H.R. 5823 – "Pandemic Risk Insurance Act of 2021"

Section-by-Section Description
November 2021

A bill to establish a Pandemic Risk Reinsurance Program, and for other purposes.

Section 1. Short Title.

Pandemic Risk Insurance Act of 2021.

Section 2. Purpose.

This section outlines the purpose of the bill, which is to establish a Federal program that provides for a transparent system of shared public and private compensation for property and casualty insurance losses resulting from a pandemic or outbreak of communicable disease emergency, in order to:

- Protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for losses resulting from such pandemic or outbreak of a communicable or infectious disease;
- Allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses while preserving State insurance regulation and consumer protections.

Section 3. Definitions.

This section defines key terms in the bill, including:

- Covered public health emergency, defined as any outbreak of infectious disease or pandemic for which the HHS Secretary determines is a public health emergency due to a significant outbreak of infectious disease and that is certified by the Treasury Secretary as a covered public health emergency;

- Affiliate, defined as any entity that controls, or is controlled by, or is under common control with the insurer;
- Business interruption insurance, defined as commercial lines of property and casualty insurance coverage or other non-property contingent business interruption insurance provided for losses resulting from periods of suspended business operations;
- Commercial property insurance, defined as property insurance which indemnifies an owner or user of property for loss or damage of the property;
- Control, defined as an entity that either (1) directly or indirectly or acting through other persons owns, controls, or has power to vote 25% of more of any class of voting securities of the other entity, (2) controls the election of a majority or the directors or trustees of the other entity, or (3) the Treasury Secretary determines controls the other entity;
- Department, define as the Department of Treasury;
- Economic recovery period, defined as the period beginning on the date of enactment of the Act and ending December 31 of the fifth year following enactment, with a provision to reset the period if a new covered public health emergency is certified;
- Event, defined as one of the specified events or productions in the Act;
- Event cancellation insurance, defined as insurance, including production package insurance, that indemnifies an insured for losses as a consequence of cancellation, abandonment, delay, or rescheduling of an event or the unavailability of an essential element of an event (e.g., non-appearance of a principal speaker, performer, covered key talent, cast members);
- Insured loss, defined as any loss resulting from an outbreak of infectious disease or pandemic for which a covered public health emergency is certified that is covered by primary or excess property and casualty insurance that occurs within the U.S. and during the effective period of the covered public health emergency;

- Insurer, defined as any entity or affiliate that receives direct earned premiums for any commercial property and casualty insurance coverage (subject to exceptions); meets any additional criteria prescribed by the Treasury Secretary; and is (1) licensed or admitted to engage in the business of providing primary or excess insurance in a state, (2) not licensed or admitted but eligible as a surplus line carrier according to NAIC, (3) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, (4) a State residual market insurance entity or State workers' compensation fund, or (5) any other entity described in Section 4(f);
- NAIC, defined as the National Association of Insurance Commissioners;
- Parametric insurance facility, defined as a non-assessable joint underwriting association or pool approved by the Treasury Secretary to provide parametric non-damage business interruption insurance;
- Parametric non-damage business interruption insurance, define as insurance that provides 180 days' fixed costs and payroll and is triggered upon a covered public health emergency certification and a closure order by the relevant State that is applicable to the policyholder's NAICS code and irrespective of the physical status or condition of the insured location;
- Participating insurer, defined as an insurer participating in the parametric insurance facility under this Act;
- Person, defined as any individual, business or nonprofit entity, trust or estate, or a State or political subdivision of a governmental unit;
- Program, defined as the Pandemic Risk Reinsurance Program;
- Property and casualty insurance, defined as commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, business interruption insurance, commercial general liability, directors and officers liability, and event cancellation insurance (subject to several exceptions);
- Secretary, defined as the Secretary of the Treasury;

- State, defined as a U.S. state, D.C., Puerto Rico, Northern Mariana Islands, American Samoa, Guam, each of the U.S. Virgin Islands, and any territory of possession of the U.S.; and
- United States, defined as the several States.

Section 4. Pandemic Risk Reinsurance Program.

This section establishes the Pandemic Risk Reinsurance Program (PRRP) within the Department of the Treasury. It outlines the PRRP's structure, parameters, and provisions as follows:

- Authorizes the Secretary of the Treasury to administer the PRRP;
- Establishes mandatory participation in the PRRP for insurers;
- Mandates insurers make available, in all their property and casualty insurance policies, coverage for insured losses related to covered public health emergencies;
- Mandates insurers make available, in all their commercial property insurance policies, parametric non-damage business interruption insurance coverage for insured losses or, in the alternative, arrange for the parametric non-damage business interruption insurance coverage to be made available by either an affiliate or a parametric insurance facility;
- Once the PRRP has been established, provides the Federal share of compensation is equal to 95% of insured losses with no program cap per event (public health emergency) nor an annual cap for Federal compensation;
- Permits the Treasury Secretary to provide, for a premium, an insurer or parametric insurance facility with additional stop-loss protection for insured losses;
- Clarifies the Act does not prohibit insurers or parametric insurance facilities from purchasing reinsurance coverage in the private markets to reduce insurer retention or co-share; and
- Establishes that, during the economic recovery period, no premium will be charged to insurers or parametric insurance

facilities for the Federal quota share reinsurance protection provided by the PRRP, and the economic recovery period resets if a national public health emergency occurs within five-year period; provides the Secretary authority to prescribe a rating plan for the quota share reinsurance.

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Section 5. General Authority and Administration of Claims.

This section establishes the Treasury Secretary has authority to investigate and audit claims, prescribe regulations and procedures, and issue interim final rules or procedures.

This section also establishes the Treasury Secretary will require insurers to submit information relating to property and casualty insurance coverage resulting from covered public health emergencies. The Secretary must submit reports to Congress annually on the PRRP.

Section 6. Preemption and Nullification of Pre-Existing Exclusions.

This section clarifies that for insurers, exclusions in a contract for property and casualty insurance in effect on the date of enactment of the Act that specifically exclude losses covered under the PRRP are void. Any state approval of those exclusions is preempted to the extent it excludes losses that would covered under the PRRP. Exclusions may only be reinstated in certain circumstances, e.g., written authorization from the policyholder.

Section 7. Preservation Provisions.

This section establishes that nothing in the Act shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person, except:

- As specifically provided in this Act (i.e., preemption of exclusions);
- That the definition of "covered public health emergency" in section 3 is the exclusive definition of that term for purposes of compensation under this Act, preempting any inconsistent State provisions;
- That until December 31, 2021, rates and forms for property and casualty insurance covered by the Act and filed with any State shall not be subject to prior approval or a waiting period under any State law (although a State retains the ability to invalidate a rate as excessive, inadequate, or unfairly discriminatory); and
- That for the duration of the PRRP, relevant books and records of any insurer must be provided to the Treasury Secretary upon request, notwithstanding State laws prohibiting or limiting access.

This section clarifies that nothing in the Act alters, amends, or expands the terms under existing reinsurance agreements.

Section 8. Study and Analyses.

This section requires the Treasury Secretary to conduct a study on the effectiveness of the PRRP, the likely capacity of the property and casualty insurance industry to offer insurance for risk of public health emergencies after termination of the PRRP, and the availability and affordability of such insurance for various policyholders.

This section also requires the President's Working Group on Financial Markets, in consultation with NAIC and other stakeholders, to perform an ongoing analysis of the long-term availability and affordability of insurance for risk of public health emergencies.

This section also requires the Comptroller General to conduct a study to determine whether there are specific markets in the U.S. with unique capacity constraints on the amount of property and casualty insurance available.

Finally, this section requires the Treasury Secretary to conduct a study of small insurers participating in the PRRP and identify any competitive challenges small insurers face in the property and casualty insurance marketplace.

Section 9. Termination of Program.

This section provides that the PRRP shall terminate on December 31, 2031. The Treasury Secretary will, however, have continuing authority to pay or adjust compensation under the PRRP following the termination of the program and take such actions as may be necessary to ensure payment, recoupment, reimbursement, etc., in accordance with the provisions of the Act for periods in which the PRRP was in effect.