ENROLLMENT(S)

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 10-43

"Standards to Identify Insurance Companies Deemed to be in Hazardous Financial Condition Act of 1993".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 10-130 on first and second readings, June 29, 1993, and July 13, 1993, respectively. Following the signature of the Mayor on August 4, 1993, this legislation was assigned Act No. 10-78, published in the August 20, 1993, edition of the D.C. Register, (Vol. 40 page 6023) and transmitted to Congress on September 1, 1993 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 10-43, effective October 21, 1993.

DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

September 7,8,9,10,13,14,15,16,17,20,21,22,23,24,27,28,29,30

October 1,4,5,6,7,12,13,14,15,18,19,20

Enrolled Original

Codification

AN ACT

District of Columbia Code

D.C. ACT 10-78 (1994 Supplement)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 4, 1993

To set forth standards which the Mayor may use for identifying insurers found to be in such a condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance, and to authorize the Mayor to order that these insurers take corrective action.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Standards to Identify Insurance Companies Deemed to be in Hazardous Financial Condition Act of 1993".

Sec. 2. Standards for determining insurance companies in hazardous financial condition. New Section 35-3501

(a) In order to determine whether the continued operation of any insurer transacting an insurance business in the District of Columbia might be deemed to be hazardous to the policyholders, creditors, or the general public, the Mayor may consider the following standards, either singly or combination of 2 or more:

(1) Adverse findings reported in financial condition and market conduct examination reports;

(2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(4) The insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

(5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(6) The insurer's operating loss in the last 12-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;

(8) Contingent liabilities, pledges, or guaranties which, either individually or collectively, involve a total amount which in the opinion of the Mayor may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such an insurer;

(10) The age and collectibility of receivables;

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such a position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) Whether management of an insurer either has filed any false or misleading sworn financial statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

(15) Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

(b) For the purposes of making a determination of an insurer's financial condition under this act, the Mayor may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

New Section 35-3502

Sec. 3. Mayor's authority to order corrective action.

(a) If the Mayor determines that the continued operation of the insurer licensed to transact business in the District of Columbia may be hazardous to the policyholders or the general public, the Mayor may, upon his or her determination, issue an order requiring the insurer to:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend, or limit the volume of business being accepted or renewed;

(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) File reports in a form acceptable to the Mayor concerning the market value of an insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Mayor deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured; or

(9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on a form promulgated by the Mayor.

(b) If the insurer is a foreign insurer, the Mayor's order under subsection (a) of this section may be limited to the extent provided by statute.

(c) Any insurer subject to an order under subsection (a) of this section may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to section 10 of title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Code § 1-1509). The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the Mayor based the order. Unless mutually agreed between the Mayor and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be held in the District of Columbia. The Mayor shall hold all hearings under this section privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

Sec. 4. Judicial review.

New Section 35-3503

Any order or decision of the Mayor shall be subject to review in accordance with section 11 of title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Code § 1-1510), at the request of any person suffering a legal wrong or whose interests are adversely affected or aggrieved by the order or decision of the Mayor.

Sec. 5. Rules.

Note, New Section 35-3501

The Mayor shall, pursuant to title 1 of the District of Columbia Administrative Procedure Act , approved October 21, 1968 (82 Stat. 1204; D.C. Code §§ 1-1501 through 1-1510), issue rules to implement the provisions of this act.

Sec. 6. Effective date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and

publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

Acting Chairman
Council of the District of Columbia

Mayor
District of Columbia

Approved: August 4, 1993

COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TEN

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 10-130

☒ Item on Consent Calendar

☒ ACTION & DATE: Adopted First Reading, 6-29-93

☒ VOICE VOTE: Approved

Recorded vote on request

Absent: Barry and Chavous

☐ ROLL CALL VOTE: — RESULT _____ (__/__/__/__)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — July 19, 1993 Date

☒ Item on Consent Calendar

☒ ACTION & DATE: Adopted Final Reading, 7-13-93

☒ VOICE VOTE: Approved

Recorded vote on request

Absent: Chavous

☐ ROLL CALL VOTE: — RESULT _____ (__/__/__/__)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — July 19, 1993 Date

☐ Item on Consent Calendar

☐ ACTION & DATE: _____

☐ VOICE VOTE: _____

Recorded vote on request

Absent: _____

☐ ROLL CALL VOTE: — RESULT _____ (__/__/__/__)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — Date

