongly believe that we must act to ensure that terrorism insurance is available for our nation's property owners. Without such coverage, we endanger our nation's economy. With the current recession which we are experiencing, I do not believe that we should jeopardize our economy. Today, many property owners are receiving property insurance renewal notices which specifically exclude terrorism coverage. For many property owners, failure to purchase terrorism insurance may jeopardize their credit and result in devastating actions by their creditors.

I am disappointed that the underlying bill includes tort reform provisions which are fatally flawed. As a sponsor of an amendment to the liability provisions in this bill, I am concerned that the new liability provisions will hurt victims of terrorism and are not necessary for this bill. The underlying bill was introduced at the last minute with many onerous provisions which are not reasonable and fair. First, the liability section will preclude spouses of victims from seeking non-economic damages when a spouse is lost to a terrorism attack. I do not

believe that the House of Representatives should be limiting spouses of victims to collect only lost wages and no other reparations. This is an unprecedented effort to cause economic hardships for victims of terrorism.

I am disappointed that the House of Representatives will have to vote today on the underlying bill which has been rewritten since it was reported from the House Financial Services Committee. As a senior member of the House Financial Services Committee, I offered a critically important amendment to the liability section of this bill. The Bentsen amendment would have protected the taxpayers by ensuring that the government nor the insurance policy could be held liable for either punitive damages or non-economic damages related to this coverage. I believe it is proper to provide this protection for the taxpayers. In order to protect consumers, my amendment ensures that consumers can seek both punitive and non-economic damages from parties who have committed a gross negligent act related to terrorist attacks. I believe that the Bentsen amendment is fair and reasonable. For example, an airline security firm should be responsible for its employees who allow a terrorist to knowingly pass through a security check. I also want to highlight that my amendment on tort reform was approved on a bipartisan basis and represented the consensus of our committee on this issue. I am disappointed that the House Rules Committee acted to eviscerate my language.

I also want to express my support for the underlying loan structure in the underlying bill. In fact, as an original cosponsor of H.R. 3210, I cosponsored this bill in part because of the loan structure included in it. I also strongly supported efforts to keep this program as a temporary program. During consideration of this bill, I offered an amendment that requires that this program can only be renewed on a yearly basis. In addition, my amendment requires the Administration to provide a report to Congress detailing why this program has been renewed. I believe that these accountability provisions are necessary to ensure that this program is established for a short time period. I believe that the reinsurance market for terrorism coverage will recover and we should act prudently.

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise in opposition to H.R. 3210, the Terrorism Risk Protection Act.

It is true that certain key industries, including insurance companies, have been negatively impacted by the tragic events of September 11 and legitimately deserve assistance from the American public.

While the bill before us today provides some genuinely needed relief for the insurance industry, unfortunately it fails in other important ways.

First, instead of keeping the bill focused on providing a federal "safety net" for insurance companies in the wake of the September 11th attacks, the Republican leadership has included provisions that limit the rights of victims to pursue legal action as a result of any future terrorist attacks. These last-minute tort reform provisions include a complete ban on punitive damages, limits on non-economic damages, and caps on attorney's fees. These restrictions are not only unwarranted and unrelated to this bill, but they will severely limit the ability of victims to obtain any reimbursement they are due as a result of negligence. These provisions

were not included in the bi-partisan bill approved by the Financial Services Committee and are completely unnecessary and unrelated to the insurance relief provided by the bill.

Next, I believe that in granting government assistance to any sector, Congress must take positive steps to ensure that these companies follow responsible and fair business practices by providing affordable, quality services to the American taxpayer.

In the case of the insurance industry, companies have a responsibility to make insurance coverage available at affordable rates to those who need it. History indicates that it is common for insurers to increase the cost of policies after major catastrophes, whether these are weather-related, riot-related or other events. Therefore it is conceivable that insurers may use the tragic events of September 11 to raise rates, withdraw from some markets, and try to shift risk onto the government.

As data from the California Department of Insurance shows, lack of affordable insurance is a serious problem for many communities, especially low and moderate-income communities and communities of color, such as in my Los Angeles-based Congressional District. When uninsured or under-insured buildings suffer damage in these communities, oftentimes they are not repaired or replaced. As a result, the property owner suffer financial losses and the community is exposed to social and economic instability. Homeowners, renters and business owners are all at risk.

Since the taxpayers are assuming the risk to prop up the insurance industry, Congress must put into place protections to insure that Americans have access to affordable, high quality insurance coverage for their homes and businesses.

Establishing requirements for insurance companies to publicly report the availability and affordability of their policies is a key component of these protections. Such public disclosure will inform Congress and the American people about the fairness of various insurance policies.

In addition, the insurance industry should be required to invest in low-income neighborhoods and minority communities. Because of the Community Reinvestment Act, banks have been required to invest in low-income neighborhoods and have found significantly financial opportunities in these communities. Investments such as these are particularly critical to struggling communities in the current difficult economically times. However, as the data from the California Department of Insurance and the California Reinvestment Committee shows, insurers have essentially balked at making significant contributions and investments in these communities. I am submitting this data for inclusion in the RECORD.

Mr. Speaker, as I have stated, the bill before us is fatally flawed. It insures that the insurance industry is protected while leaving too many Americans with little or no assurance of either affordable, quality insurance coverage or corporate investment in their communities.

I urge my colleagues to reject this flawed bill and pass a measure that insures protection for the American public not just the insurance industry.

CALIFORNIA REINVESTMENT COMMITTEE—  
INSURANCE INVESTMENT ISSUES

In 1999, Californians paid \$81 billion in insurance premiums. Of those premiums, \$36

billion were for property and casualty insurance coverage.

According to the 1998 California Insurance Commissioner's Report on Underserved Communities, only 6.43 percent of 1997 California property and casualty insurance policies were in the 138 underserved zip codes identified by the Department which represent 15 percent of the state's population. (This is the most recent report available.)

In 2000, the California Organized Investment Network (COIN), an investment unit of the California Department of Insurance designed by insurers, had only \$108 million in investments, which represent 0.13 percent of 1999 insurance premiums paid by Californians.

In 2000, COIN had less than \$5 million in insurance investments, which represent 0.01 percent of California insurance premiums.

Mr. OXLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. NETHERCUTT). All time for general debate on the bill has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
OFFERED BY MR. LAFALCE

Mr. LAFALCE. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. LAFALCE:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the "Terrorism Risk Protection Act".

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Authority of Secretary of the Treasury.
- Sec. 4. Submission of premium information to Secretary.
- Sec. 5. Initial and subsequent triggering determinations.
- Sec. 6. Federal cost-sharing for commercial insurers.
- Sec. 7. Assessments.
- Sec. 8. Terrorism loss repayment surcharge.
- Sec. 9. Administration of assessments and surcharges.
- Sec. 10. Application to self-insurance arrangements and offshore insurers and reinsurers.
- Sec. 11. Requirement to provide terrorism coverage.
- Sec. 12. State preemption.
- Sec. 13. Consistent State guidelines for coverage for acts of terrorism.
- Sec. 14. Consultation with State insurance regulators and NAIC.
- Sec. 15. Study of potential effects of terrorism on life insurance industry.
- Sec. 16. Railroad and trucking insurance study.
- Sec. 17. Study of reinsurance pool system for future acts of terrorism.
- Sec. 18. Definitions.
- Sec. 19. Covered period and extension of program.
- Sec. 20. Regulations.

**SEC. 2. CONGRESSIONAL FINDINGS.**

The Congress finds that—

(1) the terrorist attacks on the World Trade Center and the Pentagon of September 11, 2001, resulted in a large number of deaths

and injuries, the destruction and damage to buildings, and interruption of business operations;

(2) the attacks have inflicted possibly the largest losses ever incurred by insurers and reinsurers in a single day;

(3) while the insurance and reinsurance industries have committed to pay the losses arising from the September 11 attacks, the resulting disruption has created widespread market uncertainties with regard to the risk of losses arising from possible future terrorist attacks;

(4) such uncertainty threatens the continued availability of United States commercial property and casualty insurance for terrorism risk at meaningful coverage levels;

(5) the unavailability of affordable commercial property and casualty insurance for terrorist acts threatens the growth and stability of the United States economy, including impeding the ability of financial services providers to finance commercial property acquisitions and new construction;

(6) in the past, the private insurance and reinsurance markets have shown a remarkable resiliency in adapting to changed circumstances;

(7) given time, the private markets will diversify and develop risk spreading mechanisms to increase capacity and guard against possible future losses incurred by terrorist attacks;

(8) it is necessary to create a temporary industry risk sharing program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks;

(9) such action is necessary to limit immediate market disruptions, encourage economic stabilization, and facilitate a transition to a viable market for private terrorism risk insurance; and

(10) terrorism insurance plays an important role in the efficient functioning of the economy and the financing of commercial property acquisitions and new construction and, therefore, the Congress intends to continue to monitor, review, and evaluate the private terrorism insurance and reinsurance marketplace to determine whether additional action is necessary to maintain the long-term stability of the real estate and capital markets.

**SEC. 3. AUTHORITY OF SECRETARY OF THE TREASURY.**

The Secretary of the Treasury shall be responsible for carrying out a program for financial assistance for commercial property and casualty insurers, as provided in this Act.

**SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO SECRETARY.**

To the extent such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit, to the Secretary or to the NAIC, a statement specifying the net premium amount of coverage written by such insurer under each line of commercial property and casualty insurance sold by such insurer during such periods as the Secretary may provide.

**SEC. 5. INITIAL AND SUBSEQUENT TRIGGERING DETERMINATIONS.**

(a) **IN GENERAL.**—For purposes of this Act, a "triggering determination" is a determination by the Secretary that—

(1) an act of terrorism has occurred during the covered period; and

(2) the industry-wide losses resulting from such occurrence or from multiple occurrences of acts of terrorism all occurring during the covered period, exceed \$100,000,000.

(b) **DETERMINATIONS REGARDING OCCURRENCES.**—The Secretary, after consultation with the Attorney General of the United States and the Secretary of State, shall have

the sole authority which may not be delegated or designated to any other officer, employee, or position, for determining whether—

(1) an occurrence was caused by an act of terrorism; and

(2) an act of terrorism occurred during the covered period.

**SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSURERS.**

(a) **IN GENERAL.**—Pursuant to a triggering determination, the Secretary shall provide financial assistance to commercial insurers in accordance with this section to the extent provided under this section to cover eligible insured losses resulting from acts of terrorism, which shall be repaid in accordance with subsection (g).

(b) **INDUSTRY OBLIGATION AMOUNT.**—For purposes of this section, the industry obligation amount in connection with a triggering determination is the following amount:

(1) **INITIAL COVERED PERIOD.**—In the case of a triggering determination occurring during the covered period specified in section 19(a), the difference between—

(A) \$5,000,000,000; and

(B) the aggregate amount of industry-wide losses resulting from the triggering events involved in any triggering determinations preceding such triggering determination.

(2) **EXTENDED COVERED PERIOD.**—If the Secretary exercises the authority under section 19(b) to extend the covered period, in the case of a triggering determination occurring during the portion of the covered period consisting of such extension, the difference between—

(A) \$10,000,000,000; and

(B) the aggregate amount of industry-wide losses resulting from the triggering events involved in any triggering determinations preceding such triggering determination.

(c) **ELIGIBLE INSURED LOSSES.**—For purposes of this section, the term "eligible insured losses" means, with respect to a triggering determination, any insured losses resulting from the triggering event involved that are in excess of the industry obligation amount for such triggering determination.

(d) **AMOUNT OF FINANCIAL ASSISTANCE.**—Subject to subsection (e), with respect to a triggering determination, financial assistance shall be made available under this section to each commercial insurer in an amount equal to 90 percent of the amount of the eligible insured losses of the insurer as a result of the triggering event involved.

(e) **LIMITATIONS.**—

(1) **AGGREGATE LIMITATION.**—The aggregate amount of financial assistance provided pursuant to this section may not exceed \$100,000,000,000.

(2) **NOTICE TO CONGRESS.**—The Secretary shall notify the Congress if the amount of financial assistance provided pursuant to this section reaches \$100,000,000,000 and the Congress shall determine the procedures for, and the source of, any additional payments of financial assistance to cover such additional insured losses.

(3) **DEFAULT ON ASSESSMENTS AND SURCHARGES.**—The Secretary may establish such limitations as may be necessary to ensure that payments under this section in connection with a triggering determination are made only to commercial insurers that are not in default of any obligation under this section or section 7 to pay assessments or under section 8 to collect surcharges.

(f) **ANNUAL LIMIT ON INDIVIDUAL INSURER LIABILITY.**—

(1) **DEFINITIONS.**—For purposes of this subsection, the following definitions shall apply:

(A) **ANNUAL INSURER LIMIT.**—The term "annual insurer limit" means, with respect to a commercial insurer and a program year, the amount equal to 7 percent of the aggregate

premium amount of all commercial property and casualty insurance coverage, written by such insurer during the calendar year preceding such program year, under all lines of commercial property and casualty insurance.

(B) **LIMITABLE LOSSES.**—The term “limitable losses” means, for any program year, the industry-wide losses in such program year that do not exceed the dollar amount specified in subsection (b)(1)(A) or (b)(2)(A), as applicable to the program year.

(C) **PROGRAM YEAR.**—The term “program year” means the period beginning on the date of the enactment of this Act and ending on January 1, 2003. If the Secretary extends the covered period pursuant to section 20(b), each calendar year (or portion thereof) covered by such extension shall be a program year for purposes of this subsection.

(2) **TRIGGERING OF INDUSTRY ASSESSMENTS.**—If, for any program year, the amount of the limitable losses for such program year that are incurred by any single commercial insurer exceed the annual insurer limit for the commercial insurer for such program year, the Secretary shall apportion the amount of such excess limitable losses pursuant to assessments under paragraph (3).

(3) **INDUSTRY ASSESSMENTS TO COVER LOSSES EXCEEDING LOSS LIMIT.**—For each program year, the Secretary shall, as soon as practicable, determine the aggregate amount of excess limitable losses described in paragraph (2), for all commercial insurers. Subject to paragraph (4), the Secretary shall assess, to each commercial insurer not described in paragraph (2), a portion of such aggregate limitable losses based on the proportion, written by each such commercial insurer, of the aggregate written premium for the calendar year preceding such program year.

(4) **OPERATION OF ANNUAL INSURER LIMIT TO ASSESSMENTS.**—The sum of the amount of limitable losses incurred by a commercial insurer in a program year and the aggregate amount of an assessment under this subsection to such insurer may not in any case exceed the annual insurer limit for the insurer.

(5) **NOTICE.**—Upon determining the amount of the assessments under this subsection for a program year, the Secretary shall, as soon as practicable, provide written notice to each commercial insurer that is subject to an assessment of the amount of the assessment and the deadline pursuant to paragraph (6) for payment of the assessment.

(6) **PAYMENT.**—Each commercial insurer that is subject to an assessment under this subsection shall pay to the Secretary the amount of the assessment not later than 60 days after the Secretary provides notice of the assessment under paragraph (5).

(7) **DISTRIBUTION OF ASSESSMENT AMOUNTS.**—Upon receiving payment of assessments under this subsection, the Secretary shall promptly distribute all such amounts among commercial insurers described in paragraph (2), based on limitable losses incurred in excess of the annual insurer limits for such insurers. The Secretary may take such actions, including making such adjustments and reimbursements, as may be necessary to carry out the purposes of this subsection.

(g) **REPAYMENT.**—Financial assistance made available under this section shall be repaid through assessments under section 7 collected by the Secretary and surcharges remitted to the Secretary under section 8. Any such amounts collected or remitted shall be deposited into the general fund of the Treasury.

(h) **FINAL NETTING.**—The Secretary shall have sole discretion to determine the time at

which claims relating to any insured loss or act of terrorism shall become final.

(i) **FINALITY OF DETERMINATIONS.**—Any determination of the Secretary under this section shall be final, and shall not be subject to judicial review.

(j) **EMERGENCY DESIGNATION.**—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this section as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

#### SEC. 7. ASSESSMENTS.

(a) **IN GENERAL.**—In the case of a triggering determination, each commercial insurer shall be subject to assessments under this section for the purpose of repaying a portion of the financial assistance made available under section 6 in connection with such determination.

