

**DISTRICT OF COLUMBIA**  
**OFFICIAL CODE**

**TITLE 31.**  
**INSURANCE AND SECURITIES.**

**CHAPTER 39A.**  
**CAPTIVE INSURANCE COMPANIES (2004).**

**2001 Edition**

**DISTRICT OF COLUMBIA OFFICIAL CODE**  
**CHAPTER 39A. CAPTIVE INSURANCE COMPANIES**  
**(2004).**

---

**TABLE OF CONTENTS**

---

**Subchapter I. General.**

---

- § 31-3931.01. Definitions.
- § 31-3931.02. Authority to do business; prohibited activities.
- § 31-3931.03. Organizational requirements for transacting business; incorporation.
- § 31-3931.04. Protected cell captive insurers.
- § 31-3931.05. Liquidation and rehabilitation of protected cells.
- § 31-3931.06. Capital and surplus.
- § 31-3931.07. Investments.
- § 31-3931.08. Reinsurance.
- § 31-3931.09. Application requirements.
- § 31-3931.10. Name.
- § 31-3931.11. Requirements for transacting business.
- § 31-3931.12. Tax on premiums collected.
- § 31-3931.13. Annual report.
- § 31-3931.14. Financial examination.
- § 31-3931.15. Revocation, suspension, or fine.
- § 31-3931.16. Insolvency.
- § 31-3931.17. Redomestication.
- § 31-3931.18. Rating organization.
- § 31-3931.19. Captive insurance regulatory and supervision trust account.
- § 31-3931.20. Judicial review; mandamus.
- § 31-3931.21. Regulations.
- § 31-3931.22. Applicable laws.
- § 31-3931.23. Repeal and transition provisions.

**Subchapter II. Special Purpose Financial Captive Insurance Companies.**

---

- § 31-3932.01. Purpose.
- § 31-3932.02. Definitions.
- § 31-3932.03. Application of subchapter I of this chapter.
- § 31-3932.04. Application requirements.
- § 31-3932.05. Capital and surplus.
- § 31-3932.06. Securities of SPFCs.
- § 31-3932.07. Authorized contracts.
- § 31-3932.08. Trust arrangements.
- § 31-3932.09. Dividends and distributions.
- § 31-3932.10. Confidentiality of examination reports; disclosure of information.
- § 31-3932.11. Reinsurance.
- § 31-3932.12. Liquidation and rehabilitation.

- § 31-3932.13. Discount on reserves; report on reserves.
- § 31-3932.14. Standards and criteria applicable in a contested case brought by a third party and certain actions by the Commissioner.
- § 31-3932.15. Rulemaking.

# **CHAPTER 39A. CAPTIVE INSURANCE COMPANIES (2004).**

## **SUBCHAPTER I. GENERAL.**

### **§ 31-3931.01. DEFINITIONS.**

For the purposes of this chapter, the term:

- (1) "Affiliated company" means a company in the same corporate system as its parent or a member organization by virtue of common ownership, control, operation, or management.
- (2) "Agency captive insurer" means a captive insurer that is owned by an insurance agency or brokerage and that only insures risks of policies that are placed by or through the agency or brokerage.
- (3) "Alien captive insurer" means any non-U.S. insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a foreign country that imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in the jurisdiction.
- (4) "Association" means a legal entity consisting of 2 or more individuals, corporations, partnerships, associations, or other forms of business organization.
- (5) "Association captive insurer" means a captive insurer that only insures risks of the member organizations of an association and the affiliated companies of those members, including groups formed pursuant to the Product Liability Risk Retention Act of 1981, approved September 25, 1981 (95 Stat. 949; 15 U.S.C. § 3901 *et seq.*), and the employee benefit plans or trusts of such organizations or companies.
- (6) "Branch business" means any insurance business transacted by a branch captive insurance company in the District.
- (7) "Branch captive insurer" means any alien captive insurer licensed by the Commissioner to transact the business of insurance in the District through a business unit with a principal place of business in the District.
- (8) "Branch operations" means any business operations of a branch captive insurer in the District.
- (9) "Captive insurer" means any insurer that insures the risks of its parent or affiliated companies of its parent, any member organizations of an association and the affiliated companies of the member organizations, or any other policyholders or participants that have entered into a contractual relationship with the insurer for the purchase of insurance, including any pure captive insurer, association captive insurer, agency captive insurer, segregated account captive insurer, and rental captive insurer licensed pursuant to this chapter.
- (10) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.
- (11) "Common ownership and control" means:
  - (A) In the case of a stock insurer, the direct or indirect ownership of 51% or more of the voting stock of 2 or more corporations by the same member or members; and
  - (B) In the case of a mutual insurer, the direct or indirect ownership of 51% or more of the surplus and the voting power of 2 or more corporations by the same member or members.
- (12) "Department" means the Department of Insurance, Securities, and Banking.
- (13) "Excess workers' compensation insurance" means insurance in excess of the specified per-incident or aggregate limit, if any, established by:
  - (A) The Commissioner, if the insurance is being transacted in the District; or

(B) The chief regulatory officer for insurance in the jurisdiction in which the insurance is being transacted.

(14) "Member organization" means any individual, corporation, partnership, association, or other form of business organization that belongs to an association.

