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COUNCIL OF THE DISTRICT OF COLUMBIA

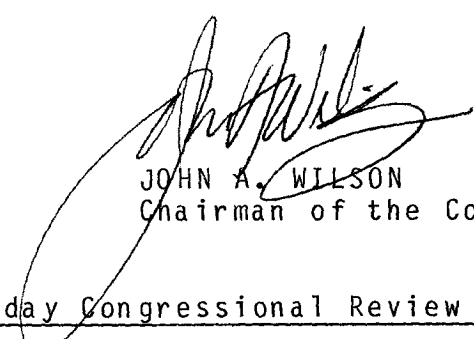
NOTICE

D.C. LAW 9-129

"Life and Health Insurance Guaranty
Association Act of 1992".

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. 9-186 on first and second readings, April 7, 1992, and May 6, 1992, respectively. Following the signature of the Mayor on May 28, 1992, this legislation was assigned Act No. 9-214, published in the June 12, 1992, edition of the D.C. Register, (Vol. 39 page 4036) and transmitted to Congress on May 29, 1992 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 9-129, effective July 22, 1992.



JOHN A. WILSON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

May 29

June 1,2,3,4,5,8,9,10,11,12,15,16,17,18,19,22,23,24,25,26,
29,30

July 1,2,7,8,9,20,21

AN ACT

Codification

District of Columbia Code

D.C. ACT 9-214

1993 Supplement

New Chapter 19A, Title 35

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 28, 1992

To create an Association of insurers for the purpose of continuing coverages to policy owners, and paying benefits to insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts in the case of the impairment or insolvency of member insurers that issued and delivered the policies or contracts.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Life and Health Insurance Guaranty Association Act of 1992".

Sec. 2. Definitions.

For the purposes of this act, the term:

New Sec.
35-1941

(1) "Account" means either of the 2 accounts created under section 4.

(2) "Association" means the District of Columbia Life and Health Insurance Guaranty Association created under section 4.

(3) "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 3.

(4) "Covered policy" means any policy, contract or group certificate within the scope of section 3.

(5) "Impaired insurer" means a member insurer which, after the effective date of this act, is not an insolvent insurer, and (A) is deemed by the Mayor to be potentially unable to fulfill its contractual obligations, or (B) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(6) "Insolvent insurer" means a member insurer which, after the effective date of this act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(7) "Mayor" means the Mayor of the District of Columbia or the Mayor's designee.

(8) "Member insurer" means any insurer licensed or holding a certificate of authority in the District of Columbia to sell any kind of insurance for which coverage is provided under section 3. The term "member insurer" shall include Group Hospitalization and Medical Services, Inc., as well as any insurer whose license or certificate of

authority in the District of Columbia may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

- (A) A non-profit hospital or medical service organization;
- (B) A health maintenance organization;
- (C) A fraternal benefit society;
- (D) A mandatory state pooling plan;
- (E) A mutual assessment company or any entity that operates on an assessment basis;
- (F) A risk retention group;
- (G) An insurance exchange; or
- (H) Any entity similar to any of the above.

(9) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Services, Inc., or any successor thereto.

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

(11) "Premiums" means amounts received on covered policies or contracts, less premiums, considerations, and deposits returned, and less dividends and experience credits. The term "premiums" does not include any amounts received for policies or contracts for which coverage is not provided under section 3(b), except that assessible premiums shall not be reduced on account of section 3(b)(2)(C) relating to interest limitations, and section 3(c)(2) relating to limitations with respect to any 1 individual, any 1 participant, and any 1 contract holder.

(12) "Resident" means any person who resides in the District of Columbia at the time a member insurer is determined to be impaired or insolvent and to whom the member insurer owes a contractual obligation. A person may reside in only 1 state, which, in the case of a person other than a natural person, shall be its domiciliary jurisdiction.

(13) "Superintendent" means the Superintendent of Insurance, Insurance Administration of the Department of Consumer and Regulatory Affairs.

(14) "Supplemental contract" means any agreement entered into for the distribution of policy or proceeds.