(b) **AGGREGATE ASSESSMENT.**—Pursuant to a triggering determination, the Secretary shall determine the aggregate amount (if any) to be assessed under this section among all commercial insurers, which shall be equal to the lesser of—

(1) the difference between—

(A) \$20,000,000,000; and

(B) the dollar amount specified in paragraph (1)(A) or (2)(A) of section 6(b), as applicable for such triggering determination; and

(2) the amount of financial assistance paid under section 6 in connection with the triggering determination.

(c) **METHOD AND TIMING.**—

(1) **IN GENERAL.**—The aggregate assessment amount in connection with a triggering determination shall be assessed through one or more, as may be necessary pursuant to paragraph (3), assessments under this section.

(2) **TIMING.**—An assessment under this section in connection with a triggering determination shall be imposed only upon the expiration of any 12-month period beginning after such determination during which no other assessments under this section have been imposed.

(3) **LIMITATION.**—The aggregate amount of any assessments imposed under this section on any single commercial insurer during any 12-month period shall not exceed the amount that is equal to 3 percent of the net premium for such insurer for such period.

(d) **ALLOCATION.**—The portion of the aggregate amount of any assessment under this section that is allocated to each commercial insurer shall be based on the ratio that the net premium written by such commercial insurer during the year during which the assessment is imposed bears to the aggregate written premium for such year, subject to section 9 and the limitation under subsection (c)(3) of this section.

(e) **NOTICE AND OBLIGATION TO PAY.**—

(1) **NOTICE.**—As soon as practicable after any triggering determination, the Secretary shall notify each commercial insurer in writing of an assessment under this section, which notice shall include the amount of the assessment allocated to such insurer.

(2) **EFFECT OF NOTICE.**—Upon notice to a commercial insurer, the commercial insurer shall be obligated to pay to the Secretary, not later than 60 days after receipt of such notice, the amount of the assessment on such commercial insurer.

(3) **FAILURE TO MAKE TIMELY PAYMENT.**—If any commercial insurer fails to pay an assessment under this section before the deadline established under paragraph (2) for the assessment, the Secretary may take either or both of the following actions:

(A) **CIVIL MONETARY PENALTY.**—Assess a civil monetary penalty pursuant to section 9(d) upon such insurer.

(B) **INTEREST.**—Require such insurer to pay interest, at such rate as the Secretary considers appropriate, on the amount of the assessment that was not paid before the deadline established under paragraph (2).

(f) **ADMINISTRATIVE FLEXIBILITY.**—

(1) **ADJUSTMENT OF ASSESSMENTS.**—The Secretary may provide for or require estimations of amounts under this section and may provide for subsequent refunds or require additional payments to correct such estimations, as appropriate.

(2) **DEFERRAL OF CONTRIBUTIONS.**—The Secretary may defer the payment of part or all of an assessment required under this section to be paid by a commercial insurer, but only to the extent that the Secretary determines that such deferral is necessary to avoid the likely insolvency of the commercial insurer.

(3) **TIMING OF ASSESSMENTS.**—The Secretary shall make adjustments regarding the timing and imposition of assessments (including the calculation of net premiums and aggregate written premium) as appropriate for commercial insurers that provide commercial property and casualty insurance on a non-calendar year basis.

#### SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.

(a) **DETERMINATION OF IMPOSITION AND COLLECTION.**—

(1) **IN GENERAL.**—If, pursuant to a triggering determination, the Secretary determines that the aggregate amount of financial assistance provided pursuant to section 6 exceeds the amount determined pursuant to section 7(b)(1), the Secretary shall consider and weigh the factors under paragraph (2) to determine the extent to which a surcharge under this section should be established.

(2) **FACTORS.**—The factors under this paragraph are—

(A) the ultimate costs to taxpayers if a surcharge under this section is not established;

(B) the economic conditions in the commercial marketplace;

(C) the affordability of commercial insurance for small- and medium-sized business; and

(D) such other factors as the Secretary considers appropriate.

(3) **POLICYHOLDER PREMIUM.**—Any amount established by the Secretary as a surcharge under this section shall be established and imposed as a policyholder premium surcharge on commercial property and casualty insurance written after such determination, for the purpose of repaying financial assistance made available under section 6 in connection with such triggering determination.

(4) **COLLECTION.**—The Secretary shall provide for commercial insurers to collect surcharge amounts established under this section and remit such amounts collected to the Secretary.

(b) **AMOUNT AND DURATION.**—Subject to subsection (c), the surcharge under this section shall be established in such amount, and shall apply to commercial property and casualty insurance written during such period, as the Secretary determines is necessary to recover the aggregate amount of financial assistance provided under section 6 in connection with the triggering determination that exceeds the amount determined pursuant to section 7(b)(1).

(c) **PERCENTAGE LIMITATION.**—The surcharge under this section applicable to commercial property and casualty insurance coverage may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for such coverage.

(d) OTHER TERMS.—The surcharge under this section shall—

(1) be based on a percentage of the premium amount charged for commercial property and casualty insurance coverage that a policy provides; and

(2) be imposed with respect to all commercial property and casualty insurance coverage written during the period referred to in subsection (b).

(e) EXCLUSIONS.—For purposes of this section, commercial property and casualty insurance does not include any reinsurance provided to primary insurance companies.

#### SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SURCHARGES.

(a) MANNER AND METHOD.—

(1) IN GENERAL.—Except to the extent specified in such sections, the Secretary shall provide for the manner and method of carrying out assessments under section 7 and surcharges under section 8, including the timing and procedures of making assessments and surcharges, notifying commercial insurers of assessments and surcharge requirements, collecting payments from and surcharges through commercial insurers, and refunding of any excess amounts paid or crediting such amounts against future assessments.

(2) EFFECT OF ASSESSMENTS AND SURCHARGES ON URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.—In determining the method and manner of imposing assessments under section 7 and surcharges under section 8, including the amount of such assessments and surcharges, the Secretary shall take into consideration—

(A) the economic impact of any such assessments and surcharges on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

(B) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

(C) the various exposures to terrorism risk for different lines of commercial property and casualty insurance.

(b) TIMING OF COVERAGES AND ASSESSMENTS.—The Secretary may adjust the timing of coverages and assessments provided under this Act to provide for equivalent application of the provisions of this Act to commercial insurers and policies that are not based on a calendar year.

(c) ADJUSTMENT.—The Secretary may adjust the assessments charged under section 7 or the percentage imposed under the surcharge under section 8 at any time, as the Secretary considers appropriate to protect the national interest, which may include avoiding unreasonable economic disruption or excessive market instability and avoiding undue burdens on small businesses.

(d) CIVIL MONETARY PENALTY.—

(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any commercial insurer that the Secretary determines, on the record after opportunity for a hearing—

(A) has failed to pay an assessment under section 7 in accordance with the requirements of, or regulations issued, under this Act;

(B) has failed to charge, collect, or remit surcharges under section 8 in accordance with the requirements of, or regulations issued under, this Act;

(C) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts; or

(D) has otherwise failed to comply with the provisions of, or the regulations issued under, this Act.

(2) AMOUNT.—The amount under this paragraph is the greater of \$1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this Act or the regulations issued under this Act, such amount in dispute.

#### SEC. 10. APPLICATION TO SELF-INSURANCE ARRANGEMENTS AND OFFSHORE INSURERS AND REINSURERS.

(a) SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC, apply the provisions of this Act, as appropriate, to self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event and all of the provisions of this Act are applied uniformly to such entities.

(b) OFFSHORE INSURERS AND REINSURERS.—The Secretary shall ensure that the provisions of this Act are applied as appropriate to any offshore or non-admitted entities that provide commercial property and casualty insurance.

#### SEC. 11. REQUIREMENT TO PROVIDE TERRORISM COVERAGE.

The Secretary shall require each commercial insurer to include, in each policy for commercial property and casualty insurance coverage made available, sold, or otherwise provided by such insurer, coverage for insured losses resulting from the occurrence of an act of terrorism that—

(1) does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism;

(2) may not be eliminated, waived, or excluded, by mutual agreement, request or consent of the policyholder, or otherwise; and

(3) that meets any other criteria that the Secretary may reasonably prescribe.

#### SEC. 12. STATE PREEMPTION.

(a) COVERED PERILS.—A commercial insurer shall be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under this Act or under any regulations issued by the Secretary.

(b) RATE LAWS.—If any provision of any State law prevents an insurer from increasing its premium rates in an amount necessary to recover any assessments pursuant to section 7, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

(c) FILE AND USE.—

(1) IN GENERAL.—With respect only to commercial property and casualty insurance covering acts of terrorism, any provision of State law that requires, as a condition precedent to the effectiveness of rates or policies for such insurance that is made available by an insurer licensed to transact such business in the State, any action (including prior approval by the State insurance regulator for such State) other than filing of such rates and policies and related information with such State insurance regulator is preempted to the extent such law requires such additional actions for such insurance coverage.

(2) SUBSEQUENT REVIEW AUTHORITY.—Paragraph (1) shall not be considered to preempt a provision of State law solely because the law provides that rates and policies for such insurance coverage are, upon such filing, subject to subsequent review and action,

which may include actions to disapprove or discontinue use of such rates or policies, by the State insurance regulator.

(3) TREATMENT OF PRIOR REVIEW PROVISIONS.—Any authority for prior review and action by a State regulator preempted under paragraph (1) shall be deemed to be authority to conduct a subsequent review and action on such filings.

#### SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE FOR ACTS OF TERRORISM.

(a) SENSE OF CONGRESS REGARDING COVERED PERILS.—It is the sense of the Congress that—

(1) the NAIC, in consultation with the Secretary, should develop appropriate definitions for acts of terrorism that are consistent with this Act and appropriate standards for making determinations regarding occurrences of acts of terrorism;

(2) each State should adopt the definitions and standards developed by the NAIC for purposes of regulating insurance coverage made available in that State;

(3) in consulting with the NAIC, the Secretary should advocate and promote the development of definitions and standards that are appropriate for purposes of this Act; and

(4) after consultation with the NAIC, the Secretary should adopt further definitions for acts of terrorism and standards for determinations that are appropriate for this Act.

(b) INSURANCE RESERVE GUIDELINES.—

(1) SENSE OF CONGRESS REGARDING ADOPTION BY STATES.—It is the sense of the Congress that—

(A) the NAIC should develop appropriate guidelines for commercial insurers and pools regarding maintenance of reserves against the risks of acts of terrorism; and

(B) each State should adopt such guidelines for purposes of regulating commercial insurers doing business in that State.

(2) CONSIDERATION OF ADOPTION OF NATIONAL GUIDELINES.—Upon the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall make a determination of whether the guidelines referred to in paragraph (1) have, by such time, been developed and adopted by nearly all States in a uniform manner. If the Secretary determines that such guidelines have not been so developed and adopted, the Secretary shall consider adopting, and may adopt, such guidelines on a national basis in a manner that supercedes any State law regarding maintenance of reserves against such risks.

(c) GUIDELINES REGARDING DISCLOSURE OF PRICING AND TERMS OF COVERAGE.—

(1) SENSE OF CONGRESS.—It is the sense of the Congress that the States should require, by laws or regulations governing the provision of commercial property and casualty insurance that includes coverage for acts of terrorism, that the price of any such terrorism coverage, including the costs of any terrorism related assessments or surcharges under this Act, be separately disclosed.

(2) ADOPTION OF NATIONAL GUIDELINES.—If the Secretary determines that the States have not enacted laws or adopted regulations adequately providing for the disclosures described in paragraph (1) within a reasonable period of time after the date of the enactment of this Act, the Secretary shall, after consultation with the NAIC, adopt guidelines on a national basis requiring such disclosure in a manner that supercedes any State law regarding such disclosure.

#### SEC. 14. CONSULTATION WITH STATE INSURANCE REGULATORS AND NAIC.

(a) IN GENERAL.—The Secretary shall consult with the State insurance regulators and the NAIC in carrying out this Act.

(b) FINANCIAL ASSISTANCE, ASSESSMENTS, AND SURCHARGES.—The Secretary may take

such actions, including entering into such agreements and providing such technical and organizational assistance to insurers and State insurance regulators, as may be necessary to provide for the distribution of financial assistance under section 6 and the collection of assessments under section 7 and surcharges under section 8.

(c) **INVESTIGATING AND AUDITING CLAIMS.**—The Secretary may, in consultation with the State insurance regulators and the NAIC, investigate and audit claims of insured losses by commercial insurers and otherwise require verification of amounts of premiums or losses, as appropriate.

**SEC. 15. STUDY OF POTENTIAL EFFECTS OF TERRORISM ON LIFE INSURANCE INDUSTRY.**

(a) **ESTABLISHMENT.**—Not later than 30 days after the date of enactment of this Act, the President shall establish a commission (in this section referred to as the “Commission”) to study and report on the potential effects of an act or acts of terrorism on the life insurance industry in the United States and the markets served by such industry.

(b) **MEMBERSHIP AND OPERATIONS.**—

(1) **APPOINTMENT.**—The Commission shall consist of 7 members, as follows:

(A) The Secretary of the Treasury or the designee of the Secretary.

(B) The Chairman of the Board of Governors of the Federal Reserve System or the designee of the Chairman.

(C) The Assistant to the President for Homeland Security.

(D) 4 members appointed by the President, who shall be—

(i) a representative of direct underwriters of life insurance within the United States;

(ii) a representative of reinsurers of life insurance within the United States;

(iii) an officer of the NAIC; and

(iv) a representative of insurance agents for life underwriters.

(2) **OPERATIONS.**—The chairperson of the Commission shall determine the manner in which the Commission shall operate, including funding, staffing, and coordination with other governmental entities.

(c) **STUDY.**—The Commission shall conduct a study of the life insurance industry in the United States, which shall identify and make recommendations regarding—

(1) possible actions to encourage, facilitate, and sustain the provision, by the life insurance industry in the United States, of coverage for losses due to death or disability resulting from an act or acts of terrorism, including in the face of threats of such acts; and

(2) possible actions or mechanisms to sustain or supplement the ability of the life insurance industry in the United States to cover losses due to death or disability resulting from an act or acts of terrorism in the event that—

(A) such acts significantly affect mortality experience of the population of the United States over any period of time;

(B) such losses jeopardize the capital and surplus of the life insurance industry in the United States as a whole; or

(C) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the life insurance industry in the United States to independently cover such losses.

(d) **RECOMMENDATIONS.**—The Commission may make a recommendation pursuant to subsection (c) only upon the concurrence of a majority of the members of the Commission.

(e) **REPORT.**—Not later than 120 days after the date of enactment of this Act, the Commission shall submit to the House of Representatives and the Senate a report describing the results of the study and any recommendations developed under subsection (c).

(f) **TERMINATION.**—The Commission shall terminate 60 days after submission of the report pursuant to subsection (e).

**SEC. 16. RAILROAD AND TRUCKING INSURANCE STUDY.**

The Secretary of the Treasury shall conduct a study to determine how the Federal Government can address a possible crisis in the availability and affordability of railroad and trucking insurance by making such insurance for acts of terrorism available on commercially reasonable terms. Not later than 120 days after the date of the enactment of this Act the Secretary shall submit to the Congress a report regarding the results and conclusions of the study.

**SEC. 17. STUDY OF REINSURANCE POOL SYSTEM FOR FUTURE ACTS OF TERRORISM.**

(a) **STUDY.**—The Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General of the United States shall jointly conduct a study on the advisability and effectiveness of establishing a reinsurance pool system relating to future acts of terrorism to replace the program provided for under this Act.

(b) **CONSULTATION.**—In conducting the study under subsection (a), the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall consult with (1) academic experts, (2) the United Nations Secretariat for Trade and Development, (3) representatives from the property and casualty insurance industry, (4) representatives from the reinsurance industry, (5) the NAIC, and (6) such consumer organizations as the Secretary considers appropriate.

(c) **REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall jointly submit a report to the Congress on the results of the study under subsection (a).

**SEC. 18. DEFINITIONS.**

For purposes of this Act, the following definitions shall apply:

(1) **ACT OF TERRORISM.**—

(A) **IN GENERAL.**—The term “act of terrorism” means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary in consultation with the NAIC.

(B) **REQUIREMENTS.**—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States;

(iii) is committed by a person or group of persons or associations who are recognized, either before or after such act, by the Department of State or the Secretary as an international terrorist group or have conspired with such a group or the group’s agents or surrogates;

(iv) has as its purpose to overthrow or destabilize the government of any country, or to influence the policy or affect the conduct of the government of the United States or any segment of the economy of United States, by coercion; and

(v) is not considered an act of war, except that this clause shall not apply with respect to any coverage for workers compensation.

