

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5840  
OFFERED BY MR. KANJORSKI OF PENNSYLVANIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Insurance Information  
3 Act of 2008”.

**4 SEC. 2. OFFICE OF INSURANCE INFORMATION.**

5 (a) DUTIES OF SECRETARY.—Section 321(a) of title  
6 31, United States Code, is amended—

7 (1) in paragraph (7), by striking “and” at the  
8 end;

9 (2) in paragraph (8)(C), by striking the period  
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following new  
12 paragraph:

13 “(9) serve as the principal advisor to the Presi-  
14 dent and the Congress on domestic and international  
15 policy issues in connection with all lines of insurance  
16 except health insurance.”.

17 (b) ESTABLISHMENT OF OFFICE.—Subchapter I of  
18 chapter 3 of title 31, United States Code, is amended—

1 (1) by transferring and inserting section 312  
2 after section 313;

3 (2) by redesignating sections 313 and 312 (as  
4 so transferred) as sections 312 and 314, respec-  
5 tively; and

6 (3) by inserting after section 312 (as so redesi-  
7 gnated) the following new section:

8 **“SEC. 313. OFFICE OF INSURANCE INFORMATION.**

9 “(a) ESTABLISHMENT.—There is established within  
10 the Department of the Treasury the Office of Insurance  
11 Information.

12 “(b) LEADERSHIP.—The Office shall be headed by a  
13 Director, who shall be appointed by the Secretary of the  
14 Treasury. The position of such Director shall be a career  
15 reserved position in the Senior Executive Service.

16 “(c) FUNCTIONS.—

17 “(1) AUTHORITY PURSUANT TO DIRECTION OF  
18 SECRETARY.—The Office shall have the authority,  
19 pursuant to the direction of the Secretary, as fol-  
20 lows:

21 “(A) To receive and collect (directly from  
22 the States and from other sources), and to ana-  
23 lyze and disseminate, data and information, and  
24 to issue reports, regarding all lines of insurance  
25 except health insurance, except that—

1           “(i) the submission of any non-pub-  
2           licly available data and information to the  
3           Office shall be voluntary and such submis-  
4           sion shall not constitute a waiver of, or  
5           otherwise affect, any privilege or confiden-  
6           tiality protection to which the data or in-  
7           formation is otherwise subject;

8           “(ii) to the extent that any such data  
9           and information has already been received  
10          or collected by, or can efficiently be re-  
11          ceived or collected by, the States (including  
12          the insurance commissioners of the  
13          States), the National Association of Insur-  
14          ance Commissioners, or any other appro-  
15          priate source, the Office may enter into an  
16          information-sharing agreement with such  
17          source to provide for the receipt of such  
18          data by the Office;

19          “(iii) any requirement under Federal  
20          or State law to the extent otherwise appli-  
21          cable, or any requirement pursuant to a  
22          written agreement in effect between the  
23          original source of any non-publicly avail-  
24          able data or information and the source of  
25          such data or information to the Office, re-

1           garding the privacy or confidentiality of  
2           any data or information in the possession  
3           of the source to the Office, and any privi-  
4           lege arising under Federal or State law  
5           (including the rules of any Federal or  
6           State court) with respect to such data or  
7           information, shall continue to apply to  
8           such data or information after the data or  
9           information has been provided pursuant to  
10          this subparagraph to the Office;

11                 “(iv) the Office shall treat as con-  
12           fidential and privileged any data or infor-  
13           mation obtained from any source that is  
14           entitled to confidential treatment under ap-  
15           plicable State or Federal law or regula-  
16           tions, or under any agreement to which the  
17           source is a party and shall take all reason-  
18           able steps to oppose any effort to secure  
19           disclosure of the data or information by  
20           the Office;

21                 “(v) the Office may not in any case  
22           disclose to any party any personally identi-  
23           fiable information received or collected by  
24           the Office pursuant to this subparagraph;  
25           and

1           “(vi) any non-publicly available data  
2           and information received or collected by  
3           the Office pursuant to this subparagraph  
4           shall be considered trade secrets and com-  
5           mercial or financial information that is  
6           privileged and confidential pursuant to sec-  
7           tion 552(b)(4) of title 5, United States  
8           Code, and may not be disclosed to the Ad-  
9           visory Group established under subsection  
10          (k).

11          “(B) To coordinate Federal efforts and es-  
12          tablish Federal policy on international insur-  
13          ance matters, including working with the Inter-  
14          national Association of Insurance Supervisors.