Sec. 3. Coverage and limitations.

(a) Coverage shall be provided for the policies and contracts issued to:

(1) Persons who, regardless of where they reside (except for non-resident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under paragraph (2) of this subsection; and

(2) Persons who are owners of, or certificate holders under, such policies or contracts, and who:

- (A) Are residents; or
- (B) Are not residents, subject to the following

conditions:

(i) The insurers which issued and delivered the policies or contracts are domiciled in the District of Columbia;

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside; and

(iii) The states have associations similar to the Association created by this act and are not eligible for coverage by the associations.

(b)(1) Coverage shall be provided to the persons specified in subsection (a) of this section for direct, non-group life, health, annuity, and supplemental policies or contracts, and for certificates under direct group policies or contracts, except as limited by this act. Annuity contracts and certificates under group annuity contracts include, but are not limited to, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(2) Coverage shall not be provided for:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the holder of the policy, contract, or certificate;

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued and delivered;

(C) Any portion of a policy, contract, or certificate if the rate of interest on which it is based:

(i) Averaged over the 4-year period prior to the date on which the Association becomes obligated with respect to the policy, contract, or certificate, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for that same 4-year period or for a lesser period if the policy, contract, or certificate was issued and delivered less than 4 years before the Association became obligated; and

(ii) On and after the date on which the Association becomes obligated with respect to the policy, contract, or certificate, exceeds the rate of interest determined by subtracting 3 percentage points from the most recent Moody's Corporate Bond Yield Average;

(D) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under:

(i) A Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 897; 29 U.S.C. 1144), as amended;

(ii) A minimum premium group insurance plan;

(iii) A stop-loss group insurance plan; or

(iv) An administrative services only contract;

(E) Any portion of a policy, contract, or certificate to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy, contract, or certificate holder, in connection with the service to or administration of the policy, contract, or certificate;

(F) Any policy, contract, or certificate issued and delivered in the District of Columbia by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue and deliver the policy, contract, or certificates in the District of Columbia; or

(G) Any unallocated annuity contract.

Enrolled Original

(c) The benefits for which the Association may become liable shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2)(A) With respect to any 1 life, regardless of the number of policies, contracts, or certificates:

(i) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) \$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values; or

(iii) \$300,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) The liability of the Association shall be limited strictly by the express terms of the policies or contracts and by this act, and shall not be affected by the contents of any brochures, illustrations, advertisements in print or electronic media, or other advertising material used in connection with the sale of the policies or contracts, or by oral statements made by agents or other sales representatives in connection with the sale of the policies or contracts. The Association shall not be liable for extra-contractual damages, punitive damages, attorney fees, or interest other than as provided for by the terms of the policies or contracts as limited by this act, that might be awarded by any court or governmental agency in connection with the policies or contracts.

(d) In no event shall the Association be liable to expend more than \$300,000 in the aggregate with respect to any 1 individual.

Sec. 4. Creation of the Association.

(a)(1) There is created a nonprofit legal entity to be known as the District of Columbia Life and Health Insurance Guaranty Association.

(2) All member insurers shall be and shall continually remain members of the Association as a condition of their authority to transact insurance business in the District of Columbia.

(3) The Association shall perform its functions under the plan of operation established and approved under section 8 and shall exercise its powers through a board of directors established under section 5.

(4) For purposes of administration and assessment the Association shall maintain 2 accounts:

(A) The life insurance and annuity account which shall include the following subaccounts:

(i) Life insurance account; and

(ii) Annuity account; and

(B) The health insurance account.

(b) The Association shall come under the immediate supervision of the Mayor and shall be subject to the applicable provisions of the insurance laws of the District of Columbia.

Sec. 5. Board of directors.

(a)(1) The Board of Directors of the Association ("Board" or "Board of Directors") shall consist of no less than 5 and no more than 9 member insurers serving terms as established in the plan of operation.

New Sec.
35-1943

New Sec.
35-1944

(2) The members of the Board shall be selected by member insurers subject to the approval of the Mayor.