(2) **AFFILIATE.**—The term “affiliate” means, with respect to an insurer, any company that controls, is controlled by, or is under common control with the insurer.

(3) **AGGREGATE WRITTEN PREMIUM.**—The term “aggregate written premium” means, with respect to a year, the aggregate premium amount of all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance.

(4) **COMMERCIAL INSURER.**—The term “commercial insurer” means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurer.

(5) **COMMERCIAL PROPERTY AND CASUALTY INSURANCE.**—

(A) **IN GENERAL.**—The term “commercial property and casualty insurance” means insurance or reinsurance, or retrocessional reinsurance, for persons or properties in the United States against—

(i) loss of or damage to property;

(ii) loss of income or extra expense incurred because of loss of or damage to property;

(iii) third party liability claims caused by negligence or imposed by statute or contract, including workers compensation; or

(iv) loss resulting from debt or default of another.

(B) **EXCLUSIONS.**—Such term does not include—

(i) insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, or other insurance for personal, family, or household needs;

(ii) insurance for professional liability, including medical malpractice, errors and omissions, or directors’ and officers’ liability; or

(iii) health or life insurance.

(6) **CONTROL.**—A company has control over another company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the other company; or

(C) the Secretary determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the other company.

(7) **COVERED PERIOD.**—The term “covered period” has the meaning given such term in section 19.

(8) **INDUSTRY-WIDE LOSSES.**—The term “industry-wide losses” means the aggregate insured losses sustained by all insurers from coverage written under all lines of commercial property and casualty insurance.

(9) **INSURED LOSS.**—The term “insured loss” means any loss, net of reinsurance and retrocessional reinsurance, covered by commercial property and casualty insurance.

(10) **NAIC.**—The term “NAIC” means the National Association of Insurance Commissioners.

(11) **NET PREMIUM.**—The term “net premium” means, with respect to a commercial insurer and a year, the aggregate premium amount collected by such commercial insurer for all commercial property and casualty insurance coverage written during such year under all lines of commercial property and casualty insurance by such commercial insurer, less any premium paid by such commercial insurer to other commercial insurers to insure or reinsure those risks.

(12) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(13) **STATE.**—The term “State” means the States of the United States, the District of

Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(14) STATE INSURANCE REGULATOR.—The term “State insurance regulator” means, with respect to a State, the principal insurance regulatory authority of the State.

(15) TRIGGERING DETERMINATION.—The term “triggering determination” has the meaning given such term in section 5(a).

(16) TRIGGERING EVENT.—The term “triggering event” means, with respect to a triggering determination, the occurrence of an act of terrorism, or the occurrence of such acts, that caused the insured losses resulting in such triggering determination.

(17) UNITED STATES.—The term “United States” means, collectively, the States (as such term is defined in this section).

#### SEC. 19. COVERED PERIOD AND EXTENSION OF PROGRAM.

(a) COVERED PERIOD.—Except to the extent provided otherwise under subsection (b), for purposes of this Act, the term “covered period” means the period beginning on the date of the enactment of this Act and ending on January 1, 2003.

(b) EXTENSION OF PROGRAM.—If the Secretary determines that extending the covered period is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, the Secretary may, subject to subsection (c), extend the covered period by not more than two years.

(c) REPORT.—The Secretary may exercise the authority under subsection (b) to extend the covered period only if the Secretary submits a report to the Congress providing notice of and setting forth the reasons for such extension.

#### SEC. 20. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out this Act.

The SPEAKER pro tempore. Pursuant to House Resolution 297, the gentleman from New York (Mr. LAFALCE) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to offer a substitute that I believe would greatly improve the bill before us. The substitute in large part reflects the structure of the bill before us, but it makes improvements to the bill in three very crucial areas.

First of all, it requires the individual insurers to retain a more significant share of initial losses, providing for a real, up-front deductible.

Second, it requires that terrorism coverage be included with all property and casualty insurance, eliminating the ability of insurers to cherry-pick safer properties, while placing coverage out of the reach of others.

Third, it eliminates the extraneous limitations on victims' recovery rights that are not necessary to address this problem and have no place in this bill or any bill. There will be no bill that contains these provisions.

Let me address each of these in turn. The deductible included in my substitute would require the insurance industry to pay the first \$5 billion of insured losses in the first year, increas-

ing to \$10 billion in the second and third years. Interestingly, the insurance industry, the Senate, and administration negotiators said they could accept a bill with a \$10 billion deductible in the first year. My substitute has a \$5 billion deductible. The bill before us has no deductible. There should be a deductible.

The deductible would be met in the first instance by individual insurers who would be responsible for 100 percent of the losses suffered by their policyholders up to a cap of 7 percent of the insurer's premium income. This first dollar of loss retention is critical to the maintenance of sound underwriting practices by the insurance industry, and it will make it much easier for a private reinsurance market to re-emerge. It will also make it less likely that the Federal Government will need to step in to cover losses. Some events could be covered entirely by the deductible. It would keep the Federal Government out unless it were absolutely imperative that the Federal Government enter.

This kind of deductible has the support of a broad and diverse coalition of taxpayer, consumer, and environmental groups, each of which believe it is important that insurers should pay some level of initial loss in its entirety. And the concept of a deductible of up to \$10 billion in the first year was agreed to by the Treasury Department of the Bush administration in their conversations with the Senate. Again, the main bill before us has no deductible. The substitute does. We should have a deductible.

Second, to avoid the cherry-picking, my substitute, unlike the Republican bill, would mandate terrorist coverage. This will prevent insurers from providing terrorism coverage only on properties that are perceived as low risk while leaving large portions of the economy uncovered. This provision would help to ensure that terrorism coverage is affordable by spreading the risk across the broadest possible base. By ensuring that this coverage would be included in all property and casualty policies, as it is today, it would help to cushion the effects on businesses of any further terrorist attacks by eliminating the temptation for commercial property holders and businesses to “opt out” of terrorism coverage. Do not forget, property and casualty properties today include terrorism coverage.

Finally, my bill does not limit victims' rights by denying them the legal redress that they deserve. For reasons completely extraneous to the current insurance crisis, the White House and the Republican leadership are pursuing, by means of this legislation, long-sought restrictions going back 20–30 years on the rights of victims. They seek to minimize the compensation needed to make the victims of terrorism whole. These restrictions on victims' rights will create disincentives for businesses to do all that they

reasonably can to prevent another terrorist attack and make America safer.

I urge Members' support for this substitute. It is basically the House bill, with those changes I have articulated. In the short amount of time that we have left to address the serious threat to our economy, I believe the substitute represents a much-improved response to meeting our responsibilities.

Mr. Speaker, I reserve the balance of my time.

Mr. BACHUS. Mr. Speaker, I claim the time in opposition to the amendment in the nature of a substitute.

The SPEAKER pro tempore. The gentleman from Alabama (Mr. BACHUS) is recognized for 30 minutes.

Mr. BACHUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there are several problems that the membership ought to have with this amendment, things that I hope that the gentleman from New York (Mr. LAFALCE) will respond to, concerns which we have.

My first concern is that we are mandating that anyone who takes out commercial insurance must also take out coverage for terrorism. Now, in the towns and the cities and rural areas that I represent, there are a lot of small businessmen who do not think that they need insurance to ensure against terrorism.

□ 1415

Actually, I have farmers in my district. They have chicken houses, I would say to the gentleman from New York. Those farmers do not feel like those chicken houses and those chickens need insurance against terrorism. They do not believe that there is much of a possibility of a terrorist planting a bomb in one of those chicken houses. I have a lot of repair shops in my district that repair used automobiles. The people that own those businesses and that pay liability insurance and take out coverage on those businesses, they do not believe that they need to be paying for insurance to cover that auto body shop or that beauty shop. I have a lot of beauticians, I would say to the gentleman from New York. I have a lot of beauticians in my district. They have a lot of beauty shops. They really do not believe that they ought to be compelled by the Federal Government to take out insurance to insure against terrorists. In fact, they may not be able to afford it.

But what this substitute does, it requires anyone that takes out a commercial policy on any business, whether it is a beauty shop, a barber shop, an auto mechanic store, a chicken house, a small grocery store, it requires you to take out and insure against a terrorist act. I have a lot of businesses in my district that quite simply are having trouble paying for the insurance that they have. There is no opt-out. I can insure against theft, I can insure against fire, I can insure against vandalism; but I may not want to insure against terrorism. I may own a small

business. I may get a quote of \$12,000 a year for basic coverage and another \$1,000 or \$1,500 a year to insure against terrorism. I may say, I don't want terrorism covered.

I would say to the gentleman from New York, it is my understanding that his amendment, and correct me if I am wrong, but it is my understanding that his amendment requires anyone who takes out a commercial policy to protect their place of business, that they must also insure against terrorism. I would stop right there and I would reserve the balance of my time and ask the gentleman so we can have a coherent discussion of this, is in fact he mandating that every American that takes out insurance coverage on their place of business, that they must insure against terrorism no matter what the cost of that premium?

Mr. Speaker, I will reserve the balance of my time and let the gentleman address that question.

Mr. LAFALCE. Mr. Speaker, I could have a colloquy with the gentleman on his time, but I do not have time. If the gentleman wants to do it on his time, I would be glad to have a colloquy.

Mr. BACHUS. I would say this to the gentleman. I will answer the question and he can correct me if I am wrong. Section 11 of his amendment, a requirement to provide terrorism coverage, and it says that this coverage may not be eliminated, waived or excluded by mutual agreement, request or consent of the policyholder or otherwise. That is what it says. It says you cannot exclude coverage for that. It may not be eliminated, may not be waived, may not be excluded from a commercial policy even by mutual agreement or by request or consent of the policyholder. That is what it says. It is the plain wording.

I would hope the gentleman did not intend to say that to every American who has an insurance policy on a piece of property. There is an option. The option is that you just do not get insurance. But I think the gentleman from New York is saying if you do get insurance, you will have to have terrorist coverage and you will have to pay for that coverage.

Mr. Speaker, I reserve the balance of my time.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, quite the contrary to the distinguished gentleman from Alabama, the LaFalce substitute spreads the risk. What it simply does is it says that if you are a small business, a chicken farmer, you need to make sure that insurance companies around the world or in this Nation have the obligation to insure you and protect you. That is what we are arguing about today. That is why I rise today to support the LaFalce substitute and also to

say I would have liked to have supported a clean underlying bill. I believe it is important to provide this kind of reinsurance for our insurance companies, not for the institutions but for the people of America.

I would also say to my colleagues, I wish I was debating resources for those who are unemployed, particularly as we face some 500,000 individuals in the State of Texas. Additionally in my own congressional district we have a company that is now teetering on the brink. I may see tomorrow 3, 4, 6,000 people laid off. This House has failed in its duty to provide unemployment insurance for those who are laid off. But let us speak about the underlying bill and why the LaFalce substitute is the right direction to go.

First of all, the bill that is before us denies victims' rights. It in fact denies noneconomic damages, economic damages and punitive damages. It indicates that if you are a plaintiff and you are impacted by a terrorist act, you could not go into court and receive any benefits or receive any coverage from your insurance company if you were not physically injured. That means all the wives and husbands who lost loved ones, who lost their husbands or wives on September 11 in that heinous terrorist act could not recover for the pain and suffering, for the loss of consortium. I believe that we have a better direction to go. And in fact I am delighted that the LaFalce bill does not have the tax provisions in it. I believe it is extremely important that we find a way to engage the insurance companies but not give away money.

The underlying bill provides assistance, Federal dollars, one dollar past a billion dollars. In fact, the insurance companies said, We're willing to pay \$5 billion in losses. The LaFalce bill has \$5 billion in 1 year and I think \$10 billion after the 1 year. We are giving away money in the underlying bill.

The substitute is a clean bill that directs its attention and its energies toward the problem. What is the problem? We want to be able to ensure that insurance companies will be able to insure Americans, businesses, citizens of the United States in light of terrorist attacks. And we want to do it fairly, and we want to do it forthrightly. We do not want to deny individuals their access to the courts where they cannot go in and secure recovery for those who have maliciously not done their duty and therefore caused an enhanced injury to someone such as, for example, a baggage handling company that did not do the proper security so that something dangerous happened on the airline.

I support the LaFalce bill because it is a straight-up answer to the insurance problem, and it also provides for insurance for all Americans.

Mr. Speaker, the September 11 terrorist attacks have devastated many industries and sectors of the American economy, including the insurance industry.

The legislation before us today, H.R. 3210, has been rushed to the House floor because

the insurance industry has stated that, while it will be able to cover the estimated \$40 billion in claims resulting from the Sept. 11 terrorist attacks, any new and renewed policies will not cover terrorist-inflicted damage unless the government helps cover that unknown liability. This is an issue of great concern to Congress and to the Nation.

While I cannot support this bill as it currently stands, I would like to state, at the outset, that I join my colleagues in calling for swift passage of a terrorism reinsurance bill. Such legislation is greatly needed and Congress can make a great difference here, as we have done in the past.

As we all know, Congress acted swiftly and deliberately in the recent Airlines bailout plan in the amount of \$15 billion to save this important industry which was so severely devastated by the September 11 attacks. We can act with similar diligence and bi-partisan sensibility to help this important sector of our economy as well.

This is not just an insurance industry problem. Rather, it is a national issue because if the insurance industry cannot reinsure the risk of further terrorist attacks, it will either increase premiums to the detriment of consumers, or simply stop offering terrorism coverage altogether. Furthermore, without adequate insurance coverage, lenders will not be able to lend and new investments will not be made, creating a credit crunch that could have devastating consequences for our economy.

I applaud my colleagues on the Ways and Means Committee in striking provisions that would have provided preferential tax treatment on insurance industry reserves, and instead called for a greatly needed study of the issue. However, I am disappointed in the partisan fiasco in the Rules Committee which turned this once bipartisan effort to protect the insurance industry from terrorism claims into a partisan "tort reform" Trojan horse.

I join my colleagues on the Judiciary Committee and those on the Financial Services Committee who object to the inclusion of Section 15, a tort reform provision, which would effectively ban punitive damages in terrorism-related cases. This is absolutely unnecessary.

Additionally, it is unclear whether the bill applies to actions brought against the insured and the insurer, or just the insurer. I stand with those who support the position that such legislation limits tort actions against the insurer, but not the insured.

We must also ensure that terrorism coverage is available and affordable for all consumers and businesses, and avoid "cherry picking" where companies insure "good risks" and leave other segments of economy uncovered. To this end we can and should avoid that problem by ensuring that terrorism coverage is required as part of basic property and casualty coverage.

Finally, there is no need or justification for the tax provisions in the bill, which unnecessarily provides the industry with a long-term tax subsidy which could well exceed what it pays under the bill.

Instead, I lend my support to the LaFalce substitute. It includes, for example, an industry deductible and requires each company to meet its deductible before receiving federal assistance. It also requires terrorism coverage as part of commercial property and casualty insurance. It also does not limit tort actions or recoveries, and does not contain the offensive tax provisions as does the underlying bill.

Also, it requires the Secretary of the Treasury, in determining whether to establish a surcharge on policyholders, to consider the cost to the taxpayer, economic conditions, affordability of insurance, and other factors. And it includes studies on the impact of terrorism on the life insurance industry and on the advisability of establishing a terrorism reinsurance pool.

Congress can and must act to protect the most vulnerable sectors of our economy, and those who most need assistance. The underlying bill once held the promise of protecting the insurance industry and the millions of Americans dependent on it. However, the version of the bill before us today contains offensive provisions that I simply cannot in good conscience support. As such, I urge my colleagues to vote against the bill and to support the LaFalce substitute.

Mr. BACHUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think we received the answer to our question, and that is that this amendment attempts to require all Americans who own businesses to take out terrorist coverage and to pay for that coverage. In other words, if you have got a beauty shop, the gentleman from New York, his amendment if it passes, you will be required to take out terrorist insurance. If you have got a restaurant, you will be required to take it out and to pay for it.

So I think we have our answer there. As the gentlewoman from Texas says, we want to spread the risk to people that even may not have any risk, may not choose to need insurance. What we are basically telling them is, Not only do you need it, but you'll pay for it, whether you want it or not.

Mr. Speaker, I ask unanimous consent that the gentleman from Ohio (Mr. OXLEY) be permitted to control the remainder of my time for consideration of this amendment.