15          “(C) To determine, in accordance with  
16          subsection (e), whether State insurance meas-  
17          ures are inconsistent with such policy, including  
18          agreements entered into by the United States  
19          or on its behalf by a designated representative  
20          with a foreign government, authority, or regu-  
21          latory entity.

*as included  
in  
(by uc)*

22          “(D) To serve as a liaison between the  
23          Federal Government and the individual and sev-  
24          eral States regarding insurance matters of na-  
25          tional importance and international importance.

1           “(E) To serve as the primary advisor, re-  
2           garding the export promotion of United States  
3           insurance products and services, to the Treas-  
4           ury representative to the Trade Promotion Co-  
5           ordinating Committee.

6           “(2) ADVISORY FUNCTIONS.—To advise the  
7           Secretary on major domestic and international in-  
8           surance policy issues, including matters that affect  
9           consumers and insurers, such as, and including, fi-  
10          nancial guarantee insurance, catastrophe insurance,  
11          and reinsurance requirements.

12          “(d) SCOPE.—The authority of the Office and the Di-  
13          rector with respect to insurance shall extend to all lines  
14          of insurance except health insurance, as determined by the  
15          Secretary based on section 2791 of the Public Health  
16          Service Act (42 U.S.C. 300gg-91).

17          “(e) PREEMPTION OF STATE INSURANCE MEAS-  
18          URES.—

19                 “(1) STANDARD.—Subject to paragraph (4), a  
20          State insurance measure shall be preempted if such  
21          State insurance measure is determined, in accord-  
22          ance with this subsection, to be inconsistent with  
23          agreements relating to Federal policy on inter-  
24          national insurance matters as established by the Of-  
25          fice and as entered into by the United States or on

1 its behalf by a designated representative with a for-  
2 eign government, authority, or regulatory entity.

3 “(2) SCOPE.—A State insurance measure shall  
4 be preempted under this subsection only to the ex-  
5 tent that the measure treats a non-United States in-  
6 surer domiciled in a jurisdiction that is subject to an  
7 agreement referred to in paragraph (1) more or less  
8 favorably than it treats a United States insurer  
9 domiciled in such State.

10 “(3) DETERMINATION.—

11 “(A) AUTHORITY OF DIRECTOR.—Pursu-  
12 ant to the subsection (c)(1)(C), the Director  
13 may determine whether inconsistencies referred  
14 to in paragraph (1) of this subsection exist.

15 “(B) NOTICE OF POTENTIAL INCONSIST-  
16 ENCY.—Before making any determination re-  
17 garding whether an inconsistency referred to in  
18 paragraph (1) exists, the Director shall—

19 “(i) cause to be published in the Fed-  
20 eral Register notice of the issue regarding  
21 the potential inconsistency or preemption,  
22 including a description of each State insur-  
23 ance measure at issue and the Federal pol-  
24 icy on international insurance matters em-  
25 bodied in an agreement entered into by the

1 United States or on its behalf by a des-  
2 ignated representative, at issue;

3 “(ii) provide interested parties a pe-  
4 riod of not less than 30 days during which  
5 to submit written comments to the Office;  
6 and

7 “(iii) in making the determination,  
8 consider any comments received.

9 “(C) INITIAL DETERMINATION.—Upon  
10 making any determination regarding whether  
11 an inconsistency referred to in paragraph (1)  
12 exists, the Director shall—

13 “(i) cause to be published in the Fed-  
14 eral Register notice of such determination;

15 “(ii) notify the appropriate State of  
16 such determination; and

17 “(iii) in the case of determination that  
18 such an inconsistency exists, establish a  
19 reasonable period of time before a final de-  
20 termination under subparagraph (D) is  
21 made.

22 “(D) FINAL DETERMINATION.—In the case  
23 of an initial determination that an inconsistency  
24 referred to in paragraph (1) exists, upon the  
25 conclusion of the period referred to in subpara-

1 graph (C)(iii) of this paragraph with respect to  
2 such determination, the Director shall make a  
3 final determination of whether such inconsis-  
4 tency still exists. If the Director determines that  
5 such inconsistency still exists, the Director shall  
6 notify the State and the Secretary of such final  
7 determination.