COUNCIL OF THE DISTRICT OF COLUMBIA

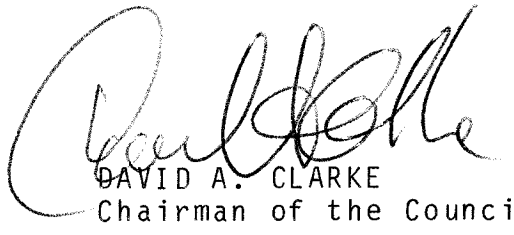
NOTICE

D.C. LAW 10-44

"Holding Company System Act of 1993".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 10-132 on first and second readings, June 29, 1993, and July 13, 1993, respectively. The legislation was deemed approved without the signature of the Mayor on August 5, 1993, pursuant to Section 404(e) of "the Act", and was assigned Act No. 10-79, published in the August 20, 1993 edition of the D.C. Register, (Vol. 40 page 6027) and transmitted to Congress on September 1, 1993 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 10-44, effective October 21, 1993.



DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

September 7,8,9,10,13,14,15,16,17,20,21,22,23,24,27,28,29,30

October 1,4,5,6,7,12,13,14,15,18,19,20

Enrolled Original

Codification

AN ACT

District of Columbia Code

D.C. ACT 10-79 1994 (_____ Supplement)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 5, 1993

To revise the law establishing standards to regulate and control insurance holding companies.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Holding Company System Act of 1993".

New Section 35-3701

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 6(k) that control does not exist in fact. The Mayor may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such a determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "District" means the District of Columbia.

(4) "Insurance holding company system" means an arrangement which consists of 2 or more affiliated persons, 1 or more of whom is an insurer.

(5) "Insurer" includes any company defined by section 2 of chapter I of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1128; D.C. Code § 35-302), and section 3 of chapter I of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1064; D.C. Code § 35-1503), authorized to do the business of insurance in the District, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District, or a state or political subdivision of a state.

(6) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(7) "Securityholder" means an individual who owns any security of a specified person, including common stock, preferred stock debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(8) "Subsidiary" means an affiliate controlled by a specified person directly or indirectly through 1 or more intermediaries.

(9) "Superintendent" means the Superintendent of Insurance of the District of Columbia.

(10) "Voting security" means any security convertible into or evidencing a right to acquire a voting security.

New Section 35-3702

Sec. 3. Subsidiaries of insurers.

(a) Any domestic insurer, either by itself or in cooperation with 1 or more persons, may organize or acquire 1 or more subsidiaries. The subsidiaries may conduct any kind of business and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under the insurance laws of the District, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of 1 or more subsidiaries, amounts which do not exceed the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders; provided that after these investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of these investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(A) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of 1 or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in section 3(b)(1) or in sections 35 and 41 of chapter III of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1152; D.C. Code §§ 35-634 and 35-639),

or in section 18 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1072; D.C. Code § 35-1521), applicable to the insurer. For the purposes of this paragraph, the term "the total investment of the insurer" shall include:

(A) Any direct investment by the insurer in an asset, and

(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such a subsidiary; or

(3) With the approval of the Mayor, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of 1 or more subsidiaries; provided, that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to section 3(b) shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the insurance laws of the District applicable to the investments of insurers.

(d) Whether any investment pursuant to section 3(b) meets the applicable requirements is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within any further time the Mayor may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of the insurance laws of the District, and the insurer has notified the Mayor.

Sec. 4. Acquisition of control of or merger with domestic insurer. New Section 35-3703

(a)(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after consummation, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer.

(2) No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the Mayor and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the Mayor in the manner prescribed by this act.

(b)(1) For purposes of this section, the term "domestic insurer" shall include any person controlling a domestic insurer unless the person, as determined by the Mayor, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such a person shall file a preacquisition notification with the Mayor containing the information set forth in section 5(c)(1) 30 days prior to the proposed effective date of the acquisition. Failure to file is subject to section 5(e)(3).

(2) For the purposes of this section, the term "person" shall not include any securities broker holding, in the usual and customary brokers function, less than 20% of the voting securities of an insurance company or of any person who controls an insurance company.