The SPEAKER pro tempore (Mr. NETHERCUTT). Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Pennsylvania (Mr. TOOMEY).

Mr. TOOMEY. Mr. Speaker, there are several problems that I have with the substitute that is offered by my distinguished colleague from New York, but I want to touch on two of them in particular. One is the fact that the substitute clearly removes from the committee bill several vital tort reform measures which are in the base bill; and they are in the base bill for a simple reason, for a variety of reasons, but mainly to ensure that in the event that harm is done in a terrorist attack, we want to see a greater share of the payment to the victims actually go to the victims and not a huge windfall going to trial lawyers. That is a big part of what this is about.

That is a serious flaw, but there is another one that I think may be even a bigger flaw in this bill and that is the

issue that was raised by my colleague, the distinguished gentleman from Alabama. There is no question, it is very clear, the substitute does impose a new Federal mandate on business, large and small business, every business, specifically by requiring that every commercial insurance policy carry this terrorism provision whether or not the insured wants to buy this provision. It is true that it only applies to commercial policies. You could choose not to buy a commercial policy; but as we all know as a practical matter, you cannot be in business in America today without having a commercial insurance policy. So it really is a universal mandate in that sense.

Think about this. At a time when thousands of businesses are losing money, forced to lay off literally hundreds of thousands of workers in the last several months, layoffs that are continuing today, this substitute, if it were adopted, would force potentially unlimited increases in costs in doing business for every business in America. It says you have got to go out and buy terrorism insurance coverage regardless of what kind of business you are in, regardless of where you are located, regardless of whether or not you perceive yourself to have any risks, and regardless of what it costs. This can only result in more job losses.

I do not know how many folks here have actually gone through the experience of taking their entire life savings, remortgaging their house, borrowing money from family and friends and risking it all to pursue the dream of owning their own business, whether that is a little coffee shop on Tilghman Street in Allentown or a dry cleaner on Chestnut Street in Emmaus or a bookstore in downtown Bethlehem, but I know what that is all about. I have been through that. I think we all know people who have been through that.

These are the people, the people who are willing to take that huge risk to risk everything they have to launch that small business. These are the people and their employees that I am concerned about, and I am concerned about the adverse effect that this provision will have on them. These are the people that are keeping our economy going. These small businesses are the ones that are creating the few new jobs we are creating in our economy. They are creating so many opportunities for so many people. The cards are stacked already against the entrepreneur starting a new business. It is the nature of a new business to have a very risky period.

We have still a crushing tax burden on Americans. We have too much regulation. My argument is let us not stack the deck further against the people who are creating new businesses, running small businesses, creating opportunity. Let us not impose this new costly mandate on them.

Reject the substitute and support the underlying bill.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BENTSEN).

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Speaker, I had not intended to support the substitute because we wrote a very good bill in the House. Again, I want to commend the chairman and the chairman of the subcommittee as well for the work they did. We worked very hard all day long to put out a good bill; and I thought the approach was the right approach to take in terms of the model, in terms of the deductible, in terms of the way it worked. It combined the pooled premium structure, it protected the taxpayers, it combined the deductible aspect that the administration wanted, and it even had some liability reform, a collateral offset that I was not particularly comfortable with but I thought was the balance we needed because this was also a temporary measure that we were passing, and in fact we made it as temporary as possible. Because I am not very comfortable with us entering the marketplace right now, but I do think it is necessary to get us into the next year so policies can be rewritten, so we do not have the calamity that I discussed that I think other Members are aware of. I know the gentleman from California (Mr. COX) was a securities lawyer before he was here, and he understands how this works and the problems that can occur if we do not do this.

But on the way to the floor, this bill was rewritten and I am left with no choice but to support a substitute that otherwise quite frankly, with all due respect to the gentleman from New York, I would not support because I would support the underlying bill as it was originally written.

I look at the litigation management section in this, and I see a couple of problems. The first problem I see is the question on noneconomic damages that are in here and there is no liability for the defendant if the defendant actually has liability. What if you have a spouse who does not work and is in a building that gets hit by a plane? There are no damages that can be brought. That spouse's worth under the court's eyes is zero dollars. I do not think any Member, whether you are for liability reform or not, thinks that is a particularly good idea.

□ 1430

But the other problem in the haste to write this bill, if you read the section on legal fees the way I read it, it applies to all attorneys. So if defense counsel does their job and wins the case, they can get no more than 20 percent of damages, and if damages are zero, 20 percent of zero, the last time I checked, was still zero. So if the PNC company pays their counsel, which most counsel I know like to get paid, they are not going to be able to pay them anything, or they are going to be



subject to fines or imprisonment. So there is a flaw in the bill. I am sure somewhere down the line it will get worked out.

But the bigger concern I have is about this is the bill we ought to pass for the good of the economy, and what this is going to do in the name of "legal reform," which is not what this bill started out about, is it is going to get shot down in the other body and we are either going to be here on December 23 trying to hammer this thing out, or December 24th, or December 25th, maybe we will take the 25th off, the 26th, 27th, trying to work this out, when we had a very good bill in the first place, a bill that made it explicitly clear that the taxpayers would not be on the hook for punitive damages or non-economic damages. But if the defendant, the building owner, the airline owner, was liable in any way for gross negligence, they had to step up to the plate for that liability. That is what we should be doing.

As a result, I am going to have to defy my chairman and support the substitute, because we are left with no other choice. I hope somewhere rationale will prevail and we can get a real bill done.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to my good friend, the gentleman from Staten Island, New York (Mr. FOSSELLA).

(Mr. FOSSELLA asked and was given permission to revise and extend his remarks.)

Mr. FOSSELLA. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I happen to believe that sometimes when we are confronted with an issue, it is best for Congress to do nothing at times. This is not one of those times. I think we are playing with fire if Congress does not act on passing this legislation this year as soon as possible.

The underlying bill as presented by the chairman is the right vehicle to proceed with. Every day that passes creates more uncertainty, thus more risk and more instability in our economy. It is not just the insurance companies or the reinsurers; it is the very foundation of our Nation.

For example, right now in midtown Manhattan, there is an office project, a major one, being contemplated. It means jobs, it means livelihoods, it means a better quality of life for so many people.

These developers right now are having discussions with their insurance agents. Insurance agents say, we cannot give you this insurance because of the risk associated with a potential terrorist attack. If that does not occur, there may not be and very likely will not be this development project in midtown Manhattan. Hundreds of millions of dollars will stop. That is going to take place across New York and across the country, unless something is done.

I would urge everybody in this Chamber and the other body to come to clo-

sure on this as soon as possible, without raising the cost of insurance unnecessarily to small and big business owners across the country, to work cooperatively to do what is right for the American people; not to put the taxpayer on the hook, but to play the vital role that government should play in this capacity, and that is to protect against any potential terrorist attack which, by definition, is random and terrorist in nature. Put it aside, support the underlying bill, and let us move forward.

Mr. LAFALCE. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), the distinguished ranking member of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

Mr. KANJORSKI. Mr. Speaker, I speak in favor of the substitute, and it is for a very simple reason. There are three key elements developed in the substitute that I think are important but, more so than being important, I think they make the bill viable so we can get something done.

The previous speaker just indicated that it is important to get something done, and it is. We had something that could have been done, and suddenly some of our friends have lobbed on things called tort reform, or revision, as I call it, changing the whole civil procedure and rights of victims in this country, and I think it caused unfairness.

As my friend the gentleman from Texas (Mr. BENTSEN) pointed out, it seems to me to strip out any benefit or any recovery for non-economic damages and leaves a major part of the victims of this country without coverage.

Now, we are fighting here to make sure real estate can go on, insurance can be sold, business can conclude; and we are going to take care of large entities, big investments, because they are the targets for terrorism. But the small victims, the individual citizens who do not measure into the definition providing the limitations in this bill for victims' recovery, they get nothing or are restricted in their recovery. That is nonsensical.

First of all, it is not going to go anywhere. I plead with the other side. This bill is not going to be the bill. The Senate and White House are in the process of writing another bill which is going to be sent over here, and we are either going to take it or not take it in the waning days of this session.

We have an opportunity, by adopting the substitute that the gentleman from New York (Mr. LAFALCE) has presented, to handle the three key issues. We do provide something the White House and the Senate has indicated they want at all times, deductibility, and the insurance industry did not say that was bad. As a matter of fact, they were in favor of it, \$5 billion or \$10 billion deductibility.

Two, doing nothing with these victims' rights or tort reform, it does not

belong here. We can have another vehicle, another debate, another day, on that issue.

Finally, to provide insurance coverage for everyone, I am led to understand the White House is in favor of that too, because we do not want cherry-picking, we do not want favoritism, and we do not want to lessen the base of those people who are going to stand behind the premiums to pay for the terrorist occasion that occurs before it gets to the taxpayers.

I say that we have a reasonable substitute here that, if we pass it today, can be moved to the Senate very quickly and become the real vehicle for reinsurance protection for terrorism in the United States. Other than that, this is an academic, a political exercise, that will absolutely go nowhere, and we are going to end up, if we do want legislation, and I think it is vitally important, adopting the Senate provisions when they are finally passed.

Mr. OXLEY. Mr. Speaker, I yield myself 30 seconds. I appreciate the gentleman's remarks.

Let everyone understand something. The Senate and the White House apparently have been at this for quite some time and, literally, as we speak, they still have not got their act together. The House of Representatives is on the floor with legislation ready to pass in the next hour, so we have done our job.

So you can talk all you want about what the Senate and White House are doing. We are getting the job done for the people of this country to make certain we have insurance coverage. I think we all should be very, very proud of that.

Mr. Speaker I yield 3½ minutes to the gentleman from California (Mr. COX), a valuable member of our committee.

Mr. COX. Mr. Speaker, I thank the chairman for yielding me time. I particularly wish to thank the gentleman from Ohio (Chairman OXLEY), the gentleman from Louisiana (Chairman BAKER) and the gentleman from Wisconsin (Chairman SENSENBRENNER) for putting together such an important bill for us to move quickly in response to the events of September 11.

This legislation will ensure that victims are compensated after a terrorist loss if another terrorist attack or round of terrorist attacks should occur, quickly, fairly and fully. It will continue, we hope, the opportunity for people throughout our country to have insurance against terrorist risks by using the resources of the Federal Government, of the U.S. taxpayer, as a backstop. But the bill is carefully drafted so that it will not injure taxpayers in the process.

It asks a great deal from the industry. Indeed, it asks the insurance industry to pay the money back, so that taxpayers will not be treated as if they are Osama bin Laden, as if they are culpable for the next round of terrorist attacks.

The substitute, unfortunately, unravels these taxpayer protections. It

asks far less of insurance companies than does the bill for which it would be substituting. It asks much more of taxpayers and much less of trial lawyers.

The bill that was so carefully crafted in our committee established a Federal cause of action, to make sure that injured parties could quickly get to court, just as we have already done in this Congress with the victims of September 11, so they could get their money and not have to go through an endless legal process. The substitute simply repeals that protection so that the same-old-same-old will obtain, as it has for the victims of the 1993 World Trade Center bombing. Hundreds of plaintiffs have received, 8 years later, not one penny.

It puts the burden on the consumer in another way. It mandates that consumers buy terrorist risk insurance, rather than offering consumers a choice of high-quality coverage at a reasonable cost. Once the Federal Government mandates that I must buy insurance, if I am the insurer and I know the customer has to buy it, I can offer a lousy product at a high price.

We want to put the consumers in the driver's seat. The whole point is to make sure consumers are protected, and this substitute would repeal that consumer protection.

It would also repeal the fair share rule that is in the bill, and that is the protection for the innocent. If you are innocent, if you are not a terrorist, you should not be treated as if you are one. Yet under the legislation that would be passed in the name of the substitute, the fair share rule would be repealed; and if you are named in a complaint, along with Osama bin Laden who is not before the court, then a jury in any State can say you pay the whole thing, even though you might be only one-half of 1 percent responsible.

President Bush strongly supports the base legislation. His Secretary of the Treasury came to the Hill and asked that we include the litigation management provisions. It is our obligation and our responsibility to pass the bill that was produced by the Committee on Financial Services and by the Committee on the Judiciary staff, who helped us with the litigation management procedures.

I urge strongly that we reject the substitute and its repeal of consumer protections, and I urge us rather rapidly to put this bill into law, the Oxley-Baker-Sensenbrenner base bill.

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume to answer a few of the issues that have come up so far.

First of all, what does the administration support or not support? I do not really think they support the basic thrust of the bill that was reported out of committee and is before us right now. Would they sign it? Yes, because it is not an unreasonable approach. And that is why I was willing to go forward with it, and that is why I am not offering an alternative with respect to the underlying approach.

But it is not the best approach we could take. The administration, in their statement of administration policy, points that out. They really think that it could be an administrative nightmare. They do not like this concept of coming up with what is basically a loan that will then have to be paid back from dollar one. They do not like that at all.

The insurance industry does not like it. In Monday's paper there was an op-ed piece by the chairman of the board of American International Group, and they really denounced this concept. In that op-ed piece they said we could handle a \$10 billion deductible. That is what the chairman of AIG said in an op-ed piece in the Wall Street Journal on Monday. And you have no deductible.

We make it easy. We just have a \$5 billion deductible for the first year, going to a \$10 billion the second year, which the insurance industry has said we could accept and we can handle. For the life of me, I do not know why you do not have that deductible provision.

With respect to the restrictions on victims' compensation, now, yes, the administration does support that, and it supports it strongly. But that is like throwing red meat at them. They have wanted to limit victims' rights wherever and whenever they could. They want to do it with respect to a Patients' Bill of Rights, they want to do it with respect to product liability, they want to do it wherever and whenever they can. And it is unnecessary here and it is wrong and it is harmful.

You come up with a euphemism. Your euphemism is case management. That is nonsense. This has nothing to do with case management. This has everything to do with denying victims their rights that they have been entitled to under the laws of the several States from the time that we created the Union to the present. You want to change it.

There is something else, too. The insurance scheme we come up with, that is temporary. That is going to be for 1, 2 or 3 years. This restriction or elimination of victims' rights, that, you have made permanent.

□ 1445

So we have a temporary insurance scheme. But as I understand the Sensenbrenner approach, that goes in and it is independent of the duration of time of the insurance scheme and it effectively takes away victims' rights.

Now, with respect to mandatory coverage, reasonable people can differ on that issue. Let me be the first to admit that. But the fact of the matter is, right now virtually every property and casualty policy on a commercial line that I am aware of includes terrorism coverage. So we are not talking about something new. We are talking about basically, at least in 99 percent of the cases, continuing the status quo so that we can spread the cost so we would minimize it for the little guy, for the small businessperson.

What small businessperson might need it? Well, since P and C includes business interruption insurance, the ice cream parlor at an airport might need it. The pizza store on Pine Avenue in Niagra Falls got the first economic injury disaster loan in the Nation. It was \$10,000. But that business had closed its doors because of the terrorist attack in New York City, and that business could have used terrorism coverage immediately, et cetera.

If we do not mandate it, in my judgment, and I could be wrong; this is a negotiable item. I understand that reasonable people can differ on this. But I think that if we do not include this, what we are saying is, if you are rich, if you are a big corporation, if you are a Fortune 500, if you are a big real estate developer of a \$1 billion building, you will be able to afford it and buy it and pass the cost along; but if you are a little businessman, a small businessman, a mom and pop businessman, you will just go without coverage; and the fact that your business in Pennsylvania was never expected to be impaired, that will have to go without coverage.

Now, I would inquire of the chairman of the Committee on the Judiciary, did I make a mistake on the permanency of the gentleman's coverage?

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. LAFALCE. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Absolutely, the gentleman made a mistake.

Mr. LAFALCE. Okay. So it is contemporaneous.

Mr. SENSENBRENNER. Mr. Speaker, it is contemporaneous with the bill. It is not here forever, but that is not the gentleman's only mistake; and I will ask the gentleman from Ohio for a little time to talk about those.

Mr. LAFALCE. Mr. Speaker, I thank the gentleman, and I stand corrected on that issue.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the distinguished chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, let me blow away the smoke screen from the litigation management provisions of this bill.

Number one, it does not take away anybody's right to sue or anybody's right to get compensation. If there is a cause of action and the Secretary triggers the provisions in this legislation, suits would have to be in one court, and that would prevent a race to court-houses all around the country to see which judge could have the trial quicker and whoever gets the quickest trial will end up exhausting all of the money that is available; and in courts where things move a little bit slower, if the money is exhausted, then the plaintiff would be out of luck.

