

# ENROLLMENT(S)



COUNCIL OF THE DISTRICT OF COLUMBIA

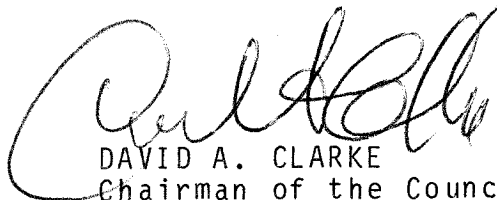
NOTICE

D.C. LAW 10-47

"Reinsurance Intermediary 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. 10-126 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. 10-92, published in the August 20, 1993, edition of the D.C. Register, (Vol. 40 page 6093) 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 10-47, 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

AN ACT

Codification

D.C. ACT 10-92

District of Columbia Code

(1994 Supplement)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

New Chapter 31,  
Title 35

AUGUST 4, 1993

To establish standards for a reinsurance intermediary to operate; to set forth duties of insurers utilizing the services of the reinsurance intermediary; and to prohibit certain activities.

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

Sec. 2. Definitions.

New Section  
35-3101

For the purposes of this act, the term:

- (1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.
- (2) "Controlling person" means any person, firm, association, or corporation who directly or indirectly has the power to direct, or cause to be directed, the management, control, or activities of the reinsurance intermediary.
- (3) "District" means the District of Columbia.
- (4) "Holding Company Act" means the Holding Company System Regulatory Act, approved August 24, 1974 (88 Stat. 752; D.C. Code § 35-2001 *et seq.*).
- (5) "Insurer" means any person, firm, association, or corporation duly licensed in the District pursuant to the applicable provisions of District insurance law as an insurer.
- (6) "Licensed producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of insurance law.
- (7) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in paragraphs (8) and (9) of this section.
- (8) "Reinsurance intermediary-broker" ("RB") means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.
- (9) "Reinsurance intermediary-manager" ("RM") means any person, firm, association, or corporation that has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a RM, manager, or other similar term. Notwithstanding the

above, for the purposes of this act, the following persons shall not be considered a RM, with respect to such a reinsurer:

(A) An employee of the reinsurer;  
(B) A United States manager of the United States branch of an alien reinsurer;

(C) An underwriting manager that, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Holding Company Act, and whose compensation is not based on the volume of premiums written; or

(D) The manager of a group, association, pool, or organization of insurers that engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner or superintendent of insurance of the state in which the manager's principal business office is located.

(10) "Reinsurer" means any person, firm, association, or corporation duly licensed in the District pursuant to the applicable provisions of insurance law of the District as an insurer with the authority to assume reinsurance.

(11) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this act.

(12) "Qualified United States financial institution" means an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States, any state, or the District;

(B) Is regulated, supervised, and examined by United States federal, state, or District authorities having regulatory authority over banks and trust companies; and

(C) Has been determined, by either the Mayor or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Mayor.

Sec. 3. Licensure.

(a) No person, firm, association, or corporation shall act as a reinsurance broker in the District if the reinsurance broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(1) In the District, unless the reinsurance broker is a licensed broker in the District; or

(2) In another state, unless the reinsurance broker is a licensed broker in the District or another state having a law substantially similar to this act or the reinsurance broker is licensed in the District as a nonresident reinsurance intermediary.

(b) No person, firm, association, or corporation shall act as a reinsurance manager:

(1) For a reinsurer domiciled in the District unless the reinsurance manager is a licensed broker in the District;

(2) In the District, if the reinsurance manager maintains an office either directly or as a member or employee of a firm or association,

New Section  
35-3102

or an officer, director, or employee of a corporation in the District, unless the reinsurance manager is a licensed broker in the District; or

(3) In another state for a nondomestic insurer, unless the reinsurance manager is a licensed broker in the District or another state having a law substantially similar to this act or the person is licensed in the District as a nonresident reinsurance intermediary.

(c) The Mayor may require a reinsurance manager subject to subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the Mayor for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy fund in an amount acceptable to the Mayor.

