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Terrorism Risk Insurance Legislation in 2007: Issue Summary and Side-by-Side

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Summary

Prior to the September 11, 2001 terrorist attacks, insurance covering terrorism losses was normally included in general insurance policies without additional cost to the policyholders. Following the attacks, both primary insurers and reinsurers pulled back from offering terrorism coverage, citing particularly an inability to calculate the probability of loss and gather the loss data critical for insurance pricing. Some argued that terrorism risk would never be insurable by the private market due to the uncertainty and potentially massive losses involved. Because insurance is required for a variety of economic transactions, it was feared that a lack of insurance against terrorism loss would have a wider economic impact.

Congress responded to the disruption in the insurance market by passing the Terrorism Risk Insurance Act of 2002 (TRIA). TRIA created a temporary program, expiring at the end of 2005, to calm the insurance markets through a government backstop for terrorism losses and to give the private industry time to gather the data and create the structures and capacity necessary for private insurance to cover terrorism risk. From 2002 to 2005, terrorism insurance became widely available and largely affordable, and the insurance industry greatly expanded its financial capacity. There was, however, little apparent success on a longer term private solution and fears persisted about wider economic consequences if insurance were not available. Congress responded to the impending expiration of TRIA with the passage of the Terrorism Risk Insurance Extension Act (TRIEA). TRIEA extended the TRIA program until the end of 2007 while increasing the private sector exposure to terrorism risk.

The two years under the extended TRIA program have been very similar to the three years under the first act. The general market for terrorism insurance has improved, but doubts remain as to capacity of the private sector to finance large-scale terrorism risk in the United States, as well as whether terrorism risk can be considered an insurable event at all. On September 19, 2007, The House took up and passed H.R. 2761, which would extend the TRIA program 15 years and make substantial other changes . On October 17, 2007, the Senate Banking Committee marked up an original bill, which would extend TRIA seven years while making more limited changes to the underlying law. It is unclear when exactly the Senate may consider the Banking Committee bill, but action would be necessary before the end of 2007 if expiration of the program is to be avoided.

This report briefly outlines the issues involved with terrorism insurance and includes a side-by-side of the current TRIA law, and the House and Senate TRIA-extension legislation. It will be updated as legislative events occur. For more complete information on the issue, please see CRS Report RL34025, *Terrorism Risk Insurance: Issue Analysis and Legislation*, by Baird Webel.

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Introduction

Prior to the September 11, 2001 terrorist attacks, insurance covering terrorism losses was normally included in general insurance policies without a specific premium being paid for this coverage. The attacks, and the more than $30 billion in insured losses that resulted from them, caused a rethinking of the possibilities of future terrorist attacks. In response to the new appreciation of the threat and the perceived inability to calculate the probability of loss and gather the loss data critical for pricing insurance, both primary insurers and reinsurers pulled back from offering terrorism coverage. Many argued that terrorism risk is essentially uninsurable by the private market due to the uncertainty and potentially massive losses involved. Because insurance is required for a variety of economic transactions, many feared that a lack of insurance against terrorism loss would have wider economic impact, particularly on large-scale developments in urban areas that would be tempting targets for terrorism.

Congress responded to the disruption in the insurance market by passing the Terrorism Risk Insurance Act of 2002 (TRIA)[1], which was signed by the President in November 2002. TRIA created the Terrorism Risk Insurance Program, which was enacted as a temporary program, expiring at the end of 2005, to calm the insurance markets through a government backstop for terrorism losses and give the private industry time to gather the data and create the structures and capacity necessary for private insurance to cover terrorism risk.

Terrorism insurance became widely available under TRIA, and the insurance industry greatly expanded its financial capacity in the three years from 2002 to 2005. Less progress, however, was made on creating terrorism models that are sufficiently robust for insurers to return to offering widespread terrorism coverage without a government backstop, and practically no progress was made on a private pooling mechanism to cover terrorism risk. Again fearing economic disruption from the absence of terrorism insurance, Congress passed, and the President approved, the Terrorism Risk Insurance Extension Act of 2005 (TRIEA)[2] in December 2005. TRIEA extended the program for two years while increasing the private sector exposure under the program.