Now, secondly, what the bill does is it prohibits punitive damages, and this

is exactly the way the Federal Tort Claims Act is. We are talking about giving a limited key to the United States Treasury, and we give the same protection to the taxpayer in this bill that we do when there is a tort claim against the Federal Government. We also limit attorneys' fees, also done in the Federal Tort Claims Act. So this is existing law for claims against the Federal Government. Since the Federal Government will be the ultimate reinsurer during this period of time, we provide the taxpayers the same protections and the plaintiffs the same limitations as we would if somebody got run over by a postal service van or ended up falling out the window of a Federal building because of a defect in construction there.

Now, it seems to me that when we are dealing with terrorism, we have to look at the fact that people who buy terrorism insurance pay a premium that is based upon the risk that the insurance company is underwriting; and if they have unlimited liability when there is a terrorist act, then those premiums are going to be so sky high as to make that coverage either unaffordable or less affordable, particularly to small business operators.

So, Mr. Speaker, these litigation management provisions protect the taxpayers, protect the ratepayers of people who have to buy terrorism coverage, and do not significantly limit the recovery that plaintiffs could get.

Mr. LAFALCE. Mr. Speaker, I yield myself 3 minutes.

A couple of issues were addressed by the distinguished chairman of the Committee on the Judiciary. First of all, he spoke about the consolidation of the claims into one court. That is something that is not unreasonable. As a matter of fact, it might be desirable to do something like that. But then the question is, would you obliterate portions of the laws of the many States?

What the gentleman does in his bill is he says that there should be a Federal cause of action that shall be exclusive; and thereby he obliterates the laws of the States, with this exception: he says in applying the Federal cause of action, we shall look to the Federal cause of actions in the States, but not the law of the States with respect to damages. There, we shall just totally obliterate whatever the laws of those States are with respect to damages and impose our own. That is where we run into difficulties. Not that one cannot go into court, but we just severely eliminate or restrict.

Now, we have proportionate liability as opposed to joint and several liability. There we are obliterating the laws of the about half of the States. We use the collateral damages as an offset; and, again, the States are split on that; but, again, that goes to the issue of how much economic damages an individual is able to collect. So it restricts their rights there.

Now, with respect to punitive damages, the gentleman made the argu-

ment, and I think it has some resonance, that the Federal taxpayer ought not to pay for punitive damages. I can accept that. The gentleman made an analogy to the Federal Tort Claims Act where one cannot bring punitive damages against the Federal Government. Well, if the gentleman would have retained within the bill the Bentsen amendment, which would have precluded taxpayer money, that is, insurance under this scheme, then the gentleman's argument would be true. But it is incorrect because what the gentleman does is not just eliminate the ability to collect damages against the Federal Government under any scheme, but against anybody.

The gentleman eliminates the basic cause of action or possibility of punitive damages, not just the insurance coverage for it. If the gentleman is willing to talk about that, we might be able to come to terms. If the gentleman's bill would do what the gentleman says it purports to do or wishes to do, we might be able to come to agreement.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from New York (Mrs. KELLY).

Mrs. KELLY. Mr. Speaker, I thank the gentleman from Ohio for yielding me this time.

The gentleman from New York has offered a well thought-out substitute. However, I believe we simply have different beliefs as to how the market should operate. I believe that we should allow the market to work out problems as much as possible.

We are here today because the reality of a war on terrorism has knocked out the commercial property and casualty insurance industry and put them in a crisis. To stabilize that industry, we have drafted TRPA.

Unfortunately, the Democratic substitute goes farther than I think we should on a number of points. I want to focus on the provision in the substitute that would mandate that property and casualty companies provide terrorism coverage. "Mandate." That is the operative word.

It is our responsibility to ensure consumers have the options to choose from, not mandate that they are forced to comply with. Terrorism coverage will be more expensive to all businesses, but every business should be able to make the choice of whether they should pay for it and take the risk.

Let us consider the cost of this mandate for things like museums, like schools, like hospitals. A hospital in California, a hospital in New York, most hospitals in this Nation operate on a very thin operating edge. They are on the very edge of solvency. A sudden increase in premiums could plunge them into oceans of red, resulting in closure. Schools. A flower shop in Buffalo, New York, ought to have the abil-

ity to make that choice to take that risk if they choose, not be mandated. A museum in Katonah, New York, should have the ability to choose. Only these entities know what their risk is. Only these entities know what their need is. These entities ought to not be mandated to share a risk they do not feel they have.

Small business is the strongest bulldozer pushing our economy and its growth. We all know the margins between profitability and failure are razor thin with most small businesses. The cost of mandated coverage could mean the difference between more or less employment or helping these people keep their jobs. I urge that people defeat this Democratic substitute.

This is just one of the many reasons the Democratic substitute should be defeated. There are others.

Give our schools, hospitals and small business the choice and join with me in voting against the Democratic substitute.

Mr. LAFALCE. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Mr. Speaker, I almost hesitate rising. I know the gentlewoman that has just spoken is a fine member of our committee and, of course, she does not want to burden the homeowners and all of these small business people and everything.

When we really stand back and analyze the argument, the argument is, there is a free lunch. Now, we are talking about insurance. There is no free lunch here. Insurance companies do not create money or assets. They merely gather premiums, analyze what the proportionate risk will be, the premiums cover that risk, and then they put out the money. If we reduce the number of premium payers, we reduce the base and for the remaining payers we accelerate the rates. It is as simple as that. It is so simple that most States in this Union require terrorism insurance as part of the main policy. We are not putting an extra burden on people here. I will tell my colleagues what burden we are putting on: if we do not have this premium base that spreads across the country for terrorism insurance, we are going to have a 1,000 percent increase in insurance in New York City and Los Angeles, the symbols of the country where terrorism would attack.

Secondly, that is partially what the argument was originally in the committee and the Secretary of the Treasury made and the White House made when we started to put this bill together. They said, terrorism is something that attacks America's symbols, and it is unusual and impossible to identify liability; and maybe that is why the Federal Government should stand in the place of that risk so that premiums do not go crazy.

But I hope our friends from the other side are not sending a message out to the American people that this substitute resolution is going to increase premiums. Quite the contrary. We are

not going to have any effect on premiums, and premiums in this country on liability insurance all over are going to go up and go up precipitously. And they already have, for two reasons: not only September 11, but because the stock market has gone down precipitously, and the earnings generated and the income generated is no longer there, and now they have to increase the premiums to effect a pool to pay the risk liability.

Mr. Speaker, sometimes we treat the American people when we talk on the floor like they are idiots, and I refer now back to the gentleman from California who made the point that they are really worried about the victims of the 1993 bombing because, gee, their cases are still in litigation.

□ 1500

It is unfortunate that it takes sometimes 7 or 8 years to get to litigation in this country. There is a solution: do away with the right of suing and collecting damages. From day one, they would not have had a cause of action under this piece of legislation. So yes, we would not tie up the courts or waste 7 or 8 years. The victim would not have a cause of action.

I know that is not the intention the Members have. I know something more than that. I know the Republican party historically has understood the free market system and the basis of our civil process in this country.

I cannot understand. Just after September 11, we are asking America, and I do not have yet a position, but we are asking to throw away the criminal code of the country, the protections of evidence, due process, and go to military tribunals in the criminal sense.

Maybe I could justify in some areas that happening. Well, that tears up 200 years of precedent and procedure in this country in the criminal law area. Now they come on the floor and civilly they want to rip up 200 years of precedent and history because we had this one attack, when in reality the insurance industry only came to the Congress and said, look, we do not know how to set the rates for liability insurance. They came to us and said, we do not know how to set the premium to create the pool that is necessary to cover potential disasters like this. We have no question that we can handle a \$10 billion disaster without any problem, but we would like to have something between there and \$100 billion that we could not have a dysfunctional economy for a number of years; and after that, we can solve the problem.

Everybody concedes that if the disaster is over \$100 billion, the United States is going to be there, just as it has been for every other disaster in the country. I hope we do not let this argument fall to the level that we are misspeaking or misrepresenting what the facts are and what the true information is.

Neither this side of the aisle nor that side of the aisle wants to see an in-

crease in insurance premiums. That has already happened; it has happened because of the economy, the stock market, and September 11.

All we are trying to do is provide a vehicle that this Congress can pass within the next 10 days to provide a stability for the American economy to help come out of the recession and not go further into recession.

Everybody recognizes, all the free marketeers of the insurance industry, that there is a role of government to be played here. We are trying to provide that role with the least interference to the private sector.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Speaker, I thank the chairman for yielding time to me and commend him on the skill he used in bringing this very complex issue to the floor. As I understand it, the other body is deeply mired in controversy and struggling on this.

I also want to compliment the subcommittee chairman, the gentleman from Louisiana (Mr. BAKER), for his work, and particularly the staff.

Mr. Speaker, this is an extremely important issue, and it is very, very important that we pass this bill. The economic implications if we do not get a bill signed into law before the first of the year could be huge.

I want to just address the issue of the substitute which is at hand right now. I certainly commend the gentleman from New York (Mr. LAFALCE) for his thoughtful attempt to work on this. It has, obviously, some of the same features we have in our underlying bill.

However, the way it is currently drafted, I think it could force some small businesses to pay higher premiums. It could erode the current State regulation system. Very importantly, I think it would potentially discourage insurance companies from using reinsurance, and I think that would be a very bad feature of the substitute.

Mr. Speaker, I believe the sentiments expressed by the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), are very, very well taken. I think it really does have the potential to encourage, in the event of another disaster, a rush to the courthouse; that there could be winners and losers, whereas I think the underlying bill clearly avoids that sort of thing.

I just want to underscore, if people want to sue Osama bin Laden, there are no limits. People can go after Osama bin Laden and his assets and take him to the cleaners, and the attorneys could walk away with 50 or 60 percent of the settlement, if that is in the contingency fee agreement they have reached.

This is about, what are the U.S. taxpayers going to pay? I think this is a very well thought-out bill. Vote no on the substitute and yes on the underlying bill.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. NETHERCUTT). Several remarks by Members during the course of this debate have prompted the Chair to remind Members that it is not in order in a debate to characterize Senate action or inaction. This prohibition includes debate that specifically urges the Senate to take certain action.

PARLIAMENTARY INQUIRY

Mr. WELDON of Florida. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. WELDON of Florida. Mr. Speaker, is it correct that no matter how much inaction there is in the other body, we still cannot talk about it?

The SPEAKER pro tempore. The gentleman fails to state a parliamentary inquiry.

Mr. OXLEY. Mr. Speaker, I yield 4 minutes to the gentleman from Louisiana (Mr. BAKER), the chairman of the subcommittee.

Mr. BAKER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I think it is important at the close of debate on this important substitute to go through quickly the elements that are of concern to those of us looking for appropriate resolution on the question of terrorism insurance.

First, mandatory coverage. Think about it for a moment. The property and casualty premium will now include an undisclosed terrorism premium.

How do we know how that pricing was done? How will we make a judgment as to whether or not it is appropriate, given the risk we think we perceive to our business interests from a terrorist attack?

Under H.R. 3210, we have a separate pricing of the terrorism premium so we can see it off to the side, as against the property and casualty premium, which we can compare with last year's. And so we clearly identify; we do not mandate. They can shop, the taxpayer can make the decision, the consumer can make the decision. Where do I go, and further, Do I really need terrorism insurance?

Second, with regard to the first \$5 billion worth of loss, there has been some suggestion that there is no deductible, no payment by the industry under our approach, and that their approach, having a \$5 billion deductible is somehow going to fix that problem.

There is no mechanism in the bill for distributing that \$5 billion worth of loss across the industry. So if there are two, three, four, five big companies who take the \$5 billion hit, they absorb that hit unfairly against all other companies. There is no mechanism to distribute the loss across all companies. Translation: small businesses get hit.

They attempt to spread the risk, however, by having a complicated process that equals 7 percent of gross premium collected. When we read through it and understand what they are trying to do here, they do not recognize that

a direct insurance company who insures our business turns around and lays off part of that risk to the reinsurance industry. When we lay off that risk, we have to give them the premium. But we are going to set the criteria by which they get taxpayer assistance on 7 percent of the total premium.

To translate that: small business gets nailed. This is not a good approach. It is not a sound approach. Under H.R. 3210, taxpayers are protected first, small businesses are protected second. We help the claimants by making sure that liquidity is provided to the insurance company to help the victims of a heinous act in a timely and prompt manner. It is the only way in which we should proceed.

Finally, with regard to the contentious issue of liability reform, it really is very simple: we are using taxpayer money to help avert an economic calamity as the result of an act of terrorism. The modest reforms contained in this bill limit the amount of money that will go to the trial lawyer.

If we are trying to help people in times of real duress and crisis, is that an unreasonable thing to do? Should we not make sure that taxpayer dollars get to the pocket to which they were intended? I think it highly appropriate to do so.

If Members want a bill that says that we are going to respond to a crisis without creating unnecessary bureaucracy; we are going to do it quickly; we are going to make sure if we extend the credit of taxpayer dollars, that they get the money back; we are going to give the Secretary of the Treasury the ability to administer the program to make sure we do not disrupt a fragile economy by saying, If this does not make sense, Secretary of the Treasury, you have the right to administer to the best economic interests of the citizens of this country and collect the repayment later, but collect it you must.

Now, if Members want a bill that will ensure that big insurance companies, as opposed to small, get helped; that trial lawyers get more money out of the taxpayer; and that there is no guarantee of taxpayer repayment, the substitute is the plan.

But if Members want to help victims of heinous acts of violence in a timely, prompt, professional, accountable manner in which taxpayer resources will be repaid, in which only those who need it receive the assistance, the underlying H.R. 3210 is a piece of work that is not perfect, but it is good. We will be back next year to change it. I am sure the market will tell us the changes we need to make. But failing to act today is the most irresponsible act one could engage in.

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me just make a few points. First of all, I very much want a bill. I think it is important. I have attempted to work in good faith with the members of the opposition, with the

administration, to come up with a good bill. I look forward to working in good faith in the days ahead. I hope it will be the days ahead, rather than the weeks ahead, that we will be able to come to an accord.

Secondly, I do think that there should be a deductible, and there is not one in the gentleman's bill; there is in mine. I think the gentleman from Louisiana (Mr. BAKER) inadvertently made a mistake. We do have an assessment mechanism. No company would have to pay a deductible above 7 percent of net premiums, and we use basically the same mechanism that they use. That certainly is our intent.

With respect to the mandatory coverage, maybe I made a political mistake in offering that, but I think that substantively I am right. Why? Because I cannot get over the 8 years that I chaired the Committee on Small Business. I cannot get over the 4 to 6 years that I was chairman of a small business subcommittee, when I had countless hearings on the problems that small business had with insurance.

Take product liability insurance. We had not an unavailability problem; we had an unaffordability problem. There were periods when product liability insurance was so unaffordable that it was tantamount to unavailable. Therefore, the only way we can ensure that terrorism insurance would not become so unconscionably, astronomically unaffordable for the small business men and women of America is to make sure that we continue in the future what we have experienced in the past, that is, that terrorism coverage has been part of all P&C policies. That is the way the world has worked historically; we simply want to continue that. So I think that substantively we ought to wind up there.

On the issue of victims' compensation, we have to resolve this. There will be no bill if we go forward with the gentleman's provisions. But there is a case for consolidation. There is a case to be made that the taxpayers should not pay for punitive damages. If we could come to an accord there, we can do what is necessary. We can remove that Damoclean sword that is hanging over the head of the economy.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

The SPEAKER pro tempore. The gentleman is recognized for the remaining 3½ minutes.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, this has been a very good debate, and first of all, let me thank members of our committee on both sides of the aisle and their respective staffs for what I think will turn out to be a historic legislative product that we have been able to put together.

The chairman of the subcommittee, the gentleman from Louisiana (Mr. BAKER), has done yeoman's work in

this area and deserves a great deal of credit. My friend, the gentleman from New York (Mr. LAFALCE), as well as his ranking member, Mr. KANJORSKI, have also performed admirably.

Mr. Speaker, this is a historic moment for a new committee. We have faced issues like anti-money laundering and attended a bill-signing ceremony at the White House just 3 weeks ago. Now we come to this difficult issue, the reinsurance issue, something we did not ask for, something that happened to America after September 11; but this committee stepped up. We were asked by the Speaker to produce legislation, and I am very proud of the product that we put together over a difficult issue, and it is complicated.