(c) The statement to be filed with the Mayor shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsections (a) and (b) of this section is to be effected (hereinafter called "acquiring party"):

(A) If the person is an individual, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes, other than minor traffic violations, during the past 10 years; or

(B) If the person is not an individual, a report of the nature of its business operations during the past 5 years or for any lesser period the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these positions. The list shall include for each individual the information required by subparagraph (A) of this paragraph;

(2) The source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for this purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing the consideration; provided, however, that where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each acquiring party (or for any lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to in subsections (a) and (b) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation,

agreement, or acquisition referred to in subsections (a) and (b) of this section, and a statement as to the method by which the fairness of the proposal was determined;

(6) The amount of each class of any security referred to in subsections (a) and (b) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsections (a) and (b) of this section in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom any contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any security referred to in subsections (a) and (b) of this section during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;

(9) A description of any recommendations to purchase any security referred to in subsections (a) and (b) of this section made during the 12 calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsections (a) and (b) of this section, and, if distributed, all additional related soliciting material;

(11) The terms of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsections (a) and (b) of this section for tender, and the amount of any resulting fees, commissions, or other compensation to be paid to broker-dealers; and

(12) Any additional information as the Mayor may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(d) If the person required to file the statement referred to in subsections (a) and (b) of this section is a partnership, limited partnership, syndicate or other group, the Mayor may require that the information called for by subsection (c)(1) through (12) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsections (a) and (b) of this section is a corporation, the Mayor may require that the information called for by subsection (c)(1) through (12) of this section shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(e) If any material change occurs in the facts set forth in the statement filed with the Mayor and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the Mayor and sent to the insurer within 2 business days after the person learns of the change.

(f) If any offer, request, invitation, agreement, or acquisition referred to in subsections (a) and (b) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, approved May 27, 1933 (48 Stat. 74; 15 U.S.C. 77a *et seq.*), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. 78a *et seq.*), or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsections (a) and (b) of this section may utilize the documents in furnishing the information called for by that statement.

(g)(1) The Mayor shall approve any merger or other acquisition of control referred to in subsections (a) and (b) of this section unless, after a public hearing, the Mayor finds that:

(A) After the change of control, the domestic insurer referred to in subsections (a) and (b) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in the District or tend to create a monopoly. In applying the competitive standard in this paragraph:

(i) The informational requirements of section 5(c)(1) and the standards of section 5(d)(2) shall apply;

(ii) The merger or other acquisition shall not be disapproved if the Mayor finds that any of the situations meeting the criteria provided by section 5(d)(3) exist; and

(iii) The Mayor may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(D) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(E) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) The public hearing referred to in paragraph (1) of this subsection shall be held within 30 days after the statement required by subsections (a) and (b) of this section is filed, and at least 20 days notice shall be given by the Mayor to the person filing the statement.

Not less than 7 days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons designated by the Mayor. The Mayor shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of the District of Columbia. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of the public hearing.

(3) The Mayor may retain, at the acquiring person's expense, any attorneys, actuaries, accountants, and other experts not otherwise a part of the Mayor's staff as may be reasonably necessary to assist the Mayor in reviewing the proposed acquisition of control.

(h) The provisions of this section shall not apply to:

(1) Any transaction which is subject to the laws of the District dealing with the merger or consolidation of 2 or more insurers; or

(2) Any offer, request, invitation, agreement, or acquisition which the Mayor by order shall exempt as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) otherwise not comprehended within the purposes of this section.

(i) The following shall be violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a), (b) or (c) of this section; and

(2) The effectuation, or any attempt to effectuate, an acquisition of control of, or merger with, a domestic insurer unless the Mayor has given approval.

(j) Every person not resident, domiciled, or authorized to do business in the District who files a statement with the Mayor under this section shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Mayor to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the Mayor and transmitted by registered or certified mail by the Mayor to the person at his or her last known address.

Sec. 5. Acquisitions involving insurers not otherwise covered. New Section 35-3704

(a) For the purposes of this section, the term:

(1) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring, directly or indirectly, the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(2) "Involved insurer" means an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(b)(1) Except as provided in paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in the District.