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[1] P.L. 107-297, 116 Stat. 2322. See CRS Report RS21444, *The Terrorism Risk Insurance Act of 2002: A Summary of Provisions*, by Baird Webel.

[2] P.L. 109-144, 119 Stat. 2660. See CRS Report RL33177, *Terrorism Risk Insurance Legislation in 2005: Issue Summary and Side-by-Side*, by Baird Webel.

The two years' experience under TRIEA has proved to be much like the three under TRIA. During this time, terrorism risk insurance has been available, pricing has been moderate and takeup rates have slowly increased. Some additional progress has been made on a larger scale private solution and some private groups outlined proposals for such a solution.[3] There was, however, little concrete movement towards adopting such proposals. The industry focus seemed to be on the possibility of another extension of the TRIA program.

Some see the past three years as proof of the argument that the private market will never be able to offer insurance to cover terrorism risk and continue to see the possibility of wider economic consequences if terrorism insurance again is unavailable. Others, notably the U.S. Treasury Department, respond that TRIA itself is retarding the growth of this private market by offering essentially free reinsurance against terrorism risk. Thus, it should be allowed to expire, or at least be reduced from its current form.

Legislative Action

The 110th Congress responded to the impending expiration of the TRIA program with two different bills, one in the House and one in the Senate. As was the case in the TRIA extension debate in 2005, the House bill is a significant revision and expansion of the TRIA program, whereas the Senate bill has a narrower focus — extending the program while making relatively minor changes. Also as in 2005, the Administration has indicated its support for the Senate's approach.

Terrorism Risk Insurance Revision and Extension Act of 2007 (TRIREA)

Representative Michael Capuano, along with 23 cosponsors, introduced H.R. 2761 on June 18, 2007. Referred to the Financial Services Committee, the bill was the subject of a hearing in that committee's Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises on June 21, 2007.

H.R. 2761 as introduced would have extended and revised the current structure of the Terrorism Risk Insurance Program, adding significant new elements to this structure. Within the existing TRIA structure, the bill would have extended the program 10 years, to the end of 2017, while reducing the program trigger to $50 million and generally leaving the individual insurer deductibles and aggregate retention unchanged at 20% of direct earned premium and $27.5 billion, respectively. It also would have expanded the scope of TRIA by including domestic terrorism as a covered event, adding group life insurance as a covered line, and mandating that insurers make available coverage for nuclear, biological, chemical, and radiological (NCBR) terrorist events. Under the bill as introduced, group life insurance would have had a separate pool, with its own deductibles and recoupment amounts based on the amount of

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[3] See, for example, the testimony of Edmund F. Kelly before a joint hearing of the House Financial Services Subcommittees on Capital Markets, Insurance, and Government Sponsored Enterprises and Oversight and Investigations on September 7, 2006, available at [http://financialservices.house.gov/media/pdf/092706efk.pdf].

insurance at risk, rather than direct earned premiums. NCBR coverage would have had a lower (7.5%) deductible compared to non-NCBR terrorist events (20%). In addition, H.R. 2761 as introduced included so-called reset provisions, that would have lowered the program thresholds for areas that have suffered past terrorist attacks or that suffer terrorist attacks in the future if the damage from the attacks exceeds $1 billion. Finally, the bill would have expanded the mandatory availability provisions to include restrictions on life insurers' ability to consider lawful international travel as a factor in underwriting decisions.