(15) "Mutual insurer" means an incorporated insurer without any issued and outstanding stock whose capital and surplus are owned by its policyholders.

(16) "Net direct premiums" means the direct premiums collected or contracted for on policies or contracts of insurance written by a captive insurer during the preceding calendar year, less the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(17) "Parent" means a corporation, partnership, association, or other form of business organization that directly or indirectly owns, controls, or holds power to vote more than 51% or more of the outstanding voting securities of a pure captive insurer.

(18) "Participant" means any individual or organization, and any affiliates thereof, that are insured by a segregated account captive insurer if the losses of the person are limited through a participant contract to the assets of a segregated account.

(19) "Participant contract" means a contract by which a segregated account captive insurer insures the risks of a participant and limits the losses of the participant to the assets of the segregated account.

(20) "Person" means any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, an association, joint stock company, trust, unincorporated organization, similar entity, or any combination of the foregoing.

(21) "Provisional certificate of authority" means a certificate of authority issued to a captive insurer that authorizes the captive insurer to engage in limited activities authorized by the Commissioner.

(22) "Pure captive insurer" means a captive insurer that only insures or reinsures risks of its parent and affiliated companies or controlled unaffiliated business. The parent of a pure captive insurer includes an employee benefit plan or trust.

(23) "Reciprocal insurer" includes an interinsurance exchange or a risk retention group as defined in § 31-4101(12).

(24) "Redomestication" means the transfer to the District of the insurance domicile of an authorized foreign or alien insurance company.

(25) "Rental captive insurer" means a captive insurer formed to enter into contractual agreements with policyholders or associations to offer some or all of the benefits of a program of captive insurance and that only insures risks of the policyholders or associations.

(26) "Segregated account" means a separate account established and maintained by any captive insurer:

(A) In which the minimum capital and surplus required by applicable law is provided by one or more persons;

(B) That is formed or licensed under the provisions of this chapter;

(C) That insures risks of separate participants through contract;

(D) That is comprised of one or more participants who are authorized to act on matters relating to the segregated account; and

(E) That segregates each participant's liability through one or more segregate accounts.

(27) "Stock insurer" means an incorporated insurer with issued and outstanding stock whose capital and surplus is owned by its stockholders.

(Mar. 17, 2005, D.C. Law 15-262, § 2, 52 DCR 1205.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 2 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

For temporary (90 day) additions, see §§ 2 to 17 of District of Columbia Free Clinic Captive Insurance Company Establishment Emergency Act of 2007 (D.C. Act 17-113, October 3, 2007, 54 DCR 9977).

##### *Legislative History of Laws*

Law 15-262, the "Captive Insurance Company Act of 2004", was introduced in Council and assigned Bill No. 15-834, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on

November 30, 2004, it was assigned Act No. 15-638 and transmitted to both Houses of Congress for its review. D.C. Law 15-262 became effective on March 17, 2005.

## **§ 31-3931.02. AUTHORITY TO DO BUSINESS; PROHIBITED ACTIVITIES.**

(a) A captive insurer may be organized and operated in any form of business organization authorized by the Commissioner and may, pursuant to this chapter, transact any insurance or annuity business.

(b) Notwithstanding subsection (a) of this section, a captive insurer shall not:

- (1) Directly provide personal motor vehicle or homeowners' insurance coverage, or any component thereof;
- (2) Accept or cede reinsurance, except as otherwise provided in § 31-3931.08;
- (3) Insure any risks other than those of its parent and affiliated companies if it is a pure captive insurer;
- (4) Insure any risks other than those of the member organizations of its association and the affiliated companies of the member organizations if it is an association captive insurer;
- (5) Insure any risks other than those of the policies that are placed by or through the insurance agency or brokerage that owns the captive insurer if it is an agency captive insurer;
- (6) Insure any risks other than those of the policyholders or associations that have entered into agreements with the rental captive insurer for the insurance of those risks if it is a rental captive insurer, and shall use a form approved by the Commissioner for these agreements;
- (7) Provide excess workers' compensation insurance to its parent and affiliated companies if the transaction is prohibited by the laws of the state in which the insurance is transacted;
- (8) Reinsure workers' compensation insurance provided pursuant to a program of self-funded insurance of its parent and affiliated companies unless:
  - (A) The parent or affiliated company which is providing the self-funded insurance is certified as a self-insured employer by the Commissioner, if the insurance is being transacted in the District; or
  - (B) The program of self-funded insurance is otherwise qualified pursuant to, or in compliance with, the laws of the state in which the insurance is transacted; or
- (9) Write insurance or reinsurance for employee benefits that are subject to the provisions of the provisions of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 832; 29 U. S.C. § 1001 *et seq.*), for any entity except its parent and affiliated companies.

(c) Notwithstanding subsections (a) and (b) of this section, the Commissioner may authorize a captive insurer that is otherwise qualified to conduct business in the District to engage in any activity in any form permitted by a captive insurer in any other jurisdiction.

(d) A captive insurer shall file with the Commissioner a written request to engage in any activity under subsection (c) of this section. The Commissioner shall approve the request within 30 days after receiving the request, unless the Commissioner determines that the activity will be harmful to the captive insurer's policyholders.

(e) For the purposes of this chapter, a branch captive insurer shall be deemed to be a pure captive insurer with respect to operations in the District, unless otherwise permitted by the Commissioner.