8 “(E) CONSIDERATION OF STAY BY SEC-  
9 RETARY; EFFECTIVE DATE OF PREEMPTION.—

10 In the case of a final determination under sub-  
11 paragraph (D) that an inconsistency referred to  
12 in paragraph (1) exists, the Secretary, after  
13 consultation with the Director, shall determine  
14 whether to stay preemption under paragraph  
15 (4). Immediately upon such determination, the  
16 <sup>Secretary</sup>~~Director~~ shall cause to be published in the Fed-  
17 eral Register notice of whether the State insur-  
18 ance measure is preempted pursuant to para-  
19 graph (1), to the extent of the inconsistency, or  
20 whether preemption is stayed pursuant to para-  
21 graph (4), and shall submit to the Congress a  
22 copy of such notice. Any such preemption shall  
23 be effective upon the expiration of the 90-day  
24 period beginning upon the publication of notice

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1 under this subparagraph unless the Congress by  
2 its action prevents such effectiveness.

3 “(4) STAY.—Notwithstanding any determina-  
4 tion by the Director that an inconsistency referred  
5 to in paragraph (1) exists, the Secretary shall stay  
6 preemption under this subsection, before publication  
7 of notice of preemption under paragraph (3)(E), if  
8 the Secretary determines that—

9 “(A) maintaining the State insurance  
10 measure is necessary for prudential reasons, in-  
11 cluding for—

12 “(i) the protection of policyholders  
13 and policy claimants;

14 “(ii) the maintenance of the safety,  
15 soundness, integrity or financial responsi-  
16 bility of any entity involved in the business  
17 of insurance or insurance operations; or

18 “(iii) ensuring the integrity and sta-  
19 bility of the United States financial sys-  
20 tem;

21 “(B) preemption will result in any need to  
22 establish a supervisory or regulatory authority  
23 of the Office or the Secretary over any entity  
24 involved in the business of insurance or insur-  
25 ance operations in the United States; or

1           “(C) preemption will result in a gap or  
2           void in financial or market conduct regulation  
3           of any entity involved in the business of insur-  
4           ance or insurance operations in the United  
5           States.

6           “(5) ADMINISTRATIVE REVIEW.—Any State  
7           whose insurance measure is preempted under this  
8           subsection and any other aggrieved person shall have  
9           the right to appeal such preemption to the Sec-  
10          retary, but only if the Secretary receives notice of  
11          such appeal before publication of notice of preemp-  
12          tion under paragraph (3)(E).

13          “(6) APPLICABILITY OF ADMINISTRATIVE PRO-  
14          CEDURES ACT.—Determinations under this sub-  
15          section shall be subject to the applicable provisions  
16          of subchapter II of chapter 5 of title 5, United  
17          States Code (relating to administrative procedure),  
18          and chapter 7 of such title (relating to judicial re-  
19          view).

20          “(7) LIMITATION.—No State may enforce a  
21          State insurance measure to the extent that it has  
22          been preempted pursuant to this subsection.

23          “(8) POLICIES AND PROCEDURES.—The Sec-  
24          retary may, by publication in the Federal Register,

1 issue policies and procedures to implement this sub-  
2 section and subsection (e)(1)(C).

3 “(f) SAVINGS PROVISION.—Nothing in this section  
4 shall affect the preemption of any State insurance meas-  
5 ure otherwise inconsistent with and preempted by Federal  
6 law.

7 “(g) CONSULTATION.—

8 “(1) DIRECTOR.—The Director shall consult  
9 with the Advisory Group established under sub-  
10 section (k) regarding—

11 “(A) any agreement described in sub-  
12 section (e)(1), before such agreement is entered  
13 into; and

14 “(B) any initial or final determination of  
15 preemption under subsection (e)(3).

16 “(2) SECRETARY.—The Secretary shall consult  
17 with the Advisory Group established under sub-  
18 section (k) regarding any stay of preemption under  
19 subsection (e)(4).

20 “(h) REPORTS TO CONGRESS.—

21 “(1) BIENNIAL REPORTS.—The Director, in  
22 consultation with the insurance commissioners or su-  
23 pervisors of the States, shall submit a report during  
24 each Congress to the Committee on Financial Serv-  
25 ices of the House of Representatives and the Com-

1        mittee on Banking, Housing, and Urban Affairs of  
2        the Senate on the financial state of the insurance in-  
3        dustry, meaningful trends in the industry, any ac-  
4        tions taken by the Office pursuant to subsection (e),  
5        (regarding preemption of inconsistent State insur-  
6        ance measures), and any other information as  
7        deemed relevant by the Director or as requested by  
8        such Committees.

9            “(2) REPORTS ON STATE INSURANCE MEAS-  
10        URES NOT PREEMPTED.—The Director shall submit  
11        a report to each of the Committees referred to in  
12        paragraph (1) of this subsection regarding any State  
13        insurance measure that would have been preempted  
14        but for any stay of preemption under subsection  
15        (e)(4).