H.R. 2761 was marked up by the House Financial Services Committee's Subcommittee on Insurance, Capital Markets and Government Sponsored Enterprises on July 24, 2007, and by the full committee on August 1, 2007.[4] Substantial amendments were adopted at both markups. The subcommittee markup began with a complete substitute amendment by Chairman Kanjorski being adopted by voice vote. This substitute changed the NBCR provisions, delaying the make available provisions until 2009 and lowering the deductible to 3.5% with a 0.5% increase per year. It also included a requirement for biennial reporting on the TRIA program by the Treasury and changed the composition of the independent commission created by the bill to make recommendations on the program. Several amendments to reduce the 10-year extension of the program were rejected, as was one to require full recoupment of federal funds expended beyond the $27.5 billion aggregate retention amount in current law. Amendments adopted by the subcommittee included one by Representative Gary Ackerman to include the Secretary of Homeland Security in the certification of a terrorist attack under TRIA and one by Representative Richard Baker to apply the lower trigger amount in the retrospective reset provisions to the entire country rather than just to the affected area.

The full committee markup began with an amendment by Chairman Barney Frank making a number of technical changes and three primary substantive changes. First, Chairman Frank's amendment changed the reset provisions, removing the retrospective reset altogether and applying the prospective reset provisions to the entire country. Thus, if there is a future terrorist attack resulting in more than $1 billion in damages, the trigger would by reduced to $5 million and the insurer deductible would be reduced to 5% for those insurers suffering terrorism losses. Second, it included temporary preemptions from state rate and form approval laws for NBCR coverage mandated under the bill. Third, it established a "terrorism buy down fund" in the U.S. Treasury which would essentially allow insurers to put aside reserves that would grow tax-free to cover losses from future terrorist attacks that are not reimbursed by TRIA. The U.S. Treasury could also borrow from this fund to cover the federal share of a future terrorist attack. The committee adopted a number of additional amendments, including (1) an exemption for small insurers from the requirement to make NCBR coverage available; (2) the return of farmowners multiple peril as a TRIA-covered line; (3) the specific allowance for insurers to partner in meeting the requirement to make NCBR coverage available; (4) the indexing of the various dollar amounts in the bill to an unspecified measure of inflation; (5) the provision for a report by the Secretary of the Treasury in the event that the Secretary decides not to recoup expended federal funds

[4] The full committee markup began on July 26, but H.R. 2761 was the last of a number of bills to be marked up.

beyond $27.5 billion; (6) the extension of the program for 15 years, to the end of 2022; and (7) an increase in the post-reset deductible by 0.5% per year. The amended bill was forwarded to the full House by a vote of 49-20.

The Congressional Budget Office (CBO) issued a cost estimate for H.R. 2761 on September 6, 2007. CBO found that the bill as reported would increase direct spending by $3.7 billion from 2008 to 2012 and $10.4 billion from 2008 to 2017. This spending would be offset by additional revenues of about $100 million from 2008 to 2012 and $2.0 billion from 2008 to 2017. Since the cost estimate found that an increase in the budget deficit, or decrease in surplus, would result from the bill, it may fail to meet the requirements of the "pay-as-you-go" (PAYGO) rule adopted by the House at the beginning of the 110th Congress.[5] In response to the PAYGO issues, the special rule (H.Res. 660) under which TRIREA was considered on the House floor included a self-executing amendment that inserted language into the underlying bill that would require passage by Congress of a joint resolution before any funds could be expended. H.Res. 660 provides for expedited consideration of this future resolution, including a waiver of all points of order against it and its consideration. This requirement for future congressional action introduces uncertainty to the TRIA program that did not exist before. It is unclear exactly how the insurance market might react to this uncertainty, should this language become law.

H.R. 2761 was brought up on the House floor under H.Res. 660 on September 19, 2007. The rule made in order two floor amendments and a motion to recommit with instructions. The manager's amendment (H.Amdt. 801) by Chairman Barney Frank changed the bill to include the NBCR deductible in the reset provisions, modified the certification process for an NCBR attack, indexed the dollar amounts in the bill specifically to the Consumer Price Index for All Urban Consumers (CPI-U), and made a variety of technical and conforming changes. It passed on the House floor 426-1. The other amendment (H.Amdt. 802) was offered by Representative Steve Pearce. It would have changed the increase in the deductible under the post-attack reset provisions from 0.5% per year to 1% per year. This amendment failed by a vote of 194-230. The motion to recommit with instructions was offered by Representative David Drier and failed by a vote of 196-228. The House then passed the bill as amended by a vote of 312-110. H.R. 2761 was received in the Senate on September 20, 2007, read twice, and referred to the Committee on Banking, Housing, and Urban Affairs.