(Mar. 17, 2005, D.C. Law 15-262, § 3, 52 DCR 1205; Apr. 7, 2006, D.C. Law 16-91, § 102(a), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 54(a), 53 DCR 6794.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Effect of Amendments*

D.C. Law 16-91, in par. (b)(2), substituted "§ 31-3931.08" for "§ 31-3931.07".

D.C. Law 16-191, in subsec. (b)(2), validated a previously made technical correction.

#### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 3 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

#### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

Law 16-91, the "Technical Amendments Act of 2005", was introduced in Council and assigned Bill No. 16-477 which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 1, 2005, and November 15, 2005, respectively. Signed by the Mayor on November 30, 2005, it was assigned Act No. 16-212 and transmitted to both Houses of Congress for its review. D.C. Law 16-91 became effective on April 7, 2006.

For Law 16-191, see notes following § 31-1131.02.

### **§ 31-3931.03. ORGANIZATIONAL REQUIREMENTS FOR TRANSACTING BUSINESS; INCORPORATION.**

(a) A captive insurer may be organized in the District in any form of authorized by the Commissioner.

(a-1) The articles of incorporation of a captive insurer shall become effective when approved by the Commissioner.

(b) The articles of incorporation or organizational documents of a captive insurer shall satisfy the following minimum requirements:

(1) The capital stock of a captive insurer incorporated as a stock insurer shall be issued at not less than par value;

(2) The captive insurer shall not have less than 2 incorporators or organizers;

(3) The articles of association, articles of incorporation, articles of organization, charter, or bylaws of a captive insurer shall require a quorum of the board of directors that consists of more than 1/3 of the number of directors prescribed by the articles of association, articles of incorporation, articles of organization (or equivalent organizational document), charter, or bylaws; and

(4) Any additional provisions that the Commissioner considers necessary.

(c) The Commissioner may, at the request of the captive insurer, issue a certificate of good standing and charge a fee for each certificate in an amount to be established by the Commissioner.

(d) An attorney-in-fact of a reciprocal captive insurer may be organized in the District in any form of business, including as an individual, authorized by the Commissioner.

(e) A captive insurer organized in the District shall have the privileges of, and shall be subject to, the provisions of Chapters 1, 2, 3, 4, and 8 of Title 29. If the provisions of this chapter conflict with the general provisions of Title 29, the provisions of this chapter shall control.

(f) The Commissioner may regulate the manager of a captive insurer.

(Mar. 17, 2005, D.C. Law 15-262, § 4, 52 DCR 1205; Mar. 2, 2007, D.C. Law 16-191, § 54(b), 53 DCR 6794; July 2, 2011, D.C. Law 18-378, § 3(w), 58 DCR 1720; Mar. 14, 2012, D.C. Law 19-103, § 2(a), 59 DCR 432.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 16-191, in subsec. (e), validated a previously made technical correction.

D.C. Law 18-378, in subsec. (e), substituted "Chapters 1, 2, 3, 4, and 8 of Title 29" for "general corporation law set forth in Chapter 1 of Title 29, subchapter I of Chapter 3 of Title 29, and Chapter 10 of Title 29, and the applicable provisions contained in this chapter", and substituted "general provisions in Title 29" for "general provisions of the acts codified in Title 29".

D.C. Law 19-103 added subsec. (a-1).

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 4 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For Law 16-191, see notes following § 31-1131.02.

For history of Law 18-378, see notes under § 31-754.

Law 19-103, the "Captive Insurance Company Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-149, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 6, 2011, and January 4, 2012, respectively. Signed by the Mayor on January 20, 2012, it was assigned Act No. 19-278 and transmitted to both Houses of Congress for its review. D.C. Law 19-103 became effective on March 14, 2012.

### **§ 31-3931.04. PROTECTED CELL CAPTIVE INSURERS.**

(a) For the purposes of this section, the term:

(1) "Incorporated protected cell" means a protected cell that is established as a corporation or other

legal entity separate from the protected cell captive insurer of which it is a part.

(2) "Protected cell" means a separate account established and maintained by a protected cell captive insurer and shall include an incorporated protected cell

(3) "Protected cell captive insurer" means a captive insurer that:

(A) Is formed and licensed under the provisions of this chapter;

(B) Insures the risks of separate participants through a contract; and

(C) Segregates each participant's liability through one or more protected cells.

(b)(1) A captive insurer may be organized as a protected cell captive insurer and shall be permitted to form one or more protected cells under this chapter to insure risks of one or more participants. The assets and liabilities of each protected cell shall be held separately from the assets and liabilities of all other protected cells.

(2) A protected cell captive insurer may be organized and operated in any form of business organization authorized by the Commissioner.

(3) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner.

(4) A protected cell captive insurer shall, at the time of paying the annual fee, pay an additional annual fee for each protected cell in an amount to be established by the Commissioner.

(5) Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this chapter.

(6) Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurer, each incorporated protected cell of the protected cell captive insurer shall have the same directors, secretary, and registered office as the protected cell captive insurer.

(7) A protected cell captive insurer may provide that a protected cell it creates shall be wound up and dissolved upon:

(A) The bankruptcy, death, expulsion, insanity, resignation or retirement of any participant of the protected cell;

(B) The happening of some other event that is not the expiration of a fixed period of time; or

(C) The expiration of a fixed period of time.