(2) This section shall not apply to the following:

(A) An acquisition subject to approval or disapproval by the Mayor pursuant to section 4;

(B) A purchase of securities solely for investment purposes as long as the securities are not used by voting or otherwise to cause, or attempt to cause, the substantial lessening of competition in any insurance market in the District. If a purchase of securities results in a presumption of control as defined in section 2(c), it is not solely for investment purposes unless the Commissioner of Insurance or other appropriate official of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary Commissioner to the Mayor;

(C) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the Mayor in accordance with subsection (c)(1) of this section 30 days prior to the proposed effective date of the acquisition. This preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of paragraph (2) of this subsection;

(D) The acquisition of already affiliated persons;

(E) An acquisition if, as an immediate result of the acquisition:

(i) In no market would the combined market share of the involved insurers exceed 5% of the total market;

(ii) There would be no increase in any market share; or

(iii) In no market would the combined market share of the involved insurers exceeds 12% of the total market, and the market share increases by more than 2% of the total market.

(iv) For the purposes of this subparagraph, the term "market" means direct written insurance premium in the District for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in the District;

(F) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and

(G) An acquisition of an insurer whose domiciliary state insurance commissioner or other appropriate official affirmatively finds that the insurer is in failing condition, there is a lack of a feasible alternative to improving the condition, the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and these findings are communicated by the domiciliary state insurance commissioner or other appropriate official to the Mayor.

(c)(1) An acquisition covered by subsection (b) of this section may be subject to an order pursuant to subsection (e) of this section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a

preacquisition notification. The Mayor shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 9.

(2) The preacquisition notification shall be in the form and contain the information prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (b)(2)(E) of this section, cause the acquisition not to be exempted from the provisions of this section. The Mayor may require any additional material and information the Mayor deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in the District accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(3) The waiting period required shall begin on the date of receipt by the Mayor of a preacquisition notification and shall end on the earlier of the 30th day after the date of the receipt or termination of the waiting period by the Mayor. Prior to the end of the waiting period, the Mayor, on a one-time basis, may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the Mayor or termination of the waiting period by the Mayor.

(d)(1) The Mayor may enter an order under subsection (e)(1) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to lessen substantially competition in any line of insurance in the District, or tend to create a monopoly therein, or if the insurer fails to file adequate information in compliance with subsection (c) of this section.

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1) of this subsection, the Mayor shall consider the following:

(A) Any acquisition covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standards if the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more

15%	3% or more
19%	1% or more.

A highly concentrated market is one in which the share of the 4 largest insurers is 75% or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than 2 insurers are involved, exceeding the total of the 2 columns in the table is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection. For the purposes of this subparagraph, the insurer with the largest share of the market shall be deemed to be Insurer A.

(B) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the 2 largest to the 8 largest, has increased by 7% or more of the market over a period of time extending from any base year 5 to 10 years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is 1 of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is 2% or more.

(C) For the purposes of this paragraph, the term:

(i) "Insurer" includes any company or group of companies under common management, ownership, or control.

(ii) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Mayor shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in the District, and the relevant geographical market is assumed to be the District.

(D) The burden of showing prima facie evidence of violation of the competitive standard rests upon the Mayor.

(E) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, the Mayor may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking

of marketleaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e)(1) through (4) of this section if:

(A) The acquisition will yield substantial economies of scale or economies in resource utilization that feasibly cannot be achieved in any other way, and the public benefits which would arise from these economies exceed the public benefits which would arise from not lessening competition; or

(B) The acquisition will substantially increase the availability of insurance, and the public benefits of this increase exceed the public benefits which would arise from not lessening competition.

(e)(1) If an acquisition violates the standards of this section, the Mayor may enter an order:

(A) Requiring an involved insurer to cease and desist from doing business in the District with respect to the line or lines of insurance involved in the violation; or

(B) Denying the application of an acquired or acquiring insurer for a license to do business in the District.

(2) An order under this subsection shall not be entered unless:

(A) There is a hearing;

(B) Notice of the hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

(C) The hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the Mayor setting forth findings of fact and conclusions of law.

(3) An order entered under this subsection shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such a plan or other information, the Mayor shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(4) An order pursuant to this subsection shall not apply if the acquisition is not consummated.

(5) Any person who violates a cease and desist order of the Mayor under paragraph (1) of this subsection while such an order is in effect may, after notice and hearing and upon order of the Mayor, be subject, at the discretion of the Mayor, to any 1 or more of the following:

(A) A monetary administrative penalty of not more than $10,000 for every day of violation; or

(B) Suspension or revocation of the person's license.

(6) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to an administrative fine of not more than $50,000.