To summarize, H.R. 2761 as passed by the House included provisions that would make the following changes to the current Terrorism Risk Insurance Program:

- Extend the TRIA program for 15 years, until the end of 2022.
- Make spending by the program contingent on passage of a future joint resolution.
- Add coverage for domestic terrorist acts in the program.
- Add the Secretary of Homeland Security to the certification process.

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[5] See CRS Report RL33850, *The House's "Pay-As-You-Go" (PAYGO) Rule in the 110th Congress: A Brief Overview*, by Robert Keith, for more information on PAYGO.

- Add group life insurance to the program with a separate set of retentions and deductibles.
- Return farmowners multiple peril as a covered line.
- Reduce the general trigger to $50 million.
- Require insurers to cover nuclear, biological, chemical, and radiological (NCBR) terrorist attacks starting in 2009.
- Lower insurer deductible for NCBR attacks to 3.5% immediately and then raise that number by 0.5% per year in the future.
- Increase the federal share of NCBR losses from 85% to as high as 100% for attacks causing over $100 billion in losses.
- Temporarily preempt state laws on rate and form filing for NCBR coverages.
- Provide the possibility of relief from NBCR requirement to smaller insurers.
- Reset individual insurer deductibles to 5% and the program trigger to $5 million in the aftermath of a future terrorist attack (or series of attacks) that causes more than $1 billion in damage. Deductible reset would be only for insurers who suffer losses.
- Increase the post-reset insurer deductibles by 0.5% per year.
- Establish a "Terrorism Buy-Down Fund" that would essentially allow insurers to put aside reserves that would grow tax-free to cover future losses that are not reimbursed by TRIA. The fund would also be available to the Secretary of the Treasury to cover the federal share of TRIA losses.
- Restrict life insurers' use of foreign travel as an underwriting tool.
- Index the dollar amounts in the program to future inflation.

Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA)

The Senate Banking, Housing, and Urban Affairs Committee marked up this original bill, sponsored by Chairman Christopher Dodd and Ranking Member Richard Shelby, on October 17, 2007. While Senator Schumer discussed possible amendments in the markup session, no amendments were voted on in committee. The unamended bill was ordered reported to the full Senate on a vote of 20-1. A committee report has not been filed and the bill has yet to be introduced and assigned a number.

TRIPRA is a relatively straightforward reauthorization of the existing TRIA program. The two primary changes that it would make to the program are (1) extend it for seven years, until 2014; and (2) add coverage for domestic terrorist attacks to the program. In addition, it would modify slightly the annual liability cap, and require the Secretary of the Treasury to promulgate regulations on determining payments, should losses exceed $100 billion rather than leaving this determination to a future Congress. The bill would call for reports from the Government Accountability Office (GAO) on the possibility of insurance coverage for NCBR events (within one year) and on the affordability and availability of terrorism insurance in specific markets (within 180 days). In addition, the President's Working Group on Financial Markets would be tasked to continue its analysis of the longer term availability and affordability of terrorism risk insurance, and to report on this subject in 2010 and 2013.

Administration Reaction

The Office of Management and Budget released a Statement of Administration Policy[6] on H.R. 2761 that indicated "if H.R. 2761 as reported were presented to the President, his senior advisors would recommend that he veto the bill." The Administration indicated that it objected to the length of term of the extension, as well as the increase in the federal role and the expansion of the scope of coverage. No official Statement of Administration Policy has been released on the Senate bill. Treasury Secretary Henry M. Paulson, has, however, indicated in a letter that the Administration would be willing to accept the bill as it passed the committee.[7]

[6] See [http://www.whitehouse.gov/omb/legislative/sap/110-1/hr2761sap-r.pdf].

[7] Relevant text of this letter was provided to CRS by the Department of the Treasury. This was also reported in the press. See [http://www.politico.com/news/stories/1007/6394.html].

