

# ENROLLMENT(S)

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 10-51

"Property and Liability Insurance  
Guaranty Association 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. 10-134 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. 10-96, published in the August 20, 1993, edition of the D.C. Register, (Vol. 40 page 6120) 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 10-51, 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 10-96

District of Columbia Code

(1994 Supplement)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA New Chapter 39,  
Title 35

AUGUST 4, 1993

To provide a mechanism for the payment of covered claims under certain insurance policies; to avoid excessive delay in payment; to avoid financial loss to claimants or policyholders because of the insolvency of an insurer; to assist in the detection and prevention of insurer insolvencies; and to provide an association to assess the cost of this protection among insurers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Property and Liability Insurance Guaranty Association Act of 1993".

Sec. 2. Definitions.

New Section  
35-3901

For the purposes of this act, the term:

- (1) "Account" means any 1 of the 3 accounts created by section 4.
- (2) "Affiliate" means a person who directly, or indirectly, through 1 or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31st of the year next preceding the date the insurer becomes an insolvent insurer.
- (3) "Association" means the District of Columbia Insurance Guaranty Association created pursuant to section 4.
- (4) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.
- (5) "Control" 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 that control does not exist in fact.
- (6) "Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this act applies issued by an insurer, if such an insurer becomes an insolvent insurer after the effective date of this act, and:

(A) The claimant or insured is a resident of the District at the time of the insured event, provided that for entities other than an individual, the principal place of business of the claimant or insured is located in the District at the time of the insured event; or

(B) The property from which the claim arises is permanently located in the District. The term "covered claim" shall not include any amount awarded as punitive or exemplary damages, sought as a return of premium under any retrospective rating plan, or due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries or otherwise.

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

(8) "Insolvent insurer" means an insurer licensed to transact insurance in the District of Columbia, either at the time the policy was issued or when the insured event occurred, and against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this act by a court of competent jurisdiction in the insurer's state of domicile or of the District under section 6 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1067; D.C. Code § 35-1508), and which order of liquidation has not been stayed or been the subject of a writ of supersedes or other comparable order.

(9) "Member insurer" means any person who:

(A) Writes any kind of insurance to which this act applies under section 3, including the exchange of reciprocal or interinsurance contracts; and

(B) Is licensed to transact insurance in the District.

(10) "Net direct written premiums" means direct gross premiums written in the District on insurance policies to which this act applies, less return premiums and dividends paid or credited to policyholders on the direct business. The term "net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(11) "Person" means any individual, corporation, partnership, association, or voluntary organization.

### Sec. 3. Applicability.

This act shall apply to all kinds of direct insurance, but shall not be applicable to the following:

- (1) Life, annuity, health, or disability insurance;
- (2) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.
- (5) Insurance of warranties or service contracts;
- (6) Title insurance;
- (7) Ocean marine insurance;
- (8) Any transaction or combination of transactions between a person, including affiliates of such a person, and an insurer, including affiliates of such an insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or
- (9) Any insurance provided by or guaranteed by government.

New Section  
35-3902

Sec. 4. Creation of the Association.

New Section  
35-3903

There is created a nonprofit unincorporated legal entity to be known as the District of Columbia Insurance Guaranty Association. All insurers defined as member insurers in section 2(9) shall be and remain members of the Association as a condition of their authority to transact insurance in the District. The Association shall perform its functions under a plan of operation established and approved under section 7 and shall exercise its powers through a board of directors established under section 5. For purposes of administration and assessment, the Association shall be divided into 3 separate accounts:

- (1) The workmen's compensation insurance account;
- (2) The automobile insurance account; and
- (3) The account for all other insurance to which this act

applies.

Sec. 5. Board of directors.

New Section  
35-3904

(a) The board of directors of the Association shall consist of not fewer than 5 nor more than 9 persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the Mayor. Vacancies on the board shall be filled for the remainder of the term by a majority vote of the remaining board members subject to the approval of the Mayor. If no members are selected within 60 days after the effective date of this act, the Mayor may appoint the initial members of the board of directors.

(b) In approving selections to the board of directors, the Mayor shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board of directors may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors.

Sec. 6. Powers and duties of the Association.