□ 1515

I am particularly pleased that the substitute that the gentleman from New York (Mr. LAFALCE) offered has so much in common with the underlying bill. The post-event assessment and surcharge systems are largely the same. Both bills have a \$100 million lower trigger, and the idea to protect the taxpayers is clearly inherent in both pieces of legislation.

I would, however, disagree with my friend from New York in regard to the statement he made on the deductible. The summary of the substitute provided to the Committee on Rules says that this 7 percent per company deductible is based on net premiums. That is simply not true. The substitute language actually bases the 7 percent deductible on aggregate premiums. This, of course, penalizes insurers for using reinsurance.

We do not need to be in the business of penalizing insurance companies to provide reinsurance. That is how the system works. As a matter of fact, if my colleagues can imagine a world on September 11 where domestic insurance companies did have not the ability to reinsure, imagine what kind of losses the industry would have taken and imagine what that would have brought to us today.

Indeed, this bill ultimately, when passed, will encourage the growth of reinsurance, and it may be early on that these companies, these domestic companies, will essentially have to reinsure themselves. They cannot go offshore, but I guarantee my colleagues that it will not be long before the reinsurance market offshore, the reinsurers offshore, have to go into the largest market in the world. They cannot afford to stay on the sidelines.

It is one thing on September 12 to announce that they are not going to provide reinsurance coverage for terrorism, but my guess is the American economy, the American people, the American insurance companies, will find a way to provide the kind of coverage for their consumers and their customers and their insurers. When they do that, the reinsurance folks will be running back to try to get back in this game, and that is what this bill is all about.

This is a temporary bill. This is not forever. Even the legal reforms are not forever. They are part of this legislation. So let us defeat the substitute, let us vote for final passage, and let us go on forward to get legislation for the American people.

Mr. CONYERS. Mr. Speaker, I rise in strong support of the substitute and in opposition to the base bill. I do so because the legislation was hijacked by the Rules Committee, which turned a bipartisan insurance relief bill into yet another vehicle to enact a one-sided "tort reform" agenda.

First and foremost, the base text totally eliminates punitive damages. If this passes, Congress would be saying to the future victims of terrorism that the most outrageous acts of gross negligence or intentional misconduct that lead to an act of terrorism are totally immune from punitive damages. Thus, if a baggage screening firm hires a known terrorist who allows a weapon to slip on board a plane, this bill would protect that company from liability.

The base bill also federalizes each and every action involving terrorism, throwing more than 200 years of respect for federalism out the window. Even worse, the liability provisions bear little relationship to the issue of insurance. As a matter of fact, they would apply to cases where the negligent party may have no insurance coverage whatsoever. The bill even takes away all judicial review relating to the bureaucratic decision as to whether terrorism caused the injury, an unprecedented and very likely unconstitutional limitation on victims' rights.

The underlying bill also would limit the ability of the victims of terrorism to collect non-economic damages. This says to innocent victims that damages from loss of consortium can be ignored and damages for victims who lose a limb or are forced to bear excruciating pain for the remainder of their lives are not as important as lost wages. Why Congress would want to prevent a grieving wife from obtaining monetary relief is beyond me, but that is exactly what this bill does.

The bill goes on and on—comprising a veritable wish list of liability limitations. It mandates collateral source offsets, forcing victims to choose between seeking money from charities and pursuing a grossly negligent party in court. It caps attorneys' fees without providing any comparable limitation on defendant's fees. Amazingly, the legislation would criminalize the fee cap, subjecting lawyers to jail time. The bill also eliminates pre-judgment interest, which takes away any incentive for negligent parties to reach pre-trial settlements. All of these harmful provisions are being proposed in the complete absence of hearings or any committee consideration.

If enacted, the tort provisions would constitute the most radical and one-sided liability limitations ever. I urge the Members to vote "yes" on the substitute, and "no" on final passage.

LIABILITY LIMITATION PROVISIONS IN H.R. 3210, THE "TERRORISM RISK PROTECTION ACT"  
(Prepared by the Democratic Staff of the House Judiciary Committee)

Section 15 of H.R. 3210, the "Terrorism Risk Protection Act," proposes new and unnecessary tort reforms that would be harmful to victims of terrorism. Specifically, the bill federalizes all terrorism liability cases,

prohibits judicial review of decisions to federalize such cases, eliminates punitive damages, limits the amount of non-economic damages for which defendants (not just insurers or reinsurers) are liable, mandates collateral source offsets, and imposes caps on attorneys' fees. The following is a section-by-section of H.R. 3210, Section 15.

Section 15. Litigation Management.

Subsection (a). Federal Cause of Action for Claims Relating to Terrorist Acts.

Section 15(a)(1)—In General: provides that, if the Secretary of the Treasury decides there has been one or more acts of terrorism, "there shall exist a Federal cause of action, which, except as provided in subsection (b), shall be the exclusive remedy for claims arising out of, relating to, or resulting from such acts of terrorism." This is a broadly-written provision that would limit victims' rights in every conceivable civil action—state or Federal—involving terrorism, even if the insurer is not a party to the action. In addition, the critical term "act of terrorism" is undefined within the text of the legislation and thus grants too much latitude to the Secretary to deem an event an "act of terrorism" and allow wrongdoers to benefit from this section.

Section 15(a)(2)—Effect of Determination: provides that the Secretary's determinations under section 15(a)(1) shall not be subject to judicial review and shall take effect upon publication in the Federal Register. This provision raises two significant concerns. First, it is likely unconstitutional because the Constitution has been held to provide for judicial review of actions by the Executive. Second, denying judicial review of the Secretary's decisions would grant the Secretary wide latitude to make determinations about what events would constitute "acts of terrorism," such that—as before—a hoax or practical joke could be designated an "act of terrorism."

Section 15(a)(3)—Substantive Law: states that an action under this section is governed by the law and choice of law principles of the state in which the terrorism occurred.

Section 15(a)(4)—Jurisdiction: provides that the Judicial Panel on Multi-district Litigation will designate one court and that court will have exclusive jurisdiction on all cases arising out of a particular terrorist event.

Section 15(a)(5)—Limits on Damages: provides a number of limits on damages in actions brought for damages in connection with any type of civil action related to terrorism, not just those pertaining to commercial property and casualty insurance. These limitations on their face apply in every conceivable action—state or Federal—involving terrorism. In fact, the current version of the bill is worse than that reported by the Financial Services Committee because the earlier bill limited damages only in cases involving commercial property or casualty insurance; the current bill applies to any action related to terrorism, regardless of whether an insurance claim is involved.

Section 15(a)(5)(A): would prohibit punitive damages and pre-judgment interest. Punitive damages are monetary damages awarded to plaintiffs in civil actions when a defendant's conduct has been found to flagrantly violate a plaintiff's rights. The standard for awarding punitive damages is set at the state level, but they are generally allowed only in cases of wanton, willful, reckless or malicious conduct. These damages are used to deter and punish particularly egregious conduct. Eliminating punitive damages totally undermines the deterrent and punishment function of the tort law. The threat of meaningful punitive damages is a major deterrent to wrongdoing, and eliminating punitive damages would severely undercut their de-

terrent value since reckless or malicious defendants could find it more cost effective to continue their callous behavior and risk paying small punitive damage awards. This means baggage screening firms would be protected from liability if they hired incompetent employees or deliberately failed to check for weapons and a terrorist act resulted.

Pre-judgment interest liability is an added incentive to move the judicial process along because a delay would result in a penalty of added interest to the judgment. Without the threat of added interest payments, attorneys for defendants may be prone to delay proceedings because the real dollar value of a judgment amount would be reduced, making the judgment the same no matter how long the process. Limiting interest would unfairly affect the judgment award collected by the victims and leave them vulnerable to a delayed judicial process.

Section 15(a)(5)(B): provides that a defendant will only be liable for non-economic damages in direct proportion to the percentage of the defendant's responsibility for the victim's harm and prohibits plaintiffs from recovering such non-economic damages unless the plaintiff suffered physical harm. This would alter common law rule of joint and several liability between defendants. Under the traditional rule, where more than one defendant is found liable, each defendant is held liable for the full amount of the damages. The justification for this is that it is better that a wrongdoer who can afford to do so pay more than its share, rather than an innocent victim obtain less than full recovery. Also, a defendant who pays more than its share of damages can seek contribution from the other defendants. By holding each defendant responsible only for its percentage of responsibility, this section would supersede state law by eliminating joint and several liability for non-economic damages in these actions. Also, the prohibition on non-economic damages unless physical harm is suffered raises significant concerns. Essentially, a spouse who suffers loss of consortium could not recover any non-economic damages. This is an unprecedented limitation on victims' rights.

In addition, this provision would shift non-economic costs from wrongdoers to victims and discriminate against groups less likely to establish significant economic damages, such as women, children, minorities, seniors, and the poor. It is unconscionable to put more value on the loss of a job than on the loss of a limb, loss of the ability to have children, disfigurement, or other forms of non-economic harms. Also, eliminating joint and several liability for non-economic harms would discourage settlements and thus increase case loads and litigation costs.

Section 15(a)(6)—Collateral Sources: requires that, for compensation of loss related to terrorism, a plaintiff's recovery must be offset by any funds received pursuant to any emergency or disaster relief program or any other collateral source. There are two problems with this provision. First, a reduction of a victim's award due to collateral source compensation would result in wrongdoers escaping their responsibility. This legislation subtracts any other potential sources of recovery the victim may have from any damages the wrongdoer should pay. Losses caused by negligence or wrongdoing would be shifted from liable defendants to the government, private insurers, or disaster relief organizations who made the "collateral source" payment. Second, the provision is too overreaching. The effect would be to require any funding given to the plaintiff, whether it be from health insurance payment or funds from a voluntary organization, be used to offset relief payments made

by culpable defendants. Under this provision, funds received by a victim from the Red Cross must be used to offset relief payments and reduce a wrongdoer's liability.

Section 15(a)(7)—Attorney Fees: provides that attorneys' fees shall be limited to twenty percent of either the damages ordered by a court or any court-approved settlement under this section. Any attorney who charges or receives fees in excess of twenty percent shall be fined not more than \$2,000, imprisoned not more than one year, or both. Fee caps, which apply only to victims, result in less access to justice for lower-income populations. A payment ceiling or fee cap limits the economic incentive for attorneys to take on complex or difficult-to-prove claims under the contingency fee system; in turn, this would make it much more difficult for lower-income populations to secure good representation. Moreover, the threat of imprisonment is without precedent and could deter attorneys from providing assistance.

Section 15(b)—Exclusion: provides that nothing in section 15 shall limit the liability of a person who attempts to commit, commits, participates, or is engaged in a conspiracy to commit an act of terrorism.

Section 15(c)—Right of Subrogation: provides that the United States has the right of subrogation with respect to any claim it paid under this section.

Section 15(d)—Relationship to Other Laws: states that nothing in section 15 shall affect either any party's contractual right to arbitrate a dispute, or any provision of the Air Transportation Safety and System Stabilization Act of 2001 (Pub. L. No. 107-42).

Section 15(e)—Satisfaction of Judgments from Frozen Assets of Terrorists, Terrorist Organizations, and State Sponsors of Terrorism

Section 15(e)(1)—In General: provides that, in any case in which a person obtains a judgment against a terrorist party, the frozen assets of that terrorist party or of any agency or instrumentality of that party shall be available for satisfaction of the judgment. This provision removes foreign sovereign immunity and is designed to ensure that victims of terrorism receive the compensation they are owed, even if the defendant is a foreign state.

Section 15(e)(2)—Presidential Waiver: states that the President, on an asset-by-asset basis, can waive the requirements of subsection 15(e)(1) for any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations. This waiver authority vitiates the protections for victims of state-sponsored terrorism provided for in subsection 15(e)(1). If the President can waive unilaterally any judgment for a victim, then victims could easily receive no compensation for their claims.

Mr. BAKER. Mr. Speaker, let me begin by aligning myself with the statement of Chairman OXLEY regarding the LaFalce substitute. The LaFalce substitute has many of the same components of H.R. 3210 because H.R. 3210 represents, in large part, the cooperative efforts of Chairman OXLEY, Ranking Member LAFALCE, Mr. KANJORSKI and me. However, the differences in the substitute from H.R. 3210 demonstrate exactly where Chairman OXLEY and I diverge from our Democratic colleagues. The LaFalce substitute includes provisions that we simply would not agree to, which is why I urge my colleagues to vote "no."

First, the amendment is anti-consumer in that it mandates commercial property and casualty insurers to include terrorism risk coverage on all policies on the same terms and amounts as their other commercial coverage.

This precludes businesses from creating risk management solutions that meet their particular needs. For instance, many small businesses may not feel that their size, location or exposure merits the additional cost of terrorism insurance—but they would have to pay for it regardless under the LaFalce proposal. By further example, the LaFalce plan would not permit a business to buy only standard commercial property and casualty coverage from one insurer and terrorism coverage from another if there is a pricing advantage in doing so. The plan also denies the insured the ability to self-insure for a certain amount of terrorism risk or to purchase multiple layers of terrorism coverage.

In addition to the problems that mandated coverage creates for consumers, it also unnecessarily preempts state law on form regulation by having the Federal government mandate the terms and conditions of coverage. The certainty provided by the exposure limits in our Bill and the assessment system in our Bill provides the proper incentives for commercial property and casualty insurers to provide terrorism risk coverage.

Another problem with the LaFalce substitute is that the insurance mechanism that it creates does not effectively spread risk, prevent gaming, provide adequate protections to small insurers, or encourage the spreading of risk through reinsurance. While both Bills require that industry pay the first \$5 billion in losses due to terrorism in the first year and the first \$10 billion in subsequent years, the LaFalce plan does not effectively spread this risk throughout the industry. By having a \$5 billion deductible with no provision of how these losses are calculated or paid, his plan competitively disadvantages small insurance companies who would not be able to absorb the tremendous losses that would be incurred by those small insurers before the industry assistance kicks in.

To try to respond to the small insurer disadvantage, the LaFalce plan has an individual insurance company exposure limit of 7 percent of gross premium—not net premium as stated in his summary. This is a very important point in that gross premium numbers do not give credit to the insurer for the reinsurance that it has purchased. Thus, before federal assistance kicks in, the insurer would have to suffer losses equaling over 7 percent of its gross premium even though it has already spread much of the risk that it cannot cover to reinsurers. The result: insurers are not able to write as much insurance and assistance will not kick in for them until they have already been put into financial duress.

Additionally, the LaFalce plan encourages gaming of the system. Insurers will delay claims and loss reports for months or years so that they occur after the industry deductible is reached. That way, they avoid having to absorb any of the losses themselves. Our plan does provide first dollar coverage once the triggers are met to prevent such gaming; and while the LaFalce plan does not require the industry to retain any losses after his proposal starts to provide assistance, our Bill always requires that the insurer absorb at least 10 percent of the losses at all times, regardless of federal assistance.

Finally, the LaFalce substitute strips out the sovereign immunity provisions of H.R. 3210. Acts of terrorism give rise to very unique sets of facts and a complexity of interested parties

that is uncommon in tort law. In the administration of the program established by this Act, it is essential that there is consistency and timely response. Multiple state forums awarding immense damage awards underwritten by federally supported insurance companies would result in a patchwork of inconsistent state court decisions all over the country that would impede the effective and fair implementation of this program. The lack of limited federal forums for claims would result in the kinds of tragic delays in the prompt compensation of victims as we have seen in other mass tort cases, such as the 1993 WTC bombing where cases are just now coming to trial.

Equally as important are the prohibitions on punitive damage awards and joint and several liability for losses caused by terrorist attacks. Acts of terrorism differ fundamentally from other losses that the tort system is designed to deal with in that the overwhelmingly culpable party, the terrorists, will either not be before the court or their assets will be limited or unreachable. To subject effected parties of a terrorism attack and the United States taxpayer to punitive damage awards for the acts of suicidal and maniacal terrorists is a poor allocation of limited resources and simply unfair to the group of victims as a whole. Furthermore, to suggest that an effected party that is found to be 1 percent at fault for a negligent omission of some minor sort could be held responsible for 100 percent of damages due to a terrorist attack is beyond reason.

I strongly urge a "no" vote on this amendment.

The SPEAKER pro tempore (Mr. NETHERCUTT). All time for debate on the amendment in the nature of a substitute has expired.