16            “(3) OTHER REPORTS.—The Director shall sub-  
17        mit such other informal reports as the Director con-  
18        siders necessary or as are requested by the Con-  
19        gress.

20            “(i) USE OF EXISTING RESOURCES.—The Office may  
21        employ personnel, facilities, and other Department of the  
22        Treasury resources available to the Secretary on the date  
23        of enactment of the Insurance Information Act of 2008  
24        in carrying out this section, except as otherwise prohibited  
25        by law.

1       “(j) RETENTION OF EXISTING REGULATORY AU-  
2 THORITY.—Nothing in this section may be construed to  
3 establish a general supervisory or regulatory authority of  
4 the Office or the Department of the Treasury over the  
5 business of insurance.

6       “(k) ADVISORY GROUP.—

7               “(1) ESTABLISHMENT.—There is hereby estab-  
8 lished the Advisory Group to the Office of Insurance  
9 Information (in this subsection referred to as the  
10 ‘Advisory Group’).

11               “(2) MEMBERSHIP.—The Advisory Group shall  
12 consist of no more than 13 members who shall be  
13 appointed by the Secretary, and shall include—

14                       “(A) State insurance commissioners or su-  
15 pervisors, as nominated by the National Asso-  
16 ciation of Insurance Commissioners;

17                       “(B) a representative each of—

18                               “(i) State legislators, as nominated by  
19 the National Conference of Insurance Leg-  
20 islators;

21                               “(ii) the Department of Commerce;

22                               “(iii) the Federal Trade Commission;

23                               “(iv) the Office of the United States  
24 Trade Representative;

25                               “(v) the life insurance industry;

1                   “(vi) the property and casualty insur-  
2                   ance industry;

3                   “(vii) the reinsurance industry; and

4                   “(viii) the insurance producer indus-  
5                   try; and

6                   “(C) such other representatives of the in-  
7                   surance industry, consumer groups, and other  
8                   organizations as the Secretary determines are  
9                   appropriate.

10                  “(3) DUTIES.—The sole functions of the Advi-  
11                  sory Group shall be to make recommendations to the  
12                  Secretary and the Director regarding the function of  
13                  the Office under subsection (c)(1)(B) and to consult  
14                  with the Director and the Secretary pursuant to  
15                  subsection (g).

16                  “(1) DEFINITIONS.—For purposes of this section, the  
17                  following definitions shall apply:

18                  “(1) NON-UNITED STATES INSURER.—The term  
19                  ‘non-United States insurer’ means an insurer, or re-  
20                  insurer, that is organized under the laws of a juris-  
21                  diction other than a State, but does not include any  
22                  United States branch of such an insurer.

23                  “(2) OFFICE.—The term ‘Office’ means the Of-  
24                  fice of Insurance Information established by this sec-  
25                  tion.

1           “(3) SECRETARY.—The term ‘Secretary’ means  
2           the Secretary of the Treasury.

3           “(4) STATE.—The term ‘State’ means any of  
4           the 50 States, the District of Columbia, the Com-  
5           monwealth of Puerto Rico, the United States Virgin  
6           Islands, Guam, American Samoa, the Trust Terri-  
7           tory of the Pacific Islands, the Commonwealth of the  
8           Northern Mariana Islands, and any other territory  
9           of the United States.

10           “(5) STATE INSURANCE MEASURE.—The term  
11           ‘State insurance measure’ means any State law, reg-  
12           ulation, administrative ruling, bulletin, guideline, or  
13           practice relating to or affecting the provision of in-  
14           surance or reinsurance.

15           “(6) UNITED STATES INSURER.—The term  
16           ‘United States insurer’ means—

17                   “(A) an insurer, or reinsurer, that is orga-  
18                   nized under the laws of a State; or

19                   “(B) a United States branch of a non-  
20                   United States insurer.

21           “(m) AUTHORIZATION OF APPROPRIATIONS.—There  
22           are authorized to be appropriated for the Office such sums  
23           as may be necessary for each fiscal year.”.

24           (c) INDEPENDENCE IN CONGRESSIONAL TESTIMONY  
25           AND RECOMMENDATIONS.—Section 111 of Public Law

1 93–495 (12 U.S.C. 250) is amended by inserting “the Di-  
2 rector of the Office of Insurance Information of the De-  
3 partment of the Treasury,” after “Office of Thrift Super-  
4 vision,”.

5 (d) CLERICAL AMENDMENT.—The table of sections  
6 for subchapter I of chapter 3 of title 31, United States  
7 Code, is amended by striking the item relating to section  
8 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Office of Insurance Information.

“Sec. 314. Continuing in office.”.