New Section  
35-3905

(a) The Association shall:

(1) Be obligated to pay covered claims existing prior to the determination of the insolvency arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination of insolvency, or before the insured replaces the policy or causes its cancellation, if the insured does so within 30 days of the determination. The obligation shall extend to covered claims reported pursuant to an optional extended period to report claims sold to the insured by the liquidator. The obligation as to covered claims shall be satisfied by paying to the claimant an amount as follows:

(A) The full amount of a covered claim for benefits under a workers' compensation insurance coverage;

(B) An amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; or

(C) An amount not exceeding \$300,000 per claimant for all other covered claims.

In no event shall the Association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises. Notwithstanding any other provision of this act, a covered claim shall not include any claim filed with the Guaranty Fund after the earlier of the final date for the filing of claims

against the liquidator or receiver of an insolvent insurer or 18 months after the order of liquidation. The Association shall pay only that amount of each unearned premium which is in excess of \$100;

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) Allocate claims paid and expenses incurred among the 3 accounts separately, and assess member insurers, separately for each account, amounts necessary to pay the obligations of the Association under paragraph (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any one year on any account an amount greater than 2% of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association shall pay claims in any order which it deems reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such a payment will not reduce capital or surplus below required minimums. These payments shall be refunded to those companies receiving larger assessments by virtue of such a deferment, or at the election of any company, credited against future assessments. Each member insurer may set off, against any assessment, authorized payments made on covered claims and expenses incurred in the payment of these claims by the member insurer if they are chargeable to the account for which the assessment is made;

(4) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims. The Association may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(5) Notify those persons the Mayor directs under section 8(b)(1);

(6) Handle claims through its employees or through 1 or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Mayor, but the designation may be declined by a member insurer; and

(7) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association and shall pay the other expenses of the Association authorized by this act.

(b) The Association may:

(1) Employ or retain those persons necessary to handle claims and perform other duties of the Association;

(2) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation;

(3) Sue or be sued;

(4) Negotiate and become a party to those contracts necessary to carry out the purposes of this act;

(5) Perform any other acts necessary or proper to effectuate the purposes of this act; and

(6) Refund to the member insurers, in proportion to the contribution of each member insurer to that account, that amount by which the assets of the account exceed the liabilities, if at the end of any calendar year, the board of directors finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

Sec. 7. Plan of operation.

New Section

(a)(1) The Association shall submit to the Mayor a plan of operations, and any amendments thereto, necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Mayor.

35-3906

(2) If the Association fails to submit a suitable plan of operation within 90 days following the effective date of this act, or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Mayor shall, after notice and hearing, issue those reasonable rules necessary or advisable to effectuate the provisions of this act. These rules shall continue in force until modified by the Mayor or superseded by a plan submitted by the Association and approved by the Mayor.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the Association under section 6 will be performed;

(2) Establish procedures for handling assets of the Association;

(3) Establish the amount and method of reimbursing members of the board of directors under section 5;

(4) Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of claims shall be periodically submitted to the Association or similar organization in another jurisdiction by the receiver or liquidator;

- (5) Establish regular places and times for meetings of the board of directors;
  - (6) Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the board of directors;
  - (7) Provide that any member insurer aggrieved by any final action or decision of the Association may appeal to the Mayor within 30 days after the action or decision;
  - (8) Establish the procedures whereby selections for the board of directors will be submitted to the Mayor; and
  - (9) Contain additional provisions necessary and proper for the execution of the powers and duties of the Association.
- (d) The plan of operation may provide that any or all powers and duties of the Association, except those under section 6(a)(3) and (b)(2), are delegated to a corporation, association, or other organization which performs, or will perform, functions similar to those of this Association or its equivalent in 2 or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the Mayor, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

Sec. 8. Powers and duties of the Mayor.

New Section  
35-3907

- (a) The Mayor shall:
  - (1) Notify the Association of the existence of an insolvent insurer not later than 3 days after he or she receives notice of the determination of the insolvency. The Association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction; and
  - (2) Upon request of the board of directors, provide the Association with a statement of the net direct written premiums of each member insurer.
- (b) The Mayor may:
  - (1) Require that the Association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation in the District shall be sufficient;
  - (2) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in the District of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Mayor may levy a fine on any member insurer which fails to pay an assessment when due. Such a fine shall not exceed 5% of the unpaid assessment per month, except that no fine shall be less than \$100 per month; or
  - (3) Revoke the designation of any servicing facility if the Mayor finds claims are being handled unsatisfactorily.
- (c) Any final action or order of the Mayor under this act shall be subject to judicial review 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).

Sec. 9. Effect of paid claims.

New Section  
35-3908

(a) Any person recovering under this act shall be deemed to have assigned his or her rights under the policy to the Association to the extent of his or her recovery from the Association. Every insured or claimant seeking the protection of this act shall cooperate with the Association to the same extent as that person would have been required to cooperate with the insolvent insurer. The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except those causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer and except as provided in subsection (b) of this section. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the Association shall not operate to reduce the liability of the insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The Association shall have the right to recover from the following persons the amount of any covered claim paid on behalf of such a person pursuant to the act:

(1) Any insured whose net worth on December 31st of the year next preceding the date the insurer becomes an insolvent insurer exceeds \$50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this act; and

(2) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this act.

(c) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another jurisdiction. The court having jurisdiction shall grant these claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the Association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(d) The Association shall periodically file, with the receiver or liquidator of the insolvent insurer, statements of the covered claims paid by the Association and estimates of anticipated claims on the Association which shall preserve the rights of the Association against the assets of the insolvent insurer.

Sec. 10. Nonduplication of recovery.

New Section  
35-3909

(a) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his or her right under such a policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such an insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the Association of the place of residence of the insured, except that if it is a first-party claim for damage to property

with a permanent location, he or she shall seek recovery first from the Association of the location of the property, and if it is a workers' compensation claim, he or she shall seek recovery first from the Association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sec. 11. Prevention of insolvencies.

To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors may, upon majority vote:

(A) Make recommendations to the Mayor for the detection and prevention of insurer insolvencies; and

(B) Respond to requests by the Mayor to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. The recommendations shall not be considered public documents.

(2) The board of directors may, at the conclusion of any domestic insurer insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of the insolvency, based on the information available to the Association, and submit the report to the Mayor.

New Section  
35-3910

Sec. 12. Examination of the Association.

The Association shall be subject to examination and regulation by the Mayor. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the Mayor.

New Section  
35-3911

Sec. 13. Tax exemption.

The Association shall be exempt from payment of all fees and all taxes levied by the District, except taxes levied on real or personal property.

New Section  
35-3912

Sec. 14. Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association by the member insurer less any amounts returned to the member insurer by the Association, and these rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

New Section  
35-3913

Sec. 15. Immunity from liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the board of directors, or the Mayor or his or her representatives for any action taken or any failure to act by them in the performance of their powers and duties under this act.

New Section  
35-3914

Sec. 16. Stay of proceedings.

(a) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in District of Columbia shall be stayed for 6 months, and any additional time thereafter as may be determined by the court, from the date the insolvency is determined or

New Section  
35-3915

an ancillary proceeding is instituted in the District, whichever is later, to permit proper defense by the Association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the Association, either on its own behalf or on behalf of the insured, may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and shall be permitted to defend the claim on the merits.

(b) The liquidator, receiver, or statutory successor of an insolvent insurer covered by this act shall permit access by the board of directors or its authorized representative, to any of the insolvent insurer's records which are necessary for the board of directors in carrying out its functions under this act with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board of directors, or its representative, with copies of the records upon the request by the board and at the expense of the board.

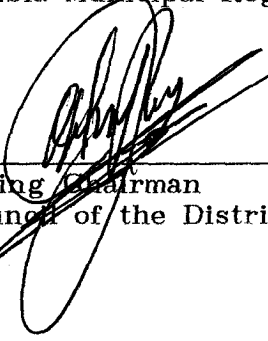
Sec. 17. Repealer.

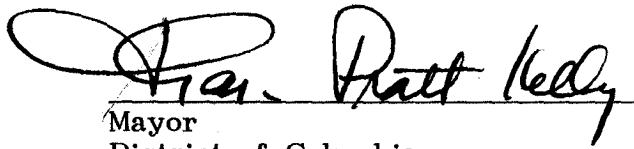
The District of Columbia Insurance Guaranty Association Act, approved August 14, 1973 (87 Stat. 297; D.C. Code § 35-1901 *et seq.*), is repealed.

Sections  
35-1901 thru  
35-1917

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 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 10-134

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

*Angie 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

*Angie 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