Pursuant to House Resolution 297, the previous question is ordered on the bill, as amended, and on the amendment offered by the gentleman from New York (Mr. LAFALCE).

The question is on the amendment in the nature of a substitute offered by the gentleman from New York (Mr. LAFALCE).

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

Mr. LAFALCE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 197, nays 222, not voting 14, as follows:

[Roll No. 462]

YEAS—197

Abercrombie	Berry	Carson (OK)
Ackerman	Bishop	Clay
Allen	Blagojevich	Clayton
Andrews	Blumenauer	Clement
Baca	Bonior	Clyburn
Baird	Borski	Condit
Baldacci	Boswell	Conyers
Baldwin	Boucher	Coyne
Barcia	Brady (PA)	Crowley
Barrett	Brown (FL)	Cummings
Becerra	Brown (OH)	Davis (CA)
Bentsen	Capps	Davis (FL)
Berkley	Capuano	Davis (IL)
Berman	Cardin	DeGette

Delahunt  
DeLauro  
Deutsch  
Dicks  
Dingell  
Doggett  
Doyle  
Edwards  
Engel  
Eshoo  
Etheridge  
Evans  
Farr  
Fattah  
Filner  
Frank  
Gephardt  
Gilman  
Gonzalez  
Gordon  
Graham  
Green (TX)  
Gutierrez  
Hall (OH)  
Hastings (FL)  
Hill  
Hilliard  
Hinchey  
Hinojosa  
Hoeffel  
Holden  
Holt  
Honda  
Hooley  
Hoyer  
Inslie  
Israel  
Istook  
Jackson (IL)  
Jackson-Lee (TX)  
Jefferson  
Johnson (IL)  
Johnson, E. B.  
Jones (OH)  
Kanjorski  
Kaptur  
Kennedy (RI)  
Kildee  
Kilpatrick  
Kind (WI)  
Kucinich  
LaFalce  
Lampson  
Langevin  
Lantos  
Larsen (WA)  
LaTourette  
Lee  
Levin  
Lewis (GA)  
Lipinski  
Lofgren  
Lowey  
Luther  
Lynch  
Maloney (CT)  
Maloney (NY)  
Markey  
Mascara  
Matheson  
Matsui  
McCarthy (MO)  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McIntyre  
McKinney  
McNulty  
Meehan  
Meek (FL)  
Meeks (NY)  
Menendez  
Millender-McDonald  
Mink  
Mollohan  
Moore  
Morella  
Murtha  
Nadler  
Napolitano  
Neal  
Oberstar  
Obey  
Oliver  
Ortiz  
Owens  
Pallone  
Pascarell  
Pastor  
Payne  
Pelosi  
Phelps  
Pomeroy

NAYS—222

Aderholt  
Akin  
Armey  
Bachus  
Baker  
Ballenger  
Barr  
Bartlett  
Barton  
Bass  
Bereuter  
Biggert  
Bilirakis  
Blunt  
Boehrlert  
Boehner  
Bonilla  
Bono  
Boozman  
Boyd  
Brady (TX)  
Brown (SC)  
Bryant  
Burr  
Burton  
Buyer  
Callahan  
Calvert  
Camp  
Cannon  
Cantor  
Capito  
Castle  
Chabot  
Coble  
Collins  
Combest  
Costello  
Cox  
Cramer  
Crane  
Crenshaw  
Culberson  
Cunningham  
Davis, Jo Ann  
Deal  
DeLay  
DeMint  
Diaz-Balart  
Dooley  
Doolittle  
Dreier  
Duncan  
Dunn  
Ehlers  
Ehrlich  
Emerson  
English  
Everett  
Ferguson  
Bonilla  
Flake  
Fletcher  
Foley  
Forbes  
Fossella  
Frelinghuysen  
Gallegly  
Ganske  
Gekas  
Gibbons  
Gilchrest  
Gillmor  
Goode  
Goodlatte  
Goss  
Granger  
Graves  
Green (WI)  
Greenwood  
Grucci  
Gutknecht  
Hall (TX)  
Hansen  
Harman  
Hart  
Hastings (WA)  
Hayes  
Hayworth  
Hefley  
Herger  
Hilleary  
Hobson  
Hoekstra  
Horn  
Hostettler  
Houghton  
Hulshof  
Hunter  
Hyde  
Isakson  
Issa  
Jenkins  
John  
Johnson (CT)  
Johnson, Sam  
Jones (NC)  
Keller  
Kelly  
Kennedy (MN)  
Kerns  
King (NY)  
Kingston  
Kirk  
Klecza  
Knollenberg  
Kolbe  
LaHood  
Largent  
Larson (CT)  
Latham  
Leach  
Lewis (CA)  
Lewis (KY)  
Linder  
LoBiondo  
Lucas (KY)  
Lucas (OK)  
Manzullo  
McCreery  
McHugh  
McInnis  
McKeon

Price (NC)  
Rahall  
Reyes  
Rivers  
Rodriguez  
Roemer  
Ross  
Roybal-Allard  
Rush  
Sabo  
Sanchez  
Sanders  
Sandlin  
Sawyer  
Schakowsky  
Schiff  
Scott  
Sessions  
Serrano  
Sherman  
Shows  
Skelton  
Slaughter  
Smith (WA)  
Snyder  
Solis  
Spratt  
Strickland  
Stupak  
Tanner  
Tauscher  
Taylor (MS)  
Terry  
Thompson (CA)  
Thompson (MS)  
Thurman  
Tierney  
Towns  
Traficant  
Turner  
Udall (CO)  
Udall (NM)  
Velazquez  
Visclosky  
Waters  
Watson (CA)  
Watt (NC)  
Waxman  
Weiner  
Woolsey  
Wu  
Wynn  
Mica  
Miller, Dan  
Miller, Gary  
Miller, Jeff  
Moran (KS)  
Moran (VA)  
Myrick  
Nethercutt  
Ney  
Northup  
Norwood  
Nussle  
Osborne  
Ose  
Otter  
Oxley  
Paul  
Pence  
Peterson (MN)  
Peterson (PA)  
Petri  
Pickering  
Pitts  
Platts  
Pombo  
Portman  
Pryce (OH)  
Putnam  
Radanovich  
Ramstad  
Carson (IN)  
Chambliss  
Cooksey  
Cubie  
Davis, Tom  
DeFazio  
Ford  
Frost  
Miller, George  
Quinn  
Stark  
Stearns  
Stenholm  
Stump  
Sununu  
Sweeney  
Tancredo  
Tauzin  
Taylor (NC)  
Thomas  
Thornberry  
Thune  
Tiahrt  
Tiberi  
Toomey  
Upton  
Vitter  
Walden  
Walsh  
Wamp  
Watkins (OK)  
Watts (OK)  
Weldon (FL)  
Weldon (PA)  
Weller  
Whitfield  
Wicker  
Wilson  
Young (AK)  
Young (FL)

NOT VOTING—14

Carson (IN)  
Chambliss  
Cooksey  
Cubie  
Davis, Tom  
DeFazio  
Ford  
Frost  
Miller, George  
Quinn  
Rangel  
Rothman  
Wexler  
Wolf

□ 1541

Messrs. SIMMONS, THOMAS, SMITH of Texas, GUTKNECHT, and Ms. HARMAN changed their vote from “yea” to “nay.”

Messrs. BERRY, OWENS, and PHELPS changed their vote from “nay” to “yea.”

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I would like the record to show that I was right at the door when the vote closed. My colleague, the gentleman from Virginia (Mr. WOLF), and I were in a meeting with the Director of OMB in the Cannon office building. Had I been present, I would have voted no.

Mr. WOLF. Mr. Speaker, I too was in the meeting with the Director of OMB. Had I been present, I would have voted no.

The SPEAKER pro tempore (Mr. NETHERCUTT). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. LAFALCE

Mr. LAFALCE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. LAFALCE. Yes, I am opposed, and the National Taxpayers Union is opposed to the bill in its current form.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. LAFALCE moves to recommit the bill H.R. 3210 to the Committee on Financial Service with instructions to report the same back to the House forthwith with the following amendments:

Strike section 15 of the bill (relating to litigation management).

At the end of section 6 of the bill (relating to federal cost-sharing for commercial insurers), add the following new subsection:

(g) REQUIREMENT.—Notwithstanding any other provision of this Act, the Secretary may not provide financial assistance under this section to any commercial insurer unless the commercial insurer provides to the Secretary such assurances, as the Secretary shall by regulation require, that such insurance company will comply with the regulations issued pursuant to section 7(i).

At the end of section 7 of the bill (relating to assessments), add the following new subsection:

(i) PROHIBITION OF PASS-THROUGH.—The Secretary shall, by regulation, prohibit any commercial insurer from including in any premiums or other charges for property and casualty insurance coverage any amounts to cover any costs attributable to any assessment under this section (including the payment of any such assessment and costs of financing such payment).

□ 1545

Mr. LAFALCE (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. NETHERCUTT). Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. LAFALCE) is recognized for 5 minutes in support of his motion to recommit.

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me make the following points. The National Taxpayers Union not only requests a “no” vote on final passage of the bill, they will be scoring final passage of the bill as it stands. I just want to make Members aware of that.

Second, what is in the motion to recommit takes the House bill as it is right now, two changes, one, a deletion. It deletes all of the tort provisions. Number two, an addition. It would prevent the insurance industry from passing through the costs of repaying the Federal assistance granted under the bill to its customers. Those are the only two changes. We cut out the tort provisions, and we prevent the pass-through of costs.

Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT) to speak to these issues.

Mr. DELAHUNT. Mr. Speaker, the provision that was added by the Committee on Rules last night which would limit relief for the victims of terrorist attacks by immunizing wrongdoers in advance from the consequences of their own negligence and reckless conduct, has nothing whatsoever to do with stabilizing the insurance market, nothing to do with ensuring that people would be able to secure insurance against future acts of terrorism. It does not belong in the bill. The motion to recommit, as the ranking member alluded to, would delete it; and it would leave us basically with the bill reported out with strong bipartisan support from the Committee on Financial Services.



If we are genuinely concerned about preventing an insurance crisis, we should agree to this motion and pass a clean bill. Let us not try to rewrite the fundamental rules of the civil justice system late at night without thoughtful and considerate debate. Note that the Committee on Rules' provision would prohibit the courts from awarding punitive damages in cases arising out of terrorist incidents no matter how outrageous the underlying conduct.

For example, even for private airport security contractors who wantonly, recklessly, maliciously hired convicted felons, failed to perform background checks, there would be no punitive damages. Even for landlords who deliberately ignore safety codes and fail to install escape routes in their buildings, there would be no punitive damages. Nobody wants to hold parties responsible if they bear no blame, but this provision lets them off the hook, even if they knowingly engage in conduct that puts our fellow citizens at risk.

Mr. Speaker, I would hope that the motion to recommit would prevail, and I urge support for the motion.

Mr. LAFALCE. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), a member of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

Mr. KANJORSKI. Mr. Speaker, I support the motion to recommit because it is certainly in the first provision cleaning up the tort reform provisions, which would go a long way in moving the process along to a final conclusion.

A second provision in the bill allows, of course, for restrictions to pass through. As I understand the concept, rather than allowing insurance companies to keep their profit scales and just pass a rate increase on to the customers, even though they have profits that could afford the cost of those losses, they first would have to look at their profits before there is a pass-through.

The purpose of this motion to recommit is to put a bill together that is more tenable for action in the Senate and eventually to pass this House. I urge my colleagues on both sides to re-examine their conscience and put the real issue at stake, the need for reinsurance in this country, a good underlying bill that was structured to accomplish that, and to do it in a bipartisan way.

Mr. LAFALCE. Mr. Speaker, I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. OXLEY) is recognized for 5 minutes in opposition to the motion to recommit.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in addition to striking the litigation management sections, the motion to recommit imposes price controls on the insurance industry. We

can attempt to regulate rates, but we cannot force insurance companies to offer coverage; and States with rate regulation have less competition and higher prices for consumers. Only if we want less insurance availability and higher prices would we vote for this motion to recommit.

Our bill, H.R. 3210, forces the industry, not the taxpayers, to bear the ultimate cost of the terrorist attack. That is what this bill is all about. The bipartisan bill passed out of committee on voice vote allows insurers to price it into future policies.

The motion to recommit says that not only are insurers responsible for spreading terrorist costs, but we are going to force them into insolvency. Why should insurers be punished and not allowed to rebuild their reserves? They should be allowed to reinsure themselves, particularly in light of the fact that the reinsurance industry has gotten out of the business.

These price controls proposed are bad for consumers, bad for policyholders and bad for our national economy.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, I rise in strong opposition to the motion to recommit which would strip from the bill vital litigation management provisions. Without these provisions, the bill would threaten untold numbers of businesses with the loss of capital and credit simply because they might be named in a lawsuit related to a terrorist attack.

Nearly identical litigation management provisions were passed by the House by a vote of 286-139 to cover lawsuits related to the September 11 attacks. Without these provisions, anyone could be on the hook for all damages caused by a terrorist attack, running into billions of dollars, even when they share only 1 percent of the responsibility of the losses and the terrorists share the remaining 99 percent.

If any defendant, even those just marginally involved in such a minuscule portion of any injuries could be made to pay the full amount of non-economic damages caused by a massive terrorist attack, hundreds of legitimate businesses would be thrown into bankruptcy.

Again, existing tort rules are designed to deal with the typical slip-and-fall case. They may properly apply when the primary cause of an injury is excessive water on the floor of a grocery store, but surely that cannot be true when the primary cause is a suicidal fanatic, motivated by the deepest hatred of America and using weapons of mass destruction intended to kill as many innocent people as possible. If anyone can convince me that a slippery floor is the moral equivalent of a terrorist, I will vote for the gentleman's motion myself.

Mr. Speaker, Congress has already recognized this in passing the liability

protection provisions governing lawsuits relating to the September 11 attacks. Without the litigation management provisions, no limits would be placed on the fees of attorneys bringing cases against Americans and their businesses, even when the primary cause of injury is a terrorist.

Without the provisions which allow courts the discretion to keep attorneys' fees reasonable, a few war profiteers can turn attacks that result in multibillion-dollar losses into private jackpots for themselves, that are paid for by the U.S. taxpayers.

Mr. Speaker, I urge all Members to oppose this motion to recommit and ensure equitable compensation to victims while protecting the American economy and the taxpayer.

Mr. OXLEY. Mr. Speaker, I yield the balance of my time to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I had hoped the motion to recommit would offer us the opportunity to fix this bill. I believe the bill is flawed, and I will be voting against it. Unfortunately, minority leadership staff has fouled up, in my opinion, the motion to recommit. I will be voting against the motion to recommit, and voting against the bill as well.