(3) Vacancies on the Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members, subject to the approval of the Mayor.

(b) The Mayor shall give notice to all member insurers of the time and place of the organizational meeting to select the initial Board of Directors, and to initially organize the Association.

(c) In determining voting rights at the organizational meeting, each member insurer shall be entitled to 1 vote in person or by proxy.

(d) If the Board of Directors is not selected within 60 days after notice of the organizational meeting, the Mayor may appoint the initial members.

(e) In approving selections or in appointing members to the Board, the Mayor shall consider, among other things, whether all member insurers are fairly represented.

(f) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors, but shall not otherwise be compensated by the Association for their services.

Sec. 6. Powers and duties of the Association.

(a) If a member insurer is an impaired domestic insurer, the Association may, in its discretion and subject to any conditions imposed by the Association that do not impair the contractual obligations of the impaired insurer that are approved by the Mayor, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies, contracts, or certificates of the impaired insurer;

(2) Provide monies, pledges, notes, guarantees, or other proper means to effectuate paragraph (1) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1) of this subsection; or

(3) Loan money to the impaired insurer.

(b)(1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2) of this subsection, the Association shall, in its discretion, either:

(A) Take any of the actions specified in subsection (a) of this section, subject to the conditions therein; or

(B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for them under claims of emergency or hardship in accordance with standards proposed by the Association and approved by the Mayor.

(2) The Association shall be subject to the requirements of paragraph (1) of this subsection only:

(A) If the laws of the member insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligation by all guaranty associations, along with all

New Sec.
35-1945

expenses and interest on all payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(i) The delinquency proceeding shall not be dismissed;

(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and

(iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and

(B) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in the District of Columbia; or

(C) If the impaired insurer is a foreign or alien insurer:

(i) It has been prohibited from soliciting or accepting new business in the District of Columbia;

(ii) Its certificate of authority has been suspended or revoked in the District of Columbia; and

(iii) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of insurance of the state.

(c) If a member insurer is an insolvent insurer, the Association shall, in its discretion:

(1)(A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies, contracts, and certificates of the insolvent insurer;

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(C) Provide the monies, pledges, guarantees, or other means as are reasonably necessary to discharge the duties; or

(2) With respect only to life and health insurance policies and certificates, provide benefits and coverages in accordance with subsection (d) of this section.

(d) When proceeding under subsection (b)(1)(B) or (c)(2) of this section, the Association shall, with respect only to life and health insurance policies and certificates:

(1) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims insured. The payment of benefits required by this paragraph shall be made:

(A) With respect to group policies, not later than the earlier of the next renewal date under the policies or 45 days, but in no event less than 30 days after the date on which the Association becomes obligated with respect to the policies; or

(B) With respect to individual policies, not later than the earlier of the next renewal date, if any, under the policies or 1 year, but in no event less than 30 days from the date on which the Association becomes obligated with respect to the policies;

(2) Make diligent efforts to provide all known insureds group policy and certificates holders with respect to group policies 30 days notice of the termination of the benefits provided; and

(3) Make available, with respect to individual policies, to each known insured, or owner if other than the insured; with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4) of this subsection, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(e)(1) In providing the substitute coverage required under subsection (d)(3) of this section, the Association may offer to reissue the terminated coverage or to issue an alternative policy.

(2) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policies.

(3) The Association may reinsure any alternative or reissued policy.

(f)(1) Alternative policies adopted by the Association shall be subject to the approval of the Mayor. The Association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(2) Alternative policies shall contain at least the minimum statutory provisions required in the District of Columbia and provide benefits that shall not be unreasonable in relation to the premium charged. The Association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(3) Alternative policies issued and delivered by the Association shall provide coverage of a type similar to that of the policies issued and delivered by the impaired or insolvent insurer, as determined by the Association.

(g) If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the Association in accordance with the amount of insurance provided and the age and class of risk, subject to prior approval of the Mayor or by a court of competent jurisdiction.

(h) The Association's obligations with respect to coverage under policies of the impaired or insolvent insurer or under any reissued or alternative policies shall cease on the date the policies are replaced by other similar policies by either the policyholder, the insured, or the Association.

(i) When proceeding under subsection (b)(1)(B) or (c) of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the Association shall assure the payment or crediting of a rate of interest consistent with section 3(b)(2)(C).

(j) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the Association's

obligations under the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this act.

(k) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the Association, and the Association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(l) The protection provided by this act shall not apply where any guaranty protection is provided to residents of the District of Columbia by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer, other than the District of Columbia.

(m) In carrying out its duties under subsections (b) and (c) of this section, the Association may, subject to approval by the court:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the Association finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the Association's duties under this act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of a permanent policy or contract lien, to be in the public interest; or

(2) Impose temporary moratoriums on liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(n) If the Association fails to act within a reasonable period of time under subsections (b)(1)(B), (c), and (d) of this section, the Mayor shall assume the powers and duties of the Association under this act with respect to impaired or insolvent insurers.

(o) The Association may render assistance and advice to the Mayor, upon request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(p) The Association shall have standing to appear before any court in the District of Columbia with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated under this act. Standing shall extend to all matters germane to the powers and duties of the Association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The Association shall also have the right to appear before a court in another state with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated or a court with jurisdiction over a 3rd party against whom the Association may have rights through subrogation of the insurer's policyholders.

(q)(1) Any person receiving benefits under this act shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the Association, whether the benefits are payments of, or on account of, contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The Association may require an assignment to it of the rights and causes of

action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this act upon such a person.

(2) The subrogation rights of the Association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this act.

(3) In addition to paragraphs (1) and (2) of this subsection, the Association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to the policy or contracts.

(r) The Association may:

(1) Enter into contracts necessary or proper to carry out the provisions and purposes of this act;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 7 and to settle claims or potential claims against it;

(3) Borrow money to carry out the purposes of this act; any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) Employ or retain persons necessary to handle the financial transactions of the Association, and to perform other functions necessary or proper under this act;

(5) Take legal action necessary to avoid payment of improper claims; and

(6) Exercise, for the purposes of this act and to the extent approved by the Mayor, the powers of a domestic life or health insurer, but in no case may the Association issue insurance policies or annuity contracts other than those issued to perform its obligations under this act.

(s) The Association may join an organization of 1 or more other state associations of similar purposes to further the purposes and administration of the powers and duties of the Association.

Sec. 7. Assessments.

(a) The Board of Directors shall assess the member insurers for the amounts necessary to carry out the powers and duties of the Association. Assessments shall be made separately for the life insurance and annuity account and for the health insurance account and shall be maintained in a District of Columbia bank, which is subject to the District of Columbia Community Development Program under the supervision of the District of Columbia Office of Banking and Financial Institutions. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest monthly until paid.

(b) There shall be 2 assessments, as follows:

(1) Class A assessments shall be made for the purposes of meeting administrative and legal costs and other expenses and examinations conducted under the authority of section 10(e). Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

New Sec.
35-1946

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under section 6 with regard to an impaired or insolvent insurer.

(c)(1) The amount of any Class A assessment shall be determined by the Board and may be made on a pro rata or non-pro rata basis. If pro rata, the Board may provide that it be credited against future Class B assessments. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the Board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account and subaccount shall be in the same proportion as the premiums received on business in the District of Columbia by each assessed member insurer on policies and contracts covered by each account for the 3 most recent calendar years, for which information is available, preceding the year in which the insurer became impaired or insolvent bears to the premiums received on business in the District of Columbia for these calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d)(1) The Association may abate or defer, in whole or in part, the assessment of a member insurer if the Board concludes that payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.

(2) In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e)(1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any 1 calendar year exceed 2% and for the health account shall not in any 1 calendar year exceed 2% of the insurer's average premiums received in the District of Columbia on the policies and contracts covered by the account during the 3 calendar years preceding the year in which the insurer is declared impaired or insolvent. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any 1 year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

(2) The Board may provide in the plan of operation a method of allocating funds among claims, whether relating to 1 or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If a 1% assessment for any subaccount of the life and annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to

subsection (c)(2) of this section, the Board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection (e)(1) of this section.

(f)(1) The Board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the Board finds is necessary to carry out, during the coming year, the obligations of the Association with regard to that account, including assets accruing from assignments, subrogation, net realized gains, and income from investments.

(2) A reasonable amount may be retained in any account in a District of Columbia bank, which is subject to the District of Columbia Community Development Program under the supervision of the District of Columbia Office of Banking and Financial Institutions, to provide funds for the continuing expenses of the Association and for future losses.

(g) It shall be proper for any member insurer, in determining its premium rates and policyholder dividends for any kind of insurance within the scope of this act, to consider the amount reasonably necessary to meet its assessment obligations under this act.

(h) The Association shall issue to each insurer paying an assessment under this act, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Mayor, for the amount of the assessment so paid. All outstanding certificates shall be of equal value, dignity, and priority without references to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time as the Mayor may approve.

Sec. 8. Plan of operation.

(a)(1) The Association shall submit to the Mayor a plan of operation, and any subsequent amendments that are necessary or suitable, to assure the fair, reasonable, and equitable administration of the Association. The plan of operation, and any amendments, shall become effective 30 days following its submission to the Mayor, unless the Mayor has issued written disapproval of the plan within the 30 days.

(2) If the Association fails to submit a suitable plan of operation within 120 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, adopt and promulgate reasonable rules as necessary or advisable to carry out the provisions of the 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, in addition to requirements enumerated elsewhere in this act, shall:

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

(2) Establish the amount and method of reimbursement of members of the Board of Directors under section 5;

(3) Establish regular places and times for meetings, including telephone conference calls of the Board of Directors;

New Sec.
35-1947

(4) Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board of Directors;

(5) Establish the procedures whereby nominations to the Board of Directors will be made and submitted to the Mayor for approval;

(6) Establish any additional procedures necessary for assessments under section 7; and

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

(d)(1) The plan of operation may provide that any or all powers and duties of the Association, except those under section 6(q)(3) and section 7, 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.

(2) Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for its performance of any function of the Association.

(3) A delegation under this subsection shall take effect only with the approval of 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. 9. Duties and powers of the Mayor.

In addition to the duties and powers enumerated elsewhere in this act, the Mayor shall:

(a) Upon request of the Board of Directors, provide the Association with a statement of the premiums in the District of Columbia and any other appropriate states for each member insurer; and

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer to comply promptly with such a demand shall not excuse the Association from the performance of its powers and duties under this act.

New Sec.
35-1948

Sec. 10. Prevention of insolvencies.

(a) To aid in the detection and prevention of insurer impairments or insolvencies, the Mayor shall:

(1) Transmit written notices to the insurance commissioners of all the other states and territories of the United States, within 30 days following the date any action is taken, when the Mayor takes any of the following actions against a member insurer:

(A) Revocation of license;

(B) Suspension of license; or

(C) Issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the District of Columbia, reinsure all or any part its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(2) Report to the Board of Directors when the Mayor has taken any of the actions set forth in paragraph (1) of this subsection or has received a report from any insurance commissioner indicating that any similar action has been taken in another state. The report shall contain

New Sec.
35-1949

all significant details of the action taken, or shall include the report received from another insurance commissioner;

(3) Report to the Board of Directors when the Mayor has reasonable cause to believe, from any examination, whether completed or in process, of any member company, that the company may be an impaired or insolvent insurer; and

(4) Furnish to the Board of Directors the ratios developed by the National Association of Insurance Commissioners' Insurance Regulatory Information System, and listings of companies not included in the ratios. The Board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information shall be kept confidential by the Board of Directors until it is made public by the Mayor or other lawful authority.

(b) The Mayor may seek the advice and recommendations of the Board of Directors concerning any matter affecting the Mayor's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in the District of Columbia.

(c) The Board of Directors may, upon majority vote, make reports and recommendations to the Mayor upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer, or germane to the solvency of any company seeking to transact insurance business in the District of Columbia. These reports and recommendations shall be internal working documents, and, consequently, shall not be considered public documents.

(d) It shall be the duty of the Board of Directors, upon majority vote, to notify the Mayor of any information indicating whether any member insurer may be an impaired or insolvent insurer.

(e)(1) The Board of Directors may, upon majority vote, request that the Mayor order an examination of any member insurer which the Board, in good faith, believes may be an impaired or insolvent insurer.

(2) Within 30 days of receipt of such a request, the Mayor shall begin the examination.

(3) The examination may be conducted as a National Association of Insurance Commissioners examination, or may be conducted by persons designated by the Mayor.

(4) The cost of the examination shall be paid by the Association and the examination report shall be treated the same as other examination reports.

(5) In no event shall the examination report be released to the Board of Directors prior to its release to the public, except in compliance with subsection (a) of this section.

(6) The Mayor shall notify the Board of Directors when the examination is completed.

(7) The request for an examination shall be kept on file by the Mayor, but it shall not be open to public inspection prior to the release of the examination report to the public.

(f) The Board of Directors may, upon majority vote, make recommendations to the Mayor for the detection and prevention of insurer insolvencies.

(g) The Board of Directors, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, shall:

(1) Prepare and submit a written report to the Mayor containing all information it possesses bearing on the history and causes of the insolvency; and

(2) Cooperate with the Boards of Directors of guaranty associations in other states in preparing reports on the history and causes of insolvency of a particular insurer. The Association may adopt by reference any report prepared by other associations.

Sec. 11. Credits for assessments paid.

New Sec.
35-1950

(a) A member insurer may offset against its premium taxes an assessment described in section 7(h) to the extent of 10% of the amount of the assessment for each of the 10 calendar years following the year in which the assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against the premium taxes for the year it ceases doing business.

(b) Any sums which are acquired by refund, pursuant to section 7(f) from the Association by member insurers, and which theretofore have been offset against premium taxes as provided in subsection (a) of this section, shall be paid by member insurers to the District of Columbia in accordance with requirements of the District of Columbia Department of Finance and Revenue. The Association shall notify the Superintendent that the refunds have been made.

Sec. 12. Miscellaneous.

New Sec.
35-1951

(a) Nothing in this act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b)(1) Records shall be kept of all negotiations and meetings in which the Association or its representatives are involved in discussing the activities of the Association in carrying out its powers and duties under section 6.

(2) Records of negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction.

(3) Nothing in this subsection shall limit the duty of the Association to render a report of its activities under section 12.

(c)(1) For the purpose of carrying out its obligations under this act, the Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to section 6(m).

(2) Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this act.

(3) For the purposes of this subsection, assets attributable to covered policies are that proportion of the assets which the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

Enrolled Original

(d)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contribution of the respective parties, including the Association, the shareholders, and policyholders of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until the total amount of valid claims of the Association, with interest, for funds expended in carrying out its powers and duties under section 6 with respect to the insurer have been fully recovered by the Association.

(e)(1) If an order for liquidation or rehabilitation of an insurer domiciled in the District of Columbia has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during 5 years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (2) through (4) of this subsection.

(2) No distribution shall be recoverable if the insurer 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.

(3)(A) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he or she received.

(B) Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately.

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

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under paragraph (3) of this subsection is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recoverable from the insolvent affiliate.

Sec. 13. Examination of the Association; annual report.

(a) The Association shall be subject to examination and regulation by the Mayor.

(b) The Board of Directors shall submit to the Mayor each year, not later than 120 days after the end of the Association's fiscal year, a financial report in a form approved by the Mayor and a report of its activities during the preceding fiscal year.

Sec. 14. Tax exemptions.

New Sec.
35-1952

New Sec.
35-1953

Enrolled Original

The Association shall be exempt from payment of all fees and all taxes levied by the District of Columbia.

Sec. 15. Immunity.

New Sec.
35-1954

(a) There shall be no liability on the part of, and no cause of action shall arise against, any member insurer or its agents or employees, the Association or its agents or employees, members of the Board of Directors, or the Mayor or the Mayor's representatives, for any action or omission by them in performance of their powers and duties under this act, except in the case of willful misconduct, gross negligence, or criminal activity on the part of these persons.