(d)(1) The Mayor may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this act. Such a license issued to a firm or association will authorize all the members of the firm or association, and any designated employees, to act as reinsurance intermediaries under the license, and all those persons shall be named in the application and any subsequent supplements. Such a license issued to a corporation shall authorize all of the officers, and any designated employees and directors, to act as reinsurance intermediaries on behalf of the corporation, and all those persons shall be named in the application and any subsequent supplements

(2) If the applicant for a reinsurance intermediary license is a nonresident, such an applicant, as a condition precedent to receiving or holding a license, shall designate the Superintendent as agent for service of process in the manner, and with the same legal effect, provided by this act for designation of service of process upon unauthorized insurers, and also shall furnish the Mayor with the name and address of a resident of the District upon whom notices or orders of the Mayor or process affecting the nonresident reinsurance intermediary may be served. Such a licensee shall promptly notify the Mayor in writing of every change in its designated agent for service of process, and no change shall become effective until acknowledged by the Mayor .

(e) The Mayor may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of such an applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such a license, or has failed to comply with any prerequisite for the issuance of such a license. Upon written request, the Mayor will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to the District of Columbia Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Code §§ 1-1521 through 1-1529).

(f) Licensed attorneys at law of the District, when acting in their professional capacity, shall be exempt from this section.

Sec. 4. Required contract provisions; reinsurance intermediary-brokers.

Transactions between a reinsurance broker and the insurer it represents shall only be entered into pursuant to a written authorization,

New Section  
35-3103

specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

(1) The insurer may terminate the reinsurance broker's authority at any time.

(2) The reinsurance broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance broker, and remit all funds due to the insurer within 30 days of receipt.

(3) All funds collected for the insurer's account will be held by the reinsurance broker in a fiduciary capacity in a bank which is a qualified United States financial institution as defined in section 2.

(4) The reinsurance broker will comply with section 5.

(5) The reinsurance broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Sec. 5. Books and records; reinsurance intermediary brokers.

New Section  
35-3104

(a) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance broker, the reinsurance broker will keep a complete record for each transaction showing:

(1) The type of contract, limits, underwriting restrictions, classes, or risks and territory;

(2) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

(3) Reporting and settlement requirements of balances;

(4) Rate used to compute the reinsurance premium;

(5) Names and addresses of assuming reinsurers;

(6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance broker;

(7) Related correspondence and memoranda;

(8) Proof of placement;

(9) Details regarding retrocessions handled by the reinsurance broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) Financial records, including, but not limited to, premium and loss accounts; and

(11) When the reinsurance broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(B) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(b) The insurer will have access and the right to copy and audit all accounts and records maintained by the reinsurance broker related to its business in a form usable by the insurer.

Sec. 6. Duties of insurers utilizing the services of a reinsurance intermediary-broker.

New Section  
35-3105

(a) An insurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance broker on its behalf unless the person is licensed as required by section 3(a).

(b) An insurer may not employ an individual who is employed by a reinsurance broker with which it transacts business, unless the reinsurance broker is under common control with the insurer and subject to the Holding Company Act.

(c) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance broker with which it transacts business.

Sec. 7. Required contract provisions; reinsurance intermediary-managers.

New Section  
35-3106

Transactions between a reinsurance manager and the reinsurer it represents shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before a reinsurer assumes or cedes business through such a producer, a true copy of the approved contract shall be filed with the Mayor for approval. The contract shall, at a minimum, provide that:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance manager. The reinsurer may immediately suspend the authority of the reinsurance manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account will be held by the reinsurance manager in a fiduciary capacity in a bank which is a qualified United States financial institution. The reinsurance manager may retain no more than 3 months estimated claims payments and allocated loss adjustment expenses. The reinsurance manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance manager, the reinsurance manager will keep a complete record for each transactions showing:

(A) The type of contract, limits, underwriting restrictions, classes, or risks, and territory;

(B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(C) Reporting and settlement requirements of balances;

(D) Rate used to compute the reinsurance premium;

(E) Names and addresses of reinsurers;

(F) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance manager;

(G) Related correspondence and memoranda;

(H) Proof of placement;

(I) Details regarding retrocessions handled by the RM, as permitted by section 9(d), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(J) Financial records, including, but not limited to, premium and loss accounts; and

(K) When the reinsurance manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance manager related to its business in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the reinsurance manager.

(7) The reinsurance manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates shall be set forth, as well as the terms and purposes of commissions, charges, and other fees which the reinsurance manager may levy against the reinsurer.

(9) If the contract permits the reinsurance manager to settle claims on behalf of the reinsurer:

(A) All claims will be reported to the reinsurer in a timely manner.

(B) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed the lesser of an amount determined by the Mayor or the limit set by the reinsurer;

(ii) Involves a coverage dispute;

(iii) May exceed the reinsurance manager's claims settlement authority;

(iv) Is open for more than 6 months; or

(v) Is closed by payment of the lesser of an amount set by the Mayor or an amount set by the reinsurer.