Mr. OXLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

RECORDED VOTE

Mr. LAFALCE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 173, noes 243, not voting 17, as follows:

[Roll No. 463]

AYES—173

Abercrombie	Condit	Hastings (FL)
Ackerman	Conyers	Hilliard
Allen	Costello	Hinchey
Andrews	Coyne	Hinojosa
Baca	Crowley	Hoefel
Baird	Cummings	Holden
Baldacci	Davis (CA)	Holt
Baldwin	Davis (IL)	Honda
Barcia	DeGette	Hooley
Barrett	Delahunt	Hoyer
Becerra	DeLauro	Inslee
Berkley	Dicks	Israel
Berman	Dingell	Jackson (IL)
Berry	Doggett	Jackson-Lee
Bishop	Doyle	(TX)
Blagojevich	Edwards	Jefferson
Bonior	Engel	Johnson, E.B.
Borski	Eshoo	Jones (OH)
Boswell	Evans	Kanjorski
Boyd	Farr	Kaptur
Brady (PA)	Fattah	Kennedy (RI)
Brown (OH)	Filner	Kildee
Capps	Frank	Kind (WI)
Capuano	Gephardt	Klecza
Cardin	Gonzalez	Kucinich
Carson (OK)	Gordon	LaFalce
Clay	Green (TX)	Lampson
Clayton	Gutierrez	Langevin
Clement	Hall (OH)	Lantos
Clyburn	Harman	Larsen (WA)

LaTourette Nadler  
 Lee Napolitano  
 Levin Neal  
 Lewis (GA) Oberstar  
 Lipinski Obey  
 Luther Oliver  
 Lynch Ortiz  
 Maloney (CT) Owens  
 Markey Pallone  
 Mascara Pastor  
 Matheson Payne  
 Matsui Pelosi  
 McCarthy (MO) Phelps  
 McCarthy (NY) Rahall  
 McCollum Reyes  
 McDermott Rivers  
 McGovern Rodriguez  
 McIntyre Ross  
 McKinney Roybal-Allard  
 McNulty Rush  
 Meehan Sabo  
 Meek (FL) Sanchez  
 Meeks (NY) Sanders  
 Menendez Sandlin  
 Millender-Sawyer  
 McDonald Schakowsky  
 Mink Schiff  
 Mollohan Scott  
 Murtha Serrano

Sherman Smith (TX) Taylor (NC)  
 Shows Snyder Terry  
 Skelton Souder Thomas  
 Slaugther Spratt Thompson (CA)  
 Smith (WA) Stark Thornberry  
 Solis Stearns Thune  
 Strickland Strickland Tiahrt  
 Stupak Stump Tiberi  
 Tauscher Sununu Whitfield  
 Taylor (MS) Sweeney Wilson  
 Thompson (MS) Tancredo Wolf  
 Thurman Tanner Vitter  
 Tierney Walden Young (AK)  
 Towns Tawzin Young (FL)

Manzullo Regula Sununu  
 Matheson Rehberg Sweeney  
 McCrery Reynolds Tanner  
 McHugh Riley Tauzin  
 McKeon Rogers (KY) Taylor (MS)  
 Mica Rogers (MI) Taylor (NC)  
 Miller, Dan Rohrabacher Terry  
 Miller, Gary Ros-Lehtinen Thomas  
 Miller, Jeff Roukema Thornberry  
 Moran (KS) Royce Thune  
 Moran (VA) Ryan (WI) Tiahrt  
 Morella Ryun (KS) Tiberi  
 Myrick Saxton Toomey  
 Nethercutt Schrock Towns  
 Ney Sensenbrenner Traficant

NOT VOTING—17

Boehner DeFazio Miller, George  
 Boucher Ford Quinn  
 Carson (IN) Frost Rangel  
 Chambliss Greenwood Rothman  
 Cooksey Johnson (CT) Wexler  
 Cubin Lowey

Northup Norththup Sessions  
 Norwood Norwood Vitter  
 Nussle Nussle Shaw  
 Osborne Osborne Shays  
 Ose Ose Sherwood  
 Otter Otter Shimkus  
 Oxley Oxley Shuster  
 Pence Pence Simmons  
 Peterson (PA) Peterson (PA) Simpson  
 Pickering Pickering Skeen  
 Pitts Pitts Smith (MI)  
 Pombo Pombo Smith (NJ)  
 Portman Portman Smith (TX)  
 Pryce (OH) Pryce (OH) Souder  
 Putnam Putnam Stearns  
 Radanovich Radanovich Stenholm  
 Ramstad Ramstad Stump

NOES—243

Aderholt Fossella McCreery  
 Akin Frelinghuysen McHugh  
 Army Gallegly McInnis  
 Bachus Ganske McKeon  
 Baker Gekas Mica  
 Ballenger Gibbons Miller, Dan  
 Barr Gilchrest Miller, Gary  
 Bartlett Gillmor Miller, Jeff  
 Barton Gilman Moore  
 Bass Goode Moran (KS)  
 Bentsen Goodlatte Moran (VA)  
 Bereuter Goss Morella  
 Biggert Graham Myrick  
 Bilirakis Granger Nethercutt  
 Blumenauer Graves Ney  
 Blunt Green (WI) Northup  
 Boehlert Grucci Norwood  
 Bonilla Gutknecht Nussle  
 Bono Hall (TX) Osborne  
 Boozman Hansen Ose  
 Brady (TX) Hart Otter  
 Brown (FL) Hastings (WA) Oxley  
 Brown (SC) Hayes Pascrell  
 Bryant Hayworth Paul  
 Burr Hefley Pence  
 Burton Herger Peterson (MN)  
 Buyer Hill Peterson (PA)  
 Callahan Hilleary Petri  
 Calvert Hobson Pickering  
 Camp Hoekstra Pitts  
 Cannon Horn Platts  
 Cantor Hostettler Pombo  
 Capito Houghton Pomeroy  
 Castle Hulshof Portman  
 Chabot Hunter Price (NC)  
 Coble Hyde Pryce (OH)  
 Collins Isakson Putnam  
 Combest Issa Radanovich  
 Cox Istook Ramstad  
 Cramer Jenkins Regula  
 Crane John Rehberg  
 Crenshaw Johnson (IL) Reynolds  
 Culberson Johnson, Sam Riley  
 Cunningham Jones (NC) Roemer  
 Davis (FL) Keller Rogers (KY)  
 Davis, Jo Ann Kelly Rogers (MI)  
 Davis, Tom Kennedy (MN) Rohrabacher  
 Deal Kerns Ros-Lehtinen  
 DeLay Kilpatrick Roukema  
 DeMint King (NY) Royce  
 Deutsch Kingston Ryan (WI)  
 Diaz-Balart Kirk Ryan (KS)  
 Dooley Knollenberg Saxton  
 Doolittle Kolbe Schaffer  
 Dreier LaHood Schrock  
 Duncan Largent Sensenbrenner  
 Dunn Larson (CT) Sessions  
 Ehlers Latham Shadegg  
 Ehrlich Leach Shaw  
 Emerson Lewis (CA) Shays  
 English Lewis (KY) Sherwood  
 Etheridge Linder Shimkus  
 Everett LoBiondo Shuster  
 Ferguson Lofgren Simmons  
 Flake Lucas (KY) Simpson  
 Fletcher Lucas (OK) Skeen  
 Foley Maloney (NY) Smith (MI)  
 Forbes Manzullo Smith (NJ)

□ 1618  
 Mr. ROEMER and Mr. MORAN of Virginia changed their vote from “aye” to “no.”

Mr. CARSON of Oklahoma changed his vote from “no” to “aye.”

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. NETHERCUTT). The question is on passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. LAFALCE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 227, noes 193, not voting 13, as follows:

[Roll No. 464]

AYES—227

Aderholt Davis, Jo Ann Hayes  
 Akin Davis, Tom Hayworth  
 Army Deal Herger  
 Bachus DeLay Hilleary  
 Baker DeMint Hobson  
 Ballenger Diaz-Balart Hoekstra  
 Barcia Dooley Holden  
 Barr Doolittle Horn  
 Bartlett Dreier Hostettler  
 Barton Dunn Houghton  
 Bass Ehlers Hulshof  
 Bereuter Ehrlich Hunter  
 Biggert Emerson Hyde  
 Bilirakis English Isakson  
 Blunt Everett Issa  
 Boehlert Ferguson Istook  
 Boehner Fletcher Jenkins  
 Bonilla Folely John  
 Bono Forbes Johnson (CT)  
 Boozman Fossella Johnson (IL)  
 Brady (TX) Frelinghuysen Johnson, Sam  
 Brown (SC) Gallegly Jones (NC)  
 Bryant Ganske Keller  
 Burr Gekas Kelly  
 Burton Gibbons Kennedy (MN)  
 Buyer Gilchrest Kerns  
 Callahan Gillmor King (NY)  
 Calvert Gilman Kingston  
 Camp Goode Kirk  
 Cannon Goodlatte Knollenberg  
 Cantor Gordon Kolbe  
 Capito Goss LaHood  
 Castle Graham Largent  
 Chabot Granger Larson (CT)  
 Clement Graves Latham  
 Coble Green (WI) LaTourette  
 Collins Greenwood Leach  
 Combest Grucci Lewis (CA)  
 Cox Gutknecht Lewis (KY)  
 Cramer Hall (OH) Linder  
 Hall (TX) Hall (TX) LoBiondo  
 Hansen Hansen Lucas (KY)  
 Hart Hart Lucas (OK)  
 Hastings (WA) Hastings (WA) Maloney (CT)

NOES—193

Abercrombie Hefley Oberstar  
 Ackerman Hill Obey  
 Allen Hilliard Olver  
 Andrews Hinchey Ortiz  
 Baca Hinojosa Owens  
 Baird Hoeffel Pallone  
 Baldacci Holt Pascrell  
 Baldwin Honda Pastor  
 Barrett Hooley Paul  
 Becerra Hoyer Payne  
 Bentsen Inslee Pelosi  
 Berkley Israel Peterson (MN)  
 Berman Jackson (IL) Petri  
 Berry Jackson-Lee Phelps  
 Bishop (TX) Platts  
 Blagojevich Jefferson Pomeroy  
 Blumenauer Johnson, E. B. Price (NC)  
 Bonior Jones (OH) Rahall  
 Borski Kanjorski Reyes  
 Boswell Kaptur Rivers  
 Boyd Kennedy (RI) Rodriguez  
 Brady (PA) Kildee Roemer  
 Brown (FL) Kilpatrick Ross  
 Brown (OH) Kind (WI) Roybal-Allard  
 Capps Kleczka Rush  
 Capuano Kucinich Sabo  
 Cardin LaFalce Sanchez  
 Carson (OK) Lampson Sanders  
 Clay Langevin Sandlin  
 Clayton Lantos Sawyer  
 Clyburn Larsen (WA) Schaffer  
 Condit Lee Schakowsky  
 Conyers Levin Schiff  
 Costello Lewis (GA) Scott  
 Coyne Lipinski Serrano  
 Crowley Lofgren Sherman  
 Cummings Luther Shows  
 Davis (CA) Lynch Skelton  
 Davis (FL) Maloney (NY) Slaughter  
 Davis (IL) Markey Smith (WA)  
 DeGette Mascara Snyder  
 Delahunt Matsui Solis  
 DeLauro McCarthy (MO) Spratt  
 Deutsch McCarthy (NY) Stark  
 Dicks McCollum Strickland  
 Dingell McDermott Stupak  
 Doggett McGovern Tancredo  
 Doyle McInnis Tauscher  
 Duncan McIntyre Thompson (CA)  
 Edwards McKinney Thompson (MS)  
 Engel McNulty Thurman  
 Eshoo Meehan Tierney  
 Etheridge Meek (FL) Turner  
 Evans Meeks (NY) Udall (CO)  
 Farr Menendez Udall (NM)  
 Fattah Millender Velazquez  
 Filner McDonald Visclosky  
 Flake Miller, George Waters  
 Frank Mink Watson (CA)  
 Gephardt Mollohan Watt (NC)  
 Gonzalez Moore Waxman  
 Green (TX) Murtha Weiner  
 Gutierrez Nadler Wolsey  
 Harman Napolitano Wu  
 Hastings (FL) Hastings (FL) Neal Wynn

## NOT VOTING—13

Boucher	DeFazio	Rangel
Carson (IN)	Ford	Rothman
Chambliss	Frost	Wexler
Cooksey	Lowe	
Cubin	Quinn	

□ 1637

Mr. CROWLEY changed his vote from "aye" to "no."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### MUSCULAR DYSTROPHY COMMUNITY ASSISTANCE, RESEARCH AND EDUCATION AMENDMENTS OF 2001

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 717) to amend the Public Health Service Act to provide for research with respect to various forms of muscular dystrophy, including Duchenne, Becker, limb girdle, congenital, facioscapulohumeral, myotonic, oculopharyngeal, distal, and Emery-Dreifuss muscular dystrophies, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Page 17, after line 6 insert:

#### SEC. 7. STUDY ON THE USE OF CENTERS OF EXCELLENCE AT THE NATIONAL INSTITUTES OF HEALTH.

(a) REVIEW.—Not later than 60 days after the date of enactment of this Act, the Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for the purpose of conducting a study and making recommendations on the impact of, need for, and other issues associated with Centers of Excellence at the National Institutes of Health.

(b) AREAS OF REVIEW.—In conducting the study under subsection (a), the Institute of Medicine shall at a minimum consider the following:

(1) The current areas of research incorporating Centers of Excellence (which shall include a description of such areas) and the relationship of this form of funding mechanism to other forms of funding for research grants, including investigator initiated research, contracts and other types of research support awards.

(2) The distinctive aspects of Centers of Excellence, including the additional knowledge that may be expected to be gained through Centers of Excellence as compared to other forms of grant or contract mechanisms.

(3) The costs associated with establishing and maintaining Centers of Excellence, and the record of scholarship and training resulting from such Centers. The research and training contributions of Centers should be assessed on their own merits and in comparison with other forms of research support.

(4) Specific areas of research in which Centers of Excellence may be useful, needed, or underused, as well as areas of research in which Centers of Excellence may not be helpful.

(5) Criteria that may be applied in determining when Centers of Excellence are an appropriate and cost-effective research investment and conditions that should be present in order to consider the establishment of Centers of Excellence.

(6) Alternative research models that may accomplish results similar to or greater than Centers of Excellence.

(c) REPORT.—Not later than 1 year after the date on which the contract is entered into under subsection (a), the Institute of Medicine shall complete the study under such subsection and submit a report to the Secretary of Health and Human Services and the appropriate committees of Congress that contains the results of such study.

Mr. TAUZIN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. NETHERCUTT). Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Louisiana?

Mr. WICKER. Mr. Speaker, reserving the right to object, and I certainly shall not object as the sponsor of this legislation. I just wanted to take this opportunity to thank the gentleman from Louisiana (Mr. TAUZIN) and also the gentleman from Florida (Mr. BILIRAKIS) for their hard work and cooperation on this issue, along with expressing my thanks to the ranking members, the gentleman from Michigan (Mr. DINGELL) and the gentleman from Ohio (Mr. BROWN), as well as to my principal cosponsor, the gentleman from Minnesota (Mr. PETERSON).

Mr. Speaker, let me just briefly say that this legislation left this House with a unanimous vote and 310 cosponsors, and it will authorize the Centers of Excellence at the National Institutes of Health as well as an epidemiological survey at the CDC for Duchenne muscular dystrophy and other forms of childhood muscular dystrophy.

I have to say that I cannot think of a better Christmas present during this time between Thanksgiving and Christmas for the tens of thousands of parents whose children suffer from this lethal disease. Duchenne muscular dystrophy, as the gentleman from Louisiana (Mr. TAUZIN) knows, is the most common and most lethal form of childhood genetic disease. By the passage of this legislation tonight, we are giving honest, real hope to the parents of these children and to the entire American people who want to fight this disease. My appreciation goes to everyone.

I have been a strong supporter of NIH and all of the scientists and dedicated professionals at the National Institutes of Health. I want to thank them for their cooperation for helping us write a better bill than I had originally offered. I am grateful to everyone, and my hat is off to the Duchenne muscular dystrophy parents who have actually made this possible.

With those words of thanks and appreciation, I yield to the gentleman from Louisiana under my reservation.

Mr. TAUZIN. Mr. Speaker, I thank the gentleman for yielding, and I want to commend the gentleman for his extraordinary work in this area. Not only will this bill, because of his great work, authorize NIH to do extensive new re-

search on Duchenne muscular dystrophy, but also other forms of childhood muscular dystrophy. What we have learned is when they do extensive research in these areas, very much of it is genetic research and that genetic research yields all sorts of information on other diseases, such as Friedreich's ataxia, which is a disease of my culture, the Cajun culture. We learn a great deal every time we do extensive research into these genetic disease areas and as the gentleman said, not only tens of thousands of parents whose children suffer with these disease, but countless tens and perhaps hundreds of thousands of families who may get an answer to diseases comparable or similar to these may come out of this research.

I want to thank the gentleman for his great work on it; and again, I think not only many families will receive this as a great Christmas gift, but future generations are going to be grateful for the work he has done on this bill.

Mr. WICKER. Mr. Speaker, reclaiming my time under my reservation, I thank my chairman. I will simply conclude by saying it is not often that we are surprised with this legislative business, but I think the speed with which this legislation swept through the House of Representatives and also the other body has taken my breath away. My hat is off to the leadership of the House and to the gentleman from Louisiana (Mr. TAUZIN).

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Louisiana?

There was no objection.

A motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 717.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

#### ACCESS AND OPENNESS IN SMALL BUSINESS LENDING ACT OF 2001

(Mr. MCGOVERN asked and was given permission to address the House for 1 minute and to revise and extend his remarks, and include therein extraneous material.)

Mr. MCGOVERN. Mr. Speaker, I join my colleagues today to introduce the Access and Openness in Small Business Lending Act of 2001, a bill that I hope will dramatically improve lending practices that benefit women and minority-owned small businesses.

This legislation will amend the Equal Credit Opportunity Act and require depository lenders such as banks, credit