(8) The articles of incorporation of a protected cell captive insurer:

(A) Shall provide that a protected cell shall not own shares in the protected cell captive insurer of which it is a part; and

(B) May provide that a protected cell may own shares in any other protected cell of the protected cell captive insurer.

(9) The name of a protected cell captive insurer shall include the words "Protected cell captive" or the abbreviation "PCC".

(10) A name that includes the words "Protected cell captive" may, in setting out or using its name for any purpose under this chapter, do so in full or in the abbreviated form.

(11) A protected cell captive insurer shall assign a distinctive name to each of its protected cells that is not an incorporated protected cell that:

(A) Identifies the protected cell as being part of the protected cell captive insurer;

(B) Distinguishes the protected cell from any other protected cell of the protected cell captive insurer; and

(C) Includes the words "Protected Cell" or the abbreviation "PC".

(12) An incorporated protected cell must include the words "Incorporated Cell" or the abbreviation "IC".

(13) Any captive insurer or protected cell formed prior to March 14, 2007, shall not be required to change its name or the designation of any of its protected cells to comply with the provisions of paragraphs (6), (8), or (9) of this subsection.

(14) A protected cell of a protected cell captive insurer, unless created as an incorporated protected cell, has no legal identity separate from that of the protected cell captive insurer of which it is a part.

(15) A protected cell of a protected cell captive insurer may enter into an agreement with its protected cell captive insurer or with another protected cell of the protected cell captive insurer that shall be enforceable as if each protected cell of the protected cell captive insurer were a separate legal entity, even if the protected cell is not organized as an incorporated protected cell.

(16) The assets of a protected cell captive insurer shall be cell assets or general assets. The cell assets comprise the assets of the protected cell captive insurer that are held within or on behalf of its



protected cells. The general assets of a protected cell captive insurer comprise the assets of the protected cell captive insurer that are not cell assets.

(17) The liabilities of a protected cell captive insurer shall be cell liabilities or general liabilities. The cell liabilities comprise the obligations of the protected cell captive insurer attributed to its protected cells. The general liabilities of a protected cell captive insurer comprise the obligations of the protected cell captive insurer that are not cell liabilities.

(18) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurer to reflect the financial condition and results of operations of each protected cell, including net income or loss, dividends or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Commissioner.

(19) Each protected cell captive insurer shall annually file with the Commissioner such financial reports as the Commissioner shall require, which reports shall include financial statements detailing the financial experience of each protected cell.

(20) The captive manager of a protected cell captive insurer shall immediately notify the Commissioner if any protected cell of the protected cell captive insurer becomes insolvent or is otherwise unable to meet its claims or other obligations.

(21) A protected cell captive insurer may create and issue shares in one or more classes or series for one or more protected cells. The proceeds of the issue shall be included in the assets of the protected cell that issued the shares.

(22) The proceeds of the issue of shares, other than protected cell shares, shall be included in the protected cell captive insurer's general assets.

(23) A protected cell captive insurer may pay a dividend on protected cell shares of any class or series whether or not a dividend is declared on any other class or series of protected cell shares or any other shares.

(24) Dividends may be paid on protected cell shares only from the cell assets of the protected cell that issued the shares and otherwise in accordance with the rights of such shares.

(25) No sale, exchange, or other transfer of assets may be made by a protected cell captive insurer between or among any of its protected cells without the written consent of the participants of the protected cell and the Commissioner.

(26) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to any person without the Commissioner's prior written approval. An approval shall not be given if the sale, exchange, transfer, dividend, or distribution will result in the insolvency or impairment with respect to a protected cell.

(27) The owners of a protected cell captive insurer, shall not, by virtue of being owners, be the owners or participants of any protected cell of the protected cell captive insurer.

(28) The participants of a protected cell shall not, by virtue of being such participants, be the owners of the protected cell captive insurer or participants or owners of any other protected cell of the protected cell captive insurer.

(29) Any individual or legal entity may be a participant in a protected cell formed under this chapter.

(30) A participant in a protected cell need not be a shareholder of the protected cell or of the protected cell captive insurer or any affiliate thereof.

(31) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new protected cell or the withdrawal or other transfer of any participant from any existing protected cell shall constitute a change in the strategic business plan of that protected cell requiring the Commissioner's prior written approval.

(32) A protected cell captive insurer shall, in addition to keeping a register of its owners or participants, keep a register of the participants of each of its protected cells.

(33) If a protected cell captive insurer (A) enters into a transaction in respect of a particular protected cell of the protected cell captive insurer, or (B) incurs a liability arising from an activity or asset of a particular protected cell, a claim by any person in connection with the transaction or liability extends only to the cell assets of the protected cell.

(34) If a protected cell captive insurer (A) enters into a transaction in its own right and not in respect of any of its protected cells, (B) incurs a liability arising from an activity its own right and not in respect of any of its protected cells, or (C) incurs a liability arising from an asset held in its own right and not in respect of any of its protected cells, a claim by any person in connection with the transaction or liability shall extend only to the general assets of the protected cell captive insurer.

(35) Except as provided by paragraphs (37) and (39) of this subsection, a protected cell captive insurer shall not satisfy any liability:

(A) Attributable to a particular protected cell of the protected cell captive insurer from the general

assets of the protected cell captive insurer; or

(B) Whether attributable to a particular protected cell or not, from the cell assets of another protected cell of the protected cell captive insurer.

(36) If (A) a protected cell captive insurer is permitted to do so under its articles of incorporation or similar organizational documents, and (B) the requirement set forth in paragraph (68) of this subsection is satisfied, the protected cell captive insurer may satisfy any liability attributable to a particular protected cell from the protected cell captive insurer's general assets.

(37) Prior to a protected cell captive insurer satisfying any liability attributable to a particular protected cell from the protected cell captive insurer's general assets, the directors who authorize the satisfaction of the liability shall state as part of the authorization that, having made the inquiry into the affairs and prospects of the protected cell captive insurer, they have formed the opinion that:

(A) Immediately following the date on which the liability is proposed to be met by the general assets of the protected cell captive insurer, the protected cell captive insurer will be able to discharge its liabilities as they fall due; and

(B) Having regard to the prospects of the protected cell captive insurer, the intentions of the directors with respect to the management of the protected cell captive insurer's business, and the amount and character of the financial resources that will, in their view, be available to the protected cell captive insurer, the protected cell captive insurer will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiration of the period of one year immediately following the date on which the liability is proposed to be satisfied by the general assets of the protected cell captive insurer or until the protected cell captive insurer is dissolved, whichever first occurs.

(38) A protected cell captive insurer may satisfy any liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell if:

(A) It is permitted to do so by the articles of incorporation or other organizational document of that other protected cell, in the case of an incorporated protected cell, or by the participant contract, in the case of all other protected cells; and

(B) Prior to the protected cell captive insurer satisfying any liability from the cell assets of that other protected cell, the directors who authorize the satisfaction of the liability shall obtain written approval from the Commissioner, upon first having made full inquiry into the affairs and prospects of that protected cell, and stating, as part of the authorization, that they have formed the opinion that:

(i) Immediately following the date on which the liability is proposed to be met by the cell assets of the protected cell, the protected cell will be able to discharge its liabilities as they fall due; and

(ii) Having regard to the prospects of the protected cell, the intentions of the directors with respect to the management of the protected cell's business, and the amount and character of the financial resources that will in their view be available to the protected cell, the protected cell will be able to continue to carry on business and will be able to discharge its liabilities as they become due or until the protected cell is dissolved, whichever first occurs.

(39) A director who makes a statement under paragraph (37) or paragraph (38) of this subsection without having reasonable grounds for the opinion expressed in the statement violates this chapter and may be removed by order of the Commissioner.

(40) If a protected cell captive insurer is liable for any penalty, under this chapter or otherwise, due to an act or failure to act of a protected cell of the protected cell captive insurer or of an officer or director of a protected cell of the protected cell captive insurer, the penalty shall:

(A) Only be met by the protected cell captive insurer from the cell assets of the protected cell; and

(B) Not be enforceable in any way against any other assets of the protected cell captive insurer or assets of any other protected cell.

(41) The directors of a protected cell captive insurer shall establish and maintain, or cause to be established and maintained, procedures:

(A) To segregate cell assets and liabilities separate and separately identifiable from general assets and liabilities;

(B) To segregate cell assets and liabilities of each protected cell separate and separately identifiable from cell assets and liabilities of any other protected cell; and

(C) Where relevant, to apportion or transfer assets and liabilities between protected cells or between protected cells and general assets and liabilities of the protected cell captive insurer.

(42) If a protected cell captive insurer enters into an agreement with respect to a protected cell of the protected cell captive insurer, a director shall ensure that:

- (A) The other party to the transaction knows, or ought reasonably to know, that the protected cell captive insurer is acting with respect to a particular protected cell; and
- (B) The minutes of any meeting of directors held with regard to the agreement clearly record the fact that the company was entering into the agreement with respect to the protected cell and that the obligation imposed by subparagraph (A) of this paragraph was, or will be, complied with.
- (43) The duties of a director of a protected cell captive insurer under this chapter shall be in addition to, and not in lieu of, those under other applicable law.
- (44) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a protected cell that is not an incorporated protected cell shall be executed by the protected cell captive insurer for and on behalf of the protected cell, shall be identified, and, if in writing, shall indicate that the execution is in the name of, by, or for the account of the protected cell.
- (45) If a protected cell captive insurer fails to comply with paragraph (41) of this subsection:
- (A) The directors of the protected cell captive insurer shall, notwithstanding any provisions to the contrary in the protected cell's organizational documents or in any contract with the protected cell captive insurer or otherwise, shall be personally liable for the liabilities of the protected cell captive insurer and the protected cell under the chapter, matter, deed, agreement, contract, instrument or arrangement that was executed; and
- (B)(i) Unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the protected cell captive insurer shall have a right of indemnity, in the case of a matter on behalf of or attributable to a protected cell, against the assets of the protected cell.
- (ii) In the case of a matter not on behalf of or attributable to a protected cell, the directors shall have a right of indemnity against the general assets of the protected cell captive insurer.
- (46) Notwithstanding the provisions of paragraph (45)(A) of this subsection, a court may relieve a director of all or part of the personal liability under paragraph (45) of this subsection if he or she satisfies the court that he or she should be relieved because:
- (A) The director was not aware of the circumstances giving rise to the liability and, in being not so aware, was not fraudulent, reckless, or negligent and did not act in bad faith; or
- (B) The director expressly objected, and exercised such rights as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability.
- (47) If, pursuant to the provisions of paragraph (46) of this subsection, the court relieves a director of all or part of his or her personal liability under paragraph (45)(A) of this subsection, the court may order that the liability in question shall instead be met from such of the protected cell or general assets of the account of the protected cell captive insurer as may be specified in the order.
- (48) Any provision in the organizational document of a captive insurer or any other contractual provision under which the protected cell captive insurer may be liable, which provision purports to indemnify directors in respect of conduct which would otherwise prohibit them from indemnification by virtue of paragraph (46) of this subsection, shall be void.
- (49) A captive insurer may amend its organizational document to become a protected cell captive insurer.
- (50) The amendment of the organizational document of a captive insurer to become a protected cell captive insurer shall require approval by:
- (A) Holders of 2/3 of the outstanding shares or ownership interests of the captive insurer, unless a greater amount is required by the organizational document of the captive insurer; and
- (B) All the creditors of the captive insurer; provided, that if the consent of all the creditors of the captive insurer cannot be obtained, the amendment may be approved by the Commissioner if he or she is satisfied that no creditor will be materially prejudiced by the amendment.
- (51) A protected cell captive insurer may amend its other organizational document to cease to be a protected cell captive insurer.
- (52) The amendment of the other organizational document of a captive insurer to cease to be a protected cell captive insurer shall require approval by:
- (A) The Commissioner;
- (B) Holders of 2/3 of the outstanding shares or ownership interests of the protected cell captive insurer, unless a greater amount is required by the other organizational document of the protected cell captive insurer;
- (C) Two-thirds of the participants of each protected cell; and
- (D) All the creditors of the protected cell captive insurer and its protected cells; provided, that if the consent of all the creditors of the captive insurer and its protected cells cannot be obtained, the

amendment may be approved by the Commissioner upon being satisfied that no creditor will be materially prejudiced by the amendment.

(53) If a captive insurer or protected cell captive insurer seeks to change its status in accordance with paragraph (49) or (51) of this subsection, the Commissioner shall issue a certificate of authority that is appropriate to the amended status of the company if there is delivered to the Commissioner:

- (A) A copy of the amendment to its name; and
- (B) Evidence satisfactory to the Commissioner that the requirements of paragraph (50) or (52) of this subsection have been met.

(54) If a company changes its status in accordance with this section, the change of status shall take effect when the Commissioner issues a new certificate of authority.

(55) A protected cell of a protected cell captive insurer may be transferred to another protected cell captive insurer.

(56) The protected cell captive insurers between which a protected cell is being transferred shall enter into a written agreement that sets forth the terms of the transfer.

(57) A transfer of a protected cell shall be approved when the directors of each protected cell captive insurer who authorized the transfer have approved the transfer and:

- (A) When the transfer agreement is approved by the Commissioner as an arrangement in accordance with this chapter;
- (B) When the transfer agreement is consented to by at least 2/3 of the participants of the protected cell being transferred and all the creditors, if any, of that protected cell; or
- (C) If the agreement of all the creditors of the cell cannot be obtained, when the transfer is approved by the Commissioner upon being satisfied that no creditor of the cell will be materially prejudiced by the transfer.

(58) Within 30 days of a transfer agreement being approved by the Commissioner, the protected cell captive insurer to which the protected cell is being transferred shall deliver to the Commissioner:

- (A) A copy of the executed transfer agreement; and
- (B) A declaration made in accordance with paragraph (59) of this subsection, signed by a majority of the directors of the protected cell captive insurer transferring the protected cell who authorized the transfer.

(59) The declaration required in paragraph (58)(B) of this subsection shall state that each director has reason to believe that:

- (A) The protected cell being transferred is able to discharge its liabilities as they become due;
- (B) There are no creditors of the protected cell captive insurer from which the cell is being transferred whose interests will be unfairly prejudiced by the transfer; and
- (C) The transfer agreement has been approved in accordance with this chapter.

(60) If a protected cell captive insurer fails to deliver the documents mentioned in paragraph (58) of this subsection within the 30-day period, the Commissioner may void the transfer.

(61) The Commissioner may void the transfer and order the removal of any director who makes a declaration under paragraph (59) of this subsection without having the grounds to do so.

(62) Upon delivery of the documents referred to in paragraph (58) to the Commissioner, the Commissioner shall, if those documents comply with this chapter:

- (A) Record the transfer of the protected cell;
- (B) Issue to the protected cell a new certificate of authority; and
- (C) Record that the protected cell has ceased to be a protected cell of the protected cell captive insurer that transferred the protected cell.

(63) Upon the issuance of the new certificate of authority:

- (A) The protected cell shall cease to be a protected cell of the protected cell captive insurer that transferred it;
- (B) The protected cell becomes a protected cell of the protected cell captive insurer to which it has been transferred;
- (C) If a protected cell was an incorporated protected cell or an unincorporated protected cell;
  - (i) All property and rights to which the protected cell was entitled immediately before the issue of the new certificate of authority shall remain the property and rights of the protected cell;
  - (ii) The liabilities, and all contracts, debts, and other obligations to which the protected cell was subject immediately before the issue of the new certificate of authority, shall remain the

liabilities, contracts, debts, and other obligations of the protected cell; and

(iii) All actions and other legal proceedings which, immediately before the issue of the new certificate of authority were pending by or against such protected cell may be continued by or against the protected cell.

(64) The operation of paragraph (63) of this subsection shall not be regarded as:

(A) A breach of contract or otherwise as a civil wrong;

(B) A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities; or

(C) Giving rise to any remedy by a party to a contract or other instrument as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

(65) A protected cell shall not be transferred under this chapter if the transfer would be inconsistent with the articles of incorporation or similar organizational document, if applicable, of the protected cell, the protected cell captive insurer transferring the protected cell, or the protected cell captive insurer to which it is to be transferred.

(66) Any insurer, including a captive insurer, that is not a protected cell captive insurer, may become a protected cell of a protected cell captive insurer.

(67) A protected cell of a protected cell captive insurer may apply to the Commissioner to be incorporated as an insurer, including a captive insurer, independent from the protected cell captive insurer.

(68) An application made under paragraph (67) of this subsection shall be approved by 2/3 of the participants of the protected cell or, if the protected cell has more than one class of participants, 2/3 approval of each class of participants, unless the organizational document of the protected cell provides for a greater percentage.

(69) If a protected cell has made an application under paragraph (68) of this subsection, a participant of the protected cell who objects to the protected cell being incorporated as an insurer, including a captive, independent of its protective cell captive may petition the Commissioner for an order denying the application on the grounds that the incorporation or the terms of the incorporation unfairly prejudice his or her interests.

(70) An application shall not be made under paragraph (69) of this subsection after the expiration of the 30-day period following the application being made under paragraph (67) of this subsection.

(71) If a protected cell is licensed as a legal entity pursuant to this section, and if the protected cell was either an incorporated protected cell or an unincorporated protected cell of a protected cell captive insurer:

(A) All property and rights to which the protected cell was entitled immediately before its licensure as a new entity shall remain the property and rights of the new entity;

(B) The protected cell shall remain subject to all criminal and civil liabilities and all contracts, debts, and other obligations to which the protected cell was subject immediately before its licensure as a new entity;

(C) All contracts, debts, and other obligations of the protected cell shall remain the contracts, debts, other obligations of the new entity; and

(D) All actions and other legal proceedings which, immediately before the licensure of the protected cell as a new entity, were pending by or against the protected cell may be continued by or against the new entity.

(72) The operation of paragraph (71)(B) and (D) of this subsection shall not be regarded as:

(A) A breach of contract;

(B) A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities; or

(C) Giving rise to any remedy by a party to a contract or other instrument as an event of default under the contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

(Mar. 17, 2005, D.C. Law 15-262, § 5, 52 DCR 1205; Mar. 14, 2007, D.C. Law 16-286, § 2, 54 DCR 957; Mar. 25, 2009, D.C. Law 17-353, § 166, 56 DCR 1117.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 16-286 rewrote this section, which formerly read:

"(a) A captive insurer may form one or more segregated accounts to insure risks of one or more participants.

"(b) A captive insurer that maintains a segregated account shall, at the time of paying the annual fee, pay an additional annual fee in an amount to be established by the Commissioner for each segregated account.

"(c) A captive insurer may create one or more segregated accounts to segregate its assets and liabilities from the assets and liabilities of its segregated accounts. The assets and liabilities of each segregated account shall be held separately from the assets and liabilities of all other segregated accounts.

"(d) A captive insurer shall be a single legal entity and each segregated account of or within a captive insurer may be established as a separate legal entity, which shall constitute a legal entity separate from the captive insurer. Each segregated account shall be separately identified or designated as being a part of the captive insurer.

"(e) A captive insurer may create and issue shares in one or more classes or series for one or more segregated accounts. The proceeds of the issue shall be included in the assets of the segregated account that issued the shares.

"(f) The proceeds of the issue of shares, other than segregated account shares, shall be included in the captive insurer's general assets.

"(g) A captive insurer may pay a dividend on segregated account shares of any class or series whether or not a dividend is declared on any other class or series of segregated account shares, or any other shares.

"(h) Segregated account dividends may be paid on the segregated account shares from the segregated account assets. The dividends shall only be paid to the shareholders of the segregated account from which the segregated account shares were issued and otherwise in accordance with the rights of the shares.

"(i) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a segregated account or accounts shall be executed by the captive insurer for and on behalf of such segregated account or accounts, shall be identified, and, if in writing, shall indicate that the execution is in the name of, or by or for the account of, the segregated account or accounts.

"(j) If a captive insurer is in breach of subsection (i) of this section:

"(1) The directors of the captive insurer shall, notwithstanding any provisions to the contrary in the captive insurer's organizational documents or in any contract with the company or otherwise, incur personal liability for the liabilities of the captive insurer and the segregated account under this chapter, matter, deed, agreement, contract, instrument, or arrangement that was executed; and

"(2) Unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the captive insurer shall have a right of indemnity:

"(A) In the case of a matter on behalf of or attributable to a segregated account or accounts; against the assets of that account or accounts.

"(B) In the case of a matter not on behalf of or attributable to any segregated account or accounts, against the general assets of the captive insurer.

"(k) Notwithstanding the provisions of subsection (j)(1) of this section, a court may relieve a director of all or part of this personal liability thereunder if he or she satisfies the court that he or she should be relieved because:

"(1) The director was not aware of the circumstances giving rise to the liability and, in being not so aware, the director was not fraudulent, reckless, or negligent, and did not act in bad faith; or

"(2) The director expressly objected, and exercised his or her rights as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability.

"(l) If, pursuant to the provisions of subsection (k) of this section, the court relieves a director of all or part of his or her personal liability under subsection (j)(1) of this section, the court may order that the liability in question shall instead be met from such of the segregated account or general assets of the account of the captive insurer as may be specified in the order.

"(m) Any provision in the organizational documents of a captive insurer, or any other contractual provision under which the captive insurer may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (j)(2) of this section, shall be void.

"(n) The assets of a captive insurer shall be either segregated account assets or general assets. The segregated account assets shall comprise the assets of the captive insurer held within or on behalf of the segregated accounts of the captive insurer. The general assets of a captive insurer shall comprise the assets of the captive insurer which are not segregated account assets.

"(o) The assets of a segregated account are comprised of assets representing the capital stock and reserves attributable to the segregated account or all other assets attributable to or held within the segregated account. For the purposes of this subsection, 'reserves' includes retained earnings, capital surplus, and paid-in capital.

"(p) The directors of a captive insurer shall establish and maintain, or cause to be established and maintained, procedures:

"(1) To segregate, and keep segregated, account assets separate and separately identifiable from general assets;

"(2) To segregate, and keep segregated, account assets of each segregated account separate and separately identifiable from segregated account assets of any other segregated account; and

"(3) If relevant, to apportion or transfer assets and liabilities between segregated accounts, or between segregated accounts and general assets, of the segregated account captive insurer.

"(q) Segregated account assets shall:

"(1) Only be available and used to meet liabilities of the creditors with respect to that segregated account, and those creditors shall thereby be entitled to have recourse to the segregated account assets attributable to that segregated account; and

"(2) Not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the captive insurer who are not creditors with respect to a particular segregated account, and those creditors shall not be entitled to have recourse to the protected segregated account assets.

"(r) If a liability of a captive insurer to a person arises from a matter, or is otherwise imposed, with respect to a particular segregated account, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to:

"(1) First, the segregated account assets attributable to the segregated account; and

"(2) Second, the captive insurer's general assets, to the extent that the segregated account assets attributable to the segregated account, are insufficient to satisfy the liability, and to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this chapter.

"(s) If a liability of a captive insurer to a person arises otherwise than from a matter in respect of a particular segregated account or accounts, or is imposed otherwise than in respect of a particular segregated account or accounts, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to the captive insurer's general assets.

"(t) Liabilities of a captive insurer not attributable to any of its segregated accounts shall be discharged from the account captive insurer's general assets. Income, receipts, and other property or rights of or acquired by a captive insurer not otherwise attributable to any segregated account shall be attributed to the captive insurer's general assets to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this chapter.

"(u)(1) Each segregated account shall be accounted for separately on the books and records of the captive insurer to reflect the financial condition and results of operations of the segregated account, including net income or loss, dividends, or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Commissioner.

"(2) No sale, exchange, or other transfer of assets shall be made by the captive insurer between or among any of its segregated accounts without the written consent of the segregated accounts and the Commissioner.

"(3) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a segregated account to any person without the Commissioner's prior written approval and the approval shall not be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment with respect to the segregated account.

"(4) Each segregated account captive insurer shall annually file with the Commissioner such financial reports as the Commissioner shall require, which shall include financial statements detailing the financial experience of each segregated account.

"(5) Each captive insurer shall notify the Commissioner within 10 business days of any segregated account that is insolvent or otherwise unable to meet its claims or expense obligations.

"(6) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new segregated account or the withdrawal of any participant from any existing segregated account shall constitute a change in the strategic business plan of that segregated account requiring the Commissioner's prior written approval.

"(v) Any person or legal entity may be a participant in a segregated account formed or licensed under this chapter.

"(w) A participant in a segregated account need not be a shareholder insured within the segregated account or by the captive insurer or any affiliate thereof."

D.C. Law 17-353 validated a previously made technical correction in subsec. (b)(41)

*Emergency Act Amendments*

For temporary (90 day) addition of section, see § 5 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

For Law 15-262, see notes following § 31-3931.01.

Law 16-286, the "Captive Insurance Company Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-898, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-645 and transmitted to both Houses of Congress for its review. D.C. Law 16-286 became effective on March 14, 2007.

For Law 17-353, see notes following § 31-1131.06.

## **§ 31-3931.05. LIQUIDATION AND REHABILITATION OF PROTECTED CELLS.**

- (a) If a protected cell captive insurer with one or more protected cells is being liquidated under this chapter, the protected cell captive insurer shall not be deemed to have no assets and no liabilities if the protected cell captive insurer continues to have a protected cell.
- (b) In the course of the liquidating the protected cell captive insurer, each protected cell shall be:
  - (1) Transferred to another protected cell captive insurer;
  - (2) Liquidated;
  - