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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 10-49

"Law on Examinations 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. 10-131 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. 10-94, published in the August 20, 1993, edition of the D.C. Register, (Vol. 40 page 6110) 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 10-49, 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

D.C. ACT 10-94

Codification
District of Columbia Code
(1994 Supplement)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 4, 1993

New Chapter 36,
Title 35

To provide for an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in the District of Columbia and all persons otherwise subject to the insurance laws of the District of Columbia.

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

Sec. 2. Definitions.

For the purposes of this act, the term:

New, Section
35-3601

(1) "Administration" means the Insurance Administration of the District of Columbia.

(2) "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the insurance laws of the District of Columbia, including fraternal benefit associations and excluding the District of Columbia Life and Health Guaranty Association and the District of Columbia Property and Liability Insurance Guaranty Association.

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

(4) "Examiner" means any individual or firm having been authorized by the Mayor to conduct an examination under this act.

(5) "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation, or any affiliate thereof.

Sec. 3. Authority, scope, and scheduling of examinations.

New, Section
35-3602

(a) The Mayor, or any of his or her examiners, may conduct an examination under this act of any company as often as the Mayor in his or her sole discretion deems appropriate, but shall at a minimum conduct an examination of every insurer licensed in the District at least once every 5 years. In scheduling and determining the nature, scope, and frequency of the examinations, the Mayor shall consider such factors as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the Mayor exercises discretion under this section.

(b) For purposes of completing an examination of any company under this act, the Mayor may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the Mayor, necessary or material to the examination of the company.

(c) In lieu of an examination under this act of any foreign or alien insurer licensed in the District, the Mayor may accept, until January 1, 1994, an examination report on the company prepared by the insurance department for the company's state of domicile or port-of-entry state. Thereafter, these reports may be accepted only if the insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program, or the examination is performed under the supervision of an accredited state insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department, and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

Sec. 4. Conduct of examinations.

(a) Upon determining that an examination should be conducted, the Mayor shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The Mayor may also employ any other guidelines or procedures the Mayor deems appropriate.

(b) Every company or person from whom information is sought, or its officers, directors, and agents, must provide to the examiners appointed under subsection (a) of this section, at all reasonable hours at its offices, convenient and free access to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the insurance laws of the District. Any proceedings for suspension, revocation, or nonrenewal of any license or authority shall be conducted pursuant to section 27 of chapter II of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1140; D.C. Code § 35-426), and section 36 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1079; D.C. Code § 35-1540).

(c) The Mayor, or any of his or her examiners, may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Mayor may petition a court of competent jurisdiction, and upon proper showing, the court may enter

New, Section
36-3603

an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(d) When making an examination under this act, the Mayor may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

(e) Nothing contained in this act shall be construed to limit the Mayor's authority to terminate, suspend, or complete any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of the District. Findings of fact and conclusions of law made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this act shall be construed to limit the Mayor's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Mayor may, in his or her sole discretion, deem appropriate.

Sec. 5. Examination reports.

(a) General description. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and those conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) Filing of examination report. No later than 60 days following completion of the examination, the examiner in charge shall file with the Mayor a verified written report of examination under oath. Upon receipt of the verified report, the Mayor shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Adoption of report on examination. Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the Mayor shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(1) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the Mayor, the Mayor may order the company to take any action the Mayor considers necessary and appropriate to cure the violation;

(2) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile pursuant to subsections (a) and (b) of this section; or

New, Section
35-3604

(3) Calling for an investigatory hearing with no less than 20-days notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(d) Orders and procedures.

(1) All orders entered pursuant to subsection (c)(1) of this section shall be accompanied by findings of fact and conclusions of law resulting from the Mayor's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. These orders shall be considered final administrative decisions and may be appealed to the Mayor pursuant to section 33 of chapter II of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1142; D.C. Code § 35-432), and section 44 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1082; D.C. Code § 35-1547), and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) Any hearing conducted under subsection (c)(3) of this section by the Mayor shall be conducted as a nonadversarial confidential investigatory proceeding necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the Mayor's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of such a hearing, the Mayor shall enter an order pursuant to subsection (c)(1) of this section.

(A) The Mayor shall appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The Mayor may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the Administration, the company, or other persons. The documents produced shall be included in the record, and testimony taken by the Mayor shall be under oath and preserved for the record. Nothing contained in this section shall require the Administration to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(B) The hearing shall proceed with the Mayor posing questions to the persons subpoenaed. Thereafter the company and the Administration may present testimony relevant to the investigation. Cross examination shall be conducted only by the Mayor. The company and the Administration shall be permitted to make closing statements and may be represented by counsel of their choice.

(e) Publication and use.

(1) Upon the adoption of the examination report under subsection (c)(1) of this section, the Mayor shall continue to hold the content of the examination report as private and confidential information for a period of 10 days, except to the extent provided in subsection (b) of this section. Thereafter, the Mayor may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(2) No District law shall prevent or be construed as prohibiting the Mayor from disclosing the content of an examination report, preliminary examination report, or results, or any related matter, to the Administration or the department of insurance of any other state or country, or to law enforcement officials of the District or any other state or any agency of the federal government at any time, so long as the agency or office receiving the report or related matters agrees in writing to hold it confidential in a manner consistent with this act.

(3) In the event the Mayor determines that regulatory action is appropriate as a result of any examination, the Mayor may initiate any proceedings or actions as provided by the laws of the District.

(f) Confidentiality of ancillary information. All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the Mayor or any other person in the course of an examination made under this act must be given confidential treatment, are not subject to subpoena, and may not be made public by the Mayor or any other person, except to the extent provided in subsection (e) of this section. Access may also be granted to the National Association of Insurance Commissioners. Parties must agree in writing prior to receiving the information to provide it the same confidential treatment required by this section, unless the prior written consent of the company to which it pertains has been obtained.

Sec. 6. Conflict of interest.

(a) No examiner may be appointed by the Mayor if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this act. This section shall not be construed to automatically preclude an examiner from being:

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of this section, the Mayor may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this act.

Sec. 7. Cost of examinations.

All expenses of the examinations shall be paid by the company examined, and the company shall timely pay the Mayor the actual expense of such an examination upon receipt of itemized bills provided by the Mayor.

Sec. 8. Immunity from liability.

(a) No cause of action shall arise nor shall any liability be imposed against the Mayor, the Mayor's authorized representatives, or an

New, Section
35-3605

New, Section
35-3606

New, Section
35-3607

examiner appointed by the Mayor for any statements made or conduct performed in good faith while carrying out the provisions of this act.

(b) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Mayor or the Mayor's authorized representative or examiner pursuant to an examination made under this act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a) of this section.

(d) A person identified in subsection (a) of this section shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section, the term "substantially justified" means a proceeding that had a reasonable basis in law or fact at the time that it was initiated.

Sec. 9. Conforming amendments.

(a) Section 653 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1292; D.C. Code § 35-202), is amended by striking the phrase "Such Superintendent of Insurance shall examine from time to time and at least as often as once a year all companies or associations described herein; and when he finds" and inserting the phrase "All companies or associations described herein shall be examined as described in the Law on Examinations Act of 1993; and when the Mayor finds" in its place.

(b) Section 19 of chapter II of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1135; D.C. Code § 35-418), is repealed.

(c) Section 10 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1069; D.C. Code § 35-1513), is repealed.

Sec. 10. Rulemaking.

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

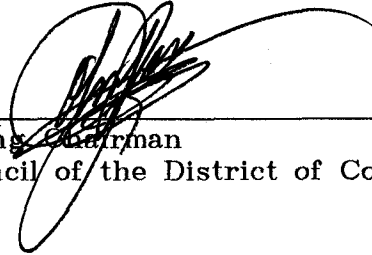
Sec. 11. Effective date.

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

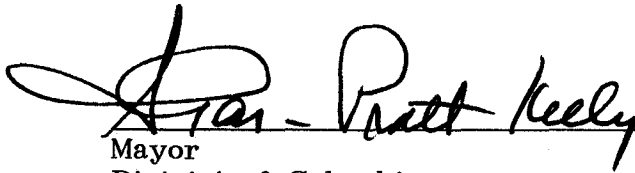
New, Section
35-3608

Note,
New, Section
35-3601

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



Acting Chairman
Council of the District of Columbia



Mayor
District of Columbia

Approved: August 4, 1993



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TEN

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 10-131

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

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

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

CERTIFICATION RECORD

Signature of Secretary to the Council

Date: July 21, 1993

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

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

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

CERTIFICATION RECORD

Signature of Secretary to the Council

Date: July 21, 1993

Item on Consent Calendar
ACTION & DATE:
VOICE VOTE:
Recorded vote on request
Absent:

ROLL CALL VOTE: -- RESULT

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

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

CERTIFICATION RECORD

Secretary to the Council

Date