

# ENROLLMENT(S)

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 10-52

"Business Transacted with Producer  
Controlled Insurer 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. 10-135 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. 10-97, published in the August 20, 1993, edition of the D.C. Register, (Vol. 40 page 6129) 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 10-52, 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 10-97

District of Columbia Code

( 1994 Supplement)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 4, 1993

New Chapter 40,  
Title 35

To establish clear standards for transacting business where an insurance broker has a controlling interest in an insurer with which the business of the consumer is to be placed.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Business Transacted with Producer Controlled Insurer Act of 1993".

Sec. 2. Definitions.

For the purposes of this act, the term:

New, Section  
35-4001

(1) "Accredited state" means a jurisdiction in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners ("NAIC").

(2) "Captive insurers" means insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies, or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

(3) "Control" or "controlled" has the meaning ascribed in section 2(2) of the Holding Company System Act of 1993.

(4) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

(5) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(6) "Holding company system" has the meaning ascribed in section 2(4) of the Holding Company System Act of 1993.

(7) "Licensed insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property/casualty insurance business in the District of Columbia. The following, inter alia, are not licensed insurers for the purposes of this act:

(A) All risk retention groups as defined in the Superfund Amendments and Reauthorization Act of 1986, approved October 17, 1986 (100 Stat. 1613; 42 U.S.C. 9601 *et seq.*), the Product Liability Risk Retention Act of 1981, approved September 25, 1981 (95 Stat. 949; 15 U.S.C. 3901 *et seq.*), and section 2 of the Risk Retention Act of 1993;

(B) All residual market pools and joint underwriting authorities or associations; and

(C) All captive insurers.

(8) "Producer" means an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, such a person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

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

Sec. 3. Applicability.

New, Section  
35-4002

This act shall apply to licensed insurers either domiciled in the District of Columbia or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the Holding Company System Act of 1993, to the extent they are not superseded by this act, shall continue to apply to all parties within holding company systems subject to this act.

Sec. 4. Applicability of minimum standards.

New, Section  
35-4003

(a) The provisions of sections 5, 6, and 7 shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(b) Subsection (a) of this section shall not apply if:

(1) The controlling producer:

(A) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with the insurance; and

(B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

Sec. 5. Required contract provisions.

New, Section  
35-4004

A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer, and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write

business during the pendency of any dispute regarding the cause for termination.

(2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract.

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with applicable provisions of insurance law of the District of Columbia. Funds of a controlling producer not required to be licensed in the District of Columbia shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract shall not be assigned in whole or in part by the controlling producer.

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees shall be included. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (7) of this section, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation shall not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to section 5(1) and (6).

(10) The contract provides a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling

producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate, but shall not bind, reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

Sec. 6. Audit committee.

New, Section  
35-4005

Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary, or other independent loss reserve specialist acceptable to the Mayor, to review the adequacy of the insurer's loss reserves.

Sec. 7. Reporting requirements.

New, Section  
35-4006

(a) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the Mayor an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the Mayor or reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including that incurred, but not reported, on business placed by the producer.

(b) The controlled insurer shall annually report to the Mayor the amount of commissions paid to the producer, the percentage the amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Sec. 8. Disclosure.

New, Section  
35-4007

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his or her records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

Sec. 9. Penalties.

New, Section  
35-4008

(a)(1) If the Mayor believes that the controlling producer or any other person has not materially complied with this act, or any regulation or order promulgated hereunder, after notice and opportunity to be

heard, the Superintendent may order the controlling producer to cease placing business with the controlled insurer; and

(2) If it was found that because of material noncompliance the controlled insurer or any policyholder has suffered any loss or damage, the Mayor may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or for other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to the Insurers Rehabilitation and Liquidation Act of 1993, and the receiver appointed under that order believes that the controlling producer, or any other person, has not materially complied with this act, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, 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 under the insurance laws of the District of Columbia.

(d) Nothing contained in this section shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Sec. 10. Rules.

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.

Note,  
New, Section  
35-4001

Sec. 11. Applicability.

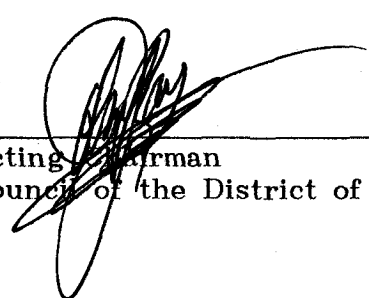
Controlled insurers and controlling producers who are not in compliance with sections 4, 5, 6, and 7 on the effective date of this act shall have 60 days to come into compliance and shall comply with section 8 beginning with all policies written or renewed on or after 60 days after the effective date of this act.

Note,  
New, Section  
35-4001

Sec. 12. Effective date.

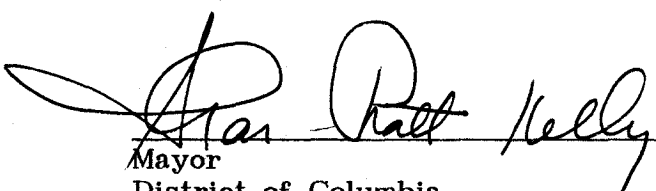
This act shall take effect after a 30 day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-223(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.



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Acting Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia

Approved: August 4, 1993





COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TEN

RECORD OF OFFICIAL COUNCIL VOTE

Bill 10-135

DOCKET NO:

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

Phyllis Ford  
Secretary to the Council

July 21, 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

Phyllis Ford  
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

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