(b) The immunity established by subsection (a) of this section shall extend to the participation in any organization of 1 or more state associations of similar purposes and to any organization and its agents or employees.

Sec. 16. Stay of proceedings; reopening default judgments.

New Sec.
35-1955

(a) All proceedings in which the insolvent insurer is a party in any court in the District of Columbia shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties.

(b) As to judgment under any decision, order, verdict, or finding based on default, the Association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

Sec. 17. Prohibited advertisement of Association act in insurance sale; notice to policyholders.

New Sec.
35-1956

(a)(1) No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the District of Columbia Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the District of Columbia Life and Health Insurance Guaranty Association Act of 1992.

(2) This subsection shall not apply to the Association or any other entity which does not sell or solicit insurance.

(b)(1) Within 180 days of the effective date of this act, the Association shall prepare a summary document describing the general purposes and current limitations of this act, which document shall be submitted to the Mayor for approval.

(2) Sixty days after the summary document is approved by the Mayor, no insurer may deliver a policy or contract described in section 3(b)(1) to a policy or contract holder unless the summary document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except as provided in subsection (d) of this section.

(3) The delivery or contents or interpretation of the summary document shall not mean that either the policy or the contract or the holder of either would be covered in the event of the impairment or insolvency of a member insurer.

(4) The summary document shall be revised by the Association as amendments to this act may require.

(5) Failure to receive this document does not give the policy holder, contract holder, certificate holder, or insured any greater rights than the rights stated in this act.

(c) The summary document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face. The Mayor shall promulgate rules establishing the form and content of the disclaimer, which at a minimum shall:

(1) State the name and address of the Association and the Superintendent of Insurance;

(2) Prominently warn the policy or contract holder that the Association may not cover the policy, or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the District of Columbia;

(3) State that the insurer and its agents are prohibited by law from using the existence of the Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

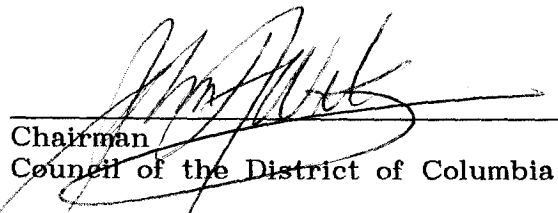
(4) Emphasize that the policy or contract holder should not rely on coverage under the Life and Health Insurance Guaranty Association when selecting an insurer; and

(5) Provide additional information as directed by the Mayor.

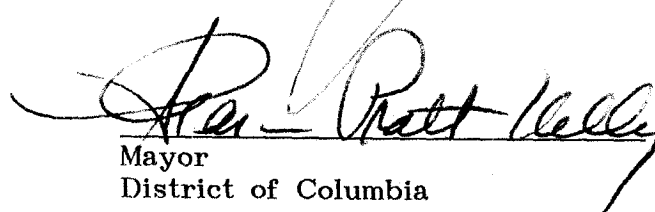
(d) No insurer or agent may deliver a policy or contract described in section 3(b)(1) and excluded under section 3(b)(2)(A) from coverage under this act unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Life and Health Insurance Guaranty Association. The Mayor, by rule, shall specify the form and content of the notice.

Sec. 18. 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.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: May 28, 1992



COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Nine

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B9-186

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 4-7-92

VOICE VOTE: Approved

Recorded vote on request

Absent: Cropp, Nathanson and Lightfoot

ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 3 times). Rows include CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

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

CERTIFICATION RECORD

Secretary to the Council (Signature)

Date: May 13, 1992

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 5-6-92

VOICE VOTE: Approved

Recorded vote on request

Absent: all present

ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 3 times). Rows include CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

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

CERTIFICATION RECORD

Secretary to the Council (Signature)

Date: May 13, 1992

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. (repeated 3 times). Rows include CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

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

CERTIFICATION RECORD

Secretary to the Council

Date