(C) All claim files will be the joint property of the reinsurer and reinsurance manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the reinsurance manager shall have reasonable access to and the right to copy the files on a timely basis.

(D) Any settlement authority granted to the reinsurance manager may be terminated for cause upon the reinsurer's written notice to the reinsurance manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance manager, the interim profits will not be paid until 1 year after the end of each underwriting period for property business, and 5 years after the end of each underwriting period for casualty business, or a later period set by the Mayor for specified lines of



insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to section 9(c).

(11) The reinsurance manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall periodically, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance manager.

(13) The reinsurance manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

Sec. 8. Prohibited acts.

The reinsurance manager shall not:

New Section  
35-3107

(1) Cede retrocessions on behalf of the reinsurer, except that the reinsurance manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for retrocessions. These guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(2) Commit the reinsurer to participate in reinsurance syndicates;

(3) Appoint any broker without assuring that the broker is lawfully licensed to transact the type of reinsurance for which he or she is appointed;

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;

(6) Jointly employ an individual who is employed by the reinsurer unless the reinsurance manager is under common control with the reinsurer subject to the Holding Company Act; or

(7) Appoint a sub-reinsurance manager.

Sec. 9. Duties of reinsurers utilizing the services of a reinsurance-intermediary-manager.

New Section  
35-3108

(a) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance manager on its behalf unless the person is licensed as required by section 3(b).

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance manager which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the Mayor.

(c) If a reinsurance manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance manager. This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance manager.

(e) Within 30 days of termination of a contract with a reinsurance manager, the reinsurer shall provide written notification of the termination to the Superintendent.

(f) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its reinsurance manager. This subsection shall not apply to relationships governed by the Holding Company Act.

Sec. 10. Examination authority.

New Section  
35-3109

(a) A reinsurance intermediary shall be subject to examination by the Mayor. The Mayor shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the Mayor

(b) A reinsurance manager may be examined as if it were the reinsurer.

Sec. 11. Penalties and liabilities.

New Section  
35-3110

(a) If the Mayor determines that the managing general agent or any other person has not materially complied with this act, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the Mayor may order:

(1) For each separate violation, a penalty in an amount not exceeding \$10,000;

(2) Revocation or suspension of the producer's license; and

(3) If it was found that because of material noncompliance the insurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors, or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to the Insurers Rehabilitation and Liquidation Act of 1993, and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with this act, or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the Mayor to impose any other penalties provided in District insurance law.

(d) Nothing contained in this act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to those persons.

Note,  
New Section  
35-3101

Sec. 12. Rules and regulations.

The Mayor may, 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.

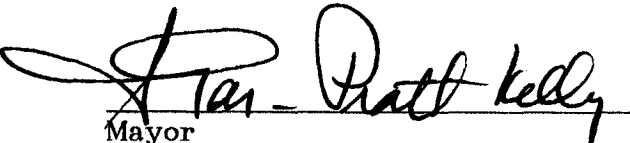
Sec. 13. Effective date.

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

Bill 10-126

DOCKET NO:

[X] Item on Consent Calendar

[X] ACTION & DATE:

Adopted First Reading, 6-29-93

[X] VOICE VOTE:

Approved

Recorded vote on request

Absent:

Barry and Chavous

[ ] ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. and 5 rows of member names: CHMN. RAY, BARRY, BRAZIL, CHAVOUS, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, SMITH, JR., THOMAS, SR.

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

CERTIFICATION RECORD

Signature of Secretary to the Council

Secretary to the Council

July 21, 1993 Date

[X] Item on Consent Calendar

[X] ACTION & DATE:

Adopted Final Reading, 7-13-93

[X] VOICE VOTE:

Approved

Recorded vote on request

Absent:

Chavous

[ ] ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. and 5 rows of member names: CHMN. RAY, BARRY, BRAZIL, CHAVOUS, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, SMITH, JR., THOMAS, SR.

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

CERTIFICATION RECORD

Signature of Secretary to the Council

Secretary to the Council

July 21, 1993 Date

[ ] Item on Consent Calendar

[ ] ACTION & DATE:

[ ] VOICE VOTE:

Recorded vote on request

Absent:

[ ] ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. and 5 rows of member names: CHMN. RAY, BARRY, BRAZIL, CHAVOUS, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, SMITH, JR., THOMAS, SR.

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

CERTIFICATION RECORD

Secretary to the Council

Date