(f) Sections 11(b) and (c) and 13 do not apply to acquisitions covered under subsection (b) of this section.

Sec. 6. Registration of insurers.

New Section
35-3705

(a)(1) Every insurer which is authorized to do business in the District and which is a member of an insurance holding company system shall register with the Mayor, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in the following provisions of this act:

(A) Section 6;

(B) Section 7(a)(1), (b), and (d); and

(C) Either section 7(a)(2) or a provision like the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition.

(2) Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by 60 days after the effective date of the act or of each year for the previous calendar year, unless the Mayor for good cause shown extends the time for registration, and then within the extended time. The Mayor may require any insurer authorized to do business in the District which is a member of a holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (c) of this section or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement on a form prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(A) Loans, other investments, or purchases, sales, or exchange of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales, or exchange of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) All management agreements, service contracts, and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Mayor.

(c) All registration statements shall contain a summary outlining all items in the current registration statement which are different from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if the information is not material for the purposes of this section. Unless the Mayor by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of 1% or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(e) Subject to section 7(b), each registered insurer shall report to the Mayor all dividends and other distributions to shareholders within 15 business days following their declaration.

(f) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this act.

(g) The Mayor shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(h) The Mayor may require or allow 2 or more affiliated insurers subject to registration to file a consolidated registration statement.

(i) The Mayor may allow an insurer which is authorized to do business in the District and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the Mayor by rule, regulation, or order shall exempt the same from the provisions of this section.

(k) Any person may file with the Mayor a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the Mayor disallows such a disclaimer. The Mayor shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(l) The failure to file a registration statement or any summary of the registration statement required by this section within the time specified for such a filing shall be a violation of this section.

New Section 35-3706

Sec. 7. Standards and management of an insurer within a holding company system.

(a)(1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) Charges or fees for services performed shall be reasonable;

(C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(D) The books, accounts, and records of each party to all the transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including any accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

(E) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Mayor in writing of its intention to enter into such a transaction at least 30 days prior thereto, or any shorter period as the Mayor may permit, and the Mayor has not disapproved it within such a period:

(A) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders as of December 31st next preceding; or

(ii) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st next preceding;

(B) Loans or extensions of credit to any person who is not a affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders as of December 31st next preceding; or

(ii) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st next preceding;

(C) Reinsurance agreements or modifications in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer

and nonaffiliate that any portion of the assets will be transferred to 1 or more affiliates of the insurer;

(D) All management agreements, service contracts, and all cost-sharing arrangements; and

(E) Any material transactions, specified by regulation, which the Mayor determines may adversely affect the interests of the insurer's policyholders.

(3) Nothing contained in paragraph (2) of this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(4) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Mayor determines that any separate transactions were entered into over any 12-month period for that purpose, the Mayor may exercise authority provided under section 10.

(5) The Mayor, in reviewing transactions pursuant to subsection (a)(2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (a)(1) of this section and whether they may adversely affect the interests of policyholders.

(6) The Mayor shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds 10% of such corporation's voting securities.

(b)(1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty days after the Mayor has received notice of the declaration and has not within this period disapproved the payment; or

(B) The Mayor shall have approved the payment within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of the 31st day of December next preceding, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous 2 calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the 2nd and 3rd preceding calendar years, not including realized capital gains, less dividends paid in the 2nd and immediate preceding calendar years.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Mayor's approval, and such a declaration shall confer no rights

upon shareholders until the Mayor has approved the payment of such a dividend or distribution, or the Mayor has not disapproved the payment within the 30-day period referred to above.

(c)(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with 1 or more other persons under arrangements meeting the standards of section 5(a)(1).

(3) Not less than 1/3 of the directors of a domestic insurer and not less than 1/3 of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or such an entity. At least 1 such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee.

(4) The board of directors of a domestic insurer shall establish 1 or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer, and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such an entity. The committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not apply to a domestic insurer if the person controlling the insurer is an insurer having a board of directors and committees that meet the requirements of paragraphs (3) and (4) of this subsection.

(d) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates.

The Mayor may treat such an investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such an investment so warrants.

Sec. 8. Examination.

New Section 35-3707

(a) Subject to the limitations contained in this section and in addition to the powers which the Mayor has under the insurance laws of the District relating to the examination of insurers, the Mayor may order any insurer registered under section 6 to produce records, books, or other information papers in the possession of the insurer or its affiliates reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this act. In the event the insurer fails to comply with the order, the Mayor shall have the power to examine such affiliates to obtain the information.