Table 1. Terrorism Risk Insurance Side-by Side: Current Law, H.R. 2761, and Senate Committee Original Bill

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Title	Terrorism Insurance Program	Terrorism Risk Insurance Revision and Extension Act of 2007	Terrorism Risk Insurance Program Reauthorization Act of 2007
Expiration Date	December 31, 2007 (Sec. 108(a))	December 31, 2022 (Sec. 2)	December 31, 2014 (Sec. 3)
"Act of Terrorism" Definition	For an act of terrorism to be covered under TRIA, it must be a violent act committed on behalf of a foreign person or interest as part of an effort to coerce the U.S. civilian population or influence U.S. government policy. It must have resulted in damage within the United States or to a U.S. airliner or mission abroad. Terrorist act is to be certified by the Secretary of the Treasury in concurrence with the Attorney General and Secretary of State. (Sec. 102(1)(A))	Removes requirement that a covered act of terrorism be committed on behalf of a foreign person or interest. Adds "Nuclear, Biological, Chemical, and Radiological (NBCR) Terrorism" as a separate category of terrorism. Adds Secretary of Homeland Security to the certification of an act of terrorism or NBCR terrorism. (Sec. 102 (1))	Removes requirement that a covered act of terrorism be committed on behalf of a foreign person or interest. (Sec. 2)

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Aggregate Industry Loss Requirement and Program Trigger	Terrorist act must cause more than $5 million in losses to be certified. *Program Trigger prevents coverage under the program unless aggregate industry losses exceed $50,000,000 in 2006 or $100,000,000 in 2007.* (Secs.102(1)(B)(ii) and 103(e)(1)(B))	Lowers Program Trigger to $50,000,000 for the life of the program. Trigger will reset to $5,000,000 after a terrorist attack resulting in $1,000,000,000 in damage. (Sec. 103 (e)(1)(C))	No Similar Provision
Insurer Deductible	7% of earned premium for 2003, 10% of earned premium for 2004, 15% of earned premium for 2005, *17.5% of earned premium for 2006,* *20% of earned premium for 2007.* (Sec. 102(7))	Adds deductible for group life equal to 0.0351% of the value of an insurer's amount at risk. (Sec. 102 (11)(G)(ii)).	No Similar Provision
NBCR Deductible	No Provision	In the event of an NBCR terrorist attack, the property/casualty deductible is 3.5% the first year and then is raised 0.5% per year thereafter. The group life NBCR deductible is 0.00614% the first year and then raised 0.00088% per year thereafter. (Sec. 102(11)(I))	No Similar Provision

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Reset Provisions	No Provision	In the event of a terrorist attack or series of attacks that cause more than $1,000,000,000 in damage, for future program years: (1) the Program Trigger would be reduced to $5,000,000; (2) the deductible for any insurer suffering damage would be lowered to 5% and then be raised 0.5% per year thereafter. (Secs. 103 (e)(1)(C) and 102(11)(J))	No Similar Provision
NBCR Reset Provisions	No Provision	Starting with the fifth additional program year (2012), in the event of an NBCR terrorist attack or series of attacks that cause more than $1,000,000,000, the deductible for any insurer suffering losses would be lowered to 5% and then be raised 0.5% per year thereafter. (Sec. 102(11)(K))	No Similar Provision

Provision	**15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)**	**H.R. 2761 (as passed by the House)**	**Senate Committee Original Bill (as ordered reported to the full Senate)**
Covered lines of Insurance	Commercial property casualty insurance including excess insurance, workers' compensation, and surety but excluding crop insurance, private mortgage insurance, title insurance, financial guaranty insurance, medical malpractice insurance, health or life insurance, flood insurance, reinsurance, *commercial auto, burglary and theft, professional liability (except for directors and officers liability), and farm owners multiple peril.* (Sec. 102(12))	Adds farm owners multiple peril back to covered lines. Adds group life insurance. (Secs. 102(5), 102(8), and 102(17))	No Similar Provision
Mandatory Availability	Every insurer must make terrorism coverage available that does not differ materially from coverage applicable to losses other than terrorism. (Sec 103(c))	Adds coverage for NBCR terrorism to that which must be made available starting in 2009. (Sec. 103(c)) Allows for an exemption to small insurers from the requirement to provide NBCR coverage. (Sec. 103 (a)(4))	No Similar Provision
Life Insurance and Travel	No Provision	Limits life insurers from considering lawful travel in underwriting life insurance except in certain circumstances. (Sec. 103 (c)(4))	No Similar Provision

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Insured Shared Loss Compensation	Federal share of losses is 90% for insured losses that exceed the applicable insurer deductible from 2002-*2006*. *For 2007, federal share of losses is 85%.* (Sec. 103(e))	Adds sliding scale for federal share of NBCR terrorism losses, from 85% for losses less than $10,000,000,000 to 100% for losses greater than $100,000,000,000. (Sec. 103(e)(1)(B))	No Similar Provision
Aggregate Retention Amount Maximum	$10,000,000,000 for 2002-3, $12,500,000,000 for 2004, $15,000,000,000 for 2005, *$25,000,000,000 for 2006,* *$27,500,000,000 for 2007.* (Sec. 103 (e)(6))	Adds aggregate retention amount for group life insurance equal to $5,000,000,000. (Sec.103 (e)(7)(ii))	No Similar Provision
Annual Liability Cap	Should losses to terrorism exceed $100,000,000, the federal government will not make any payments on the portion of losses that exceed $100,000,000,000. Assuming that an insurer has met its deductible, insurers are not responsible for paying losses that exceed $100,000,000,000 unless Congress acts otherwise with respect to these losses. (Sec. 103 (e)(2)	Payment for federal government share would be capped at $100,000,000,000. Assuming that an insurer has met its deductible, insurers are not responsible for paying losses that exceed $100,000,000,000 unless Congress acts otherwise with respect to these losses. Requires insurers to clearly disclose this to policy holders. (Sec. 103(e)(2))	Removes the possibility that a future Congress could require insurers to cover some share of losses above $100,000,000,000 if the insurer has met its individual deductible. Requires insurers to clearly disclose this to policy holders(Sec. 4(a) and Sec. 4(d))

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Payment Procedures if Losses Exceed $100,000,000,000	After notice by the Secretary of the Treasury, Congress determines the procedures for payments if losses exceed $100,000,000,000. (Sec. 103 (e)(3)	Secretary of the Treasury will determine the pro rata share of insured losses to be paid by each insurer. Federal courts will have jurisdiction over claims in the event that losses exceed $100,000,000,000. (Sec. 103(e)(2), 103(e)(3)(C), and 103(e)(4)(F))	Requires Secretary of the Treasury to publish regulations regarding payments if losses exceed $100,000,000,000 within 240 days of passage. (Sec. 4(c))
Mandatory Recoupment of Federal Share	If insurer losses are under the aggregate retention amount, a mandatory recoupment of the federal share of the loss will be imposed. If insurer losses are over the aggregate retention amount, such recoupment is at the discretion of the Secretary of the Treasury. (Sec. 103(e)(7))	Adds an optional report should the Secretary of the Treasury choose not to require reimbursement above the aggregate retention amount. (Sec. 103(e)(8)(D))	No Similar Provision
Recoupment Surcharge	Surcharge is limited to 3% of property-casualty insurance premium and may be adjusted by the Secretary to take into account the economic impact of the surcharge on urban commercial centers, the differential risk factors related to rural areas and smaller commercial centers, and the various exposures to terrorism risk across lines of insurance. (Sec. 103(8))	Adds limit on group life insurance recoupment surcharge of 0.053% of amount at risk. (Sec. 103(9)(C))	No Similar Provision

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Joint Resolution Requirement for Future Payments	No Provision	Requires passage of a future Joint Resolution before any funds would be expended under the Act. Provides for expedited consideration of this Resolution. (Sec. 103(h))	No Similar Provision
Inflation Adjustment	No Provision	Indexes dollar amounts in the bill for inflation using the CPI-U as an adjustor. (Sec. 103(h))	No Similar Provision
Preservation and Preemption of Existing State Law	Preserves all existing regulatory authority and jurisdiction of the states except that: exclusions for terrorism existing at the time of the Act's enactment are annulled, but can be reinstated by the insurer with the agreement of the insured; the definition for "Act of Terrorism" in the Act shall preempt any state definitions for purposes of the act, state rate and form filing requirements until the end of 2003 are partially preempted; and insurers are required to provide books and records relevant to the program at the request of the Secretary of the Treasury notwithstanding any state laws to the contrary. (Sec. 105 and 106(a))	Preempts state laws requiring prior approval of rates and forms for insurance required by the act until December 31, 2008. Preempts state laws requiring prior approval of forms for NBCR insurance required by the act until December 31, 2009. Preempts state laws requiring prior approval of rates for NBCR insurance required by the act until December 31, 2010. (Sec. 3(a)(4))	No Similar Provision

Provision	**15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)**	**H.R. 2761 (as passed by the House)**	**Senate Committee Original Bill (as ordered reported to the full Senate)**
Terrorism Buy-Down Fund	No Provision	Creates a “Terrorism Buy-Down Fund” that would allow insurers to buy additional terrorism coverage from the government. This coverage would be limited to the amount of an insurer’s deductible and co-share. Payout amounts would be limited to the amount that the insurer paid for the coverage plus interest. Amounts in this buy-down fund would be available to be borrowed by the Secretary of the Treasury to cover the federal share of terrorism losses should they not be needed by the insurer who purchased the coverage. (Sec. 106A)	No Similar Provision

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Studies and Reports	Calls for a study of the need to include group life insurance under TRIA (Sec. 103 (h)), a study and report of the potential impact of terrorism on life insurance and other lines of insurance (Sec 103 (g)), and a study assessing the effectiveness of the program, the likelihood of the private industry insuring against terrorism after the program expiration, and the availability and affordability of such insurance. (Sec. 108(d)) *Calls for an analysis and report, not later than September 30, 2006, from the President's Working Group on Financial Markets, in consultation with various stakeholders, on the longer term availability and affordability of terrorism risk insurance including particularly group life coverage and coverage against chemical, nuclear, biological, and radiological events.* (Sec. 108(3))	Calls for ongoing analysis by the Secretary of the Treasury of terrorism risk insurance market conditions and biennial reports and testimony. (Sec. 5(a))	Calls for GAO studies and reports on insurance for nuclear, biological, chemical, and radiological events and on the availability and affordability of terrorism risk insurance in specific markets. Calls for ongoing analysis by the President's Working Group on Financial Markets, with reports to be delivered in 2010 and 2013. (Sec. 5)

Provision	15 U.S.C. 6701 note (P.L. 107-297 *as amended by P.L. 109-144*)	H.R. 2761 (as passed by the House)	Senate Committee Original Bill (as ordered reported to the full Senate)
Commission on Terrorism Risk Insurance	No Provision	Establishes a 21-member commission with a wide range of stakeholders, including insurers, policyholders, and the insurance commissioners. The commission is to make recommendations regarding possible actions to encourage private insurance coverage of terrorism risk. The commission is to make two reports specifically evaluating the need for the TRIA program and suggesting possible replacements. One report to be submitted before 60 months after enactment and the other submitted before 96 months after enactment. (Sec. 109)	No Similar Provision

Notes: Items in *italics* under the15 U.S.C. 6701 note column are those added by P.L. 109-144. H.R. 2761 would strike most of 15 U.S.C. 6701 note and replace it with a similar structure, including identical language in many sections. The section numbers for this bill cited in this side-by-side are, therefore, those that would appear in the code if the bill were enacted, except for the provisions entitled “Expiration Date” and “Preservation and Preemption of Existing State Law.” In contrast, the Senate bill simply amends 15 U.S.C. 6701 note. The section numbers cited in this side-by-side are thus those of the bill itself.