(b) The Mayor may retain, at the registered insurer's expense, these attorneys, actuaries, accountants and other experts not otherwise a part of the Mayor's staff reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any person so retained shall be under the direction and control of the Mayor and shall act in a purely advisory capacity.

(c) Each registered insurer producing records, books and papers for examination pursuant to subsection (a) of this section shall be liable for and shall pay the expense of the examination in accordance with the Law on Examinations Act of 1993 governing cost of examinations.

Sec. 9. Confidential treatment.

New Section 35-3708

All information, documents, and copies obtained by or disclosed to the Mayor or any other person in the course of an examination or investigation made pursuant to section 8 and all information reported pursuant to sections 6 and 7 shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the Mayor, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains, unless the Mayor, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the Mayor may publish all or any part in such a manner as he or she deems appropriate.

Sec. 10. Rules.

Note, New Section 35-3701

The Mayor shall, pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code §§ 1-1501 through 1-1510), issue rules to implement the provisions of this act.

New Section 35-3709

Sec. 11. Injunctions, prohibitions against voting securities, sequestration of voting securities.

(a) Whenever it appears to the Mayor that any insurer or any director, officer, employee, or agent has committed, or is about to commit, a violation of this act or of any rule, regulation, or order issued by the Mayor, the Mayor may apply to the Superior Court of the District of Columbia for an order enjoining the insurer or the director, officer, employee, or agent from violating or continuing to violate this act or any rule, regulation, or order, and for any other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(b)(1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this act, or of any rule, regulation, or order issued by the Mayor pursuant to this act, may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at such a meeting shall be invalidated by the voting of these securities, unless the action would materially affect control of the insurer or unless the courts of the District of Columbia have so ordered.

(2) If an insurer or the Mayor has reason to believe that any security of the insurer has been, or is about to be, acquired in contravention of the provisions of this act or of any rule, regulation, or order issued by the Mayor pursuant to this act, the insurer or the Mayor may apply to the Superior Court of the District of Columbia to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 3 or any rule, regulation, or order issued by the Superintendent to enjoin the voting of any security so acquired, to void any vote of such a security already cast at any meeting of shareholders, and for any other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) In any case where a person has acquired, or is proposing to acquire, any voting securities in violation of this act or any rule, regulation, or order issued by the Mayor pursuant to this act, the Superior Court of the District of Columbia may, on that notice the court deems appropriate and upon the application of the insurer or the Mayor, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue an order appropriate to effectuate the provisions of this act.

(d) Notwithstanding any other provisions of law, for the purposes of this act the sites of the ownership of the securities of domestic insurers shall be deemed to be in the District.

New Section 35-3710

Sec. 12. Sanctions.

(a)(1) Any insurer failing, without just cause, to file any registration statement as required in this act shall be required, after notice and hearing, to pay an administrative penalty of $1,000 for each day's delay, to be recovered by the Mayor and the penalty so recovered shall be paid into the District of Columbia Treasury. The maximum penalty under this section shall be $100,000.

(2) The Mayor may reduce the penalty if the insurer demonstrates to the Mayor that the imposition of the penalty would constitute a financial hardship to the insurer.

(3) Adjudication of infractions under this section shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*).

(b)(1) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 6(a), 7(a)(2), or 7(b), or which violate this act, shall pay, in their individual capacity, a civil administrative penalty of not more than $1,000 per violation, after notice and hearing before the Mayor.

(2) In determining the amount of the civil administrative penalty, the Mayor shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Adjudication of any infraction of this subsection shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*).

(c)(1) Whenever it appears to the Mayor that any insurer subject to this act, or any director, officer, employee, or agent, has engaged in any transaction or entered into a contract which is subject to section 7 and which would not have been approved had approval been requested, the Mayor may order the insurer to immediately cease and desist any further activity under that transaction or contract.

(2) After notice and hearing the Mayor may also order the insurer to void any contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(d)(1) Whenever it appears to the Mayor that any insurer, or any director, officer, employee, or agent, has committed a willful violation of this act, the Mayor may cause criminal proceedings to be instituted in the Superior Court of the District of Columbia against the insurer or the responsible director, officer, employee, or agent.

(2) Any insurer that willfully violates this act may be fined not more than $1,000,000.

(3) Any individual who willfully violates this act may be fined in his or her individual capacity not more than $750,000 dollars, or be imprisoned for not more than 1 to 3 years, or both.

(e) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to, or makes or causes to be made, any false statements, false reports, or false filings with the intent to deceive the Mayor in the performance of his or her duties under this act, upon conviction, shall be imprisoned for not more than 3 to 5 years, or fined $100,000 dollars, or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act, or any rules or regulations issued under the authority of this act, pursuant to titles

I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*). Adjudication of any infraction of this act shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*).

Sec. 13. Receivership. New Section 35-3711

Whenever it appears to the Mayor that any person has committed a violation of this act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the Superintendent may proceed as provided under the insurance laws of the District to take possession of the property of such a domestic insurer and to conduct its business, or take any other actions as the Mayor, at the Mayor's discretion, deems appropriate.

Sec. 14. Recovery. New Section 35-3712

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment pursuant to clause (i) or (ii) is made at any time during the 1 year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d) of this section.

(b) No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c)(1) Any person that was a parent corporation, holding company, or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable, under subsection (a) of this section, up to the amount of distributions or payments such a person received.

(2) Any person that otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions the person would have received if they had been paid immediately.

(3) If 2 or more persons are liable with respect to the same distributions, they shall be jointly and severely liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it, its

parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid shall be jointly and severely liable for any resulting deficiency in the amount recovered from the parent corporation, holding company, or person who otherwise controlled it.

New Section 35-3713

Sec. 15. Revocation, suspension, or nonrenewal of insurer's license.

Whenever it appears to the Mayor that any person has committed a violation of this act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Mayor may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in the District for such a period as the Mayor finds is required for the protection of policyholders or the public. Any determination shall be accompanied by specific findings of fact and conclusions of law.

New Section 35-3714

Sec. 16. Judicial review; mandamus.

(a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the Mayor pursuant to this act may appeal to the District of Columbia Court of Appeals, in accordance with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Code § 1-1510).

(b) The filing of an appeal pursuant to this section shall not stay the application of any such rule, regulation, order, or other action of the Mayor to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant such a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.

(c) Any person aggrieved by any failure of the Mayor to act or make a determination required by this act may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Mayor to act or make such determination forthwith.

Sections 35-2001 through 35-2015

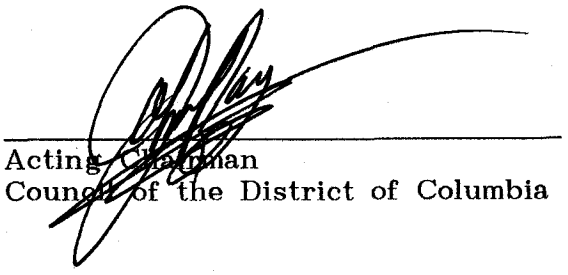
Sec. 17. Repealers.

The Holding Company System Regulatory Act, approved August 24, 1974 (88 Stat. 752; D.C. Code § 35-2001 *et seq.*), is repealed.

Sec. 18. Effective date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and

publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.



Acting Chairman
Council of the District of Columbia

DEEMED APPROVED WITHOUT SIGNATURE
UPON EXPIRATION OF 10-DAY MAYORAL
REVIEW PERIOD.

NOT SIGNED

Mayor
District of Columbia

August 5, 1993

COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TEN

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 10-132

☒ Item on Consent Calendar

☒ ACTION & DATE: Adopted First Reading, 6-29-93

☒ VOICE VOTE: Approved

Recorded vote on request

Absent: Barry and Chavous

☐ ROLL CALL VOTE: — RESULT _____ (__/__/__/__)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — July 19, 1993 Date

☒ Item on Consent Calendar

☒ ACTION & DATE: Adopted Final Reading, 7-13-93

☒ VOICE VOTE: Approved

Recorded vote on request

Absent: Chavous

☐ ROLL CALL VOTE: — RESULT _____ (__/__/__/__)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — July 19, 1993 Date

☐ Item on Consent Calendar

☐ ACTION & DATE: _____

☐ VOICE VOTE: _____

Recorded vote on request

Absent: _____

☐ ROLL CALL VOTE: — RESULT _____ (__/__/__/__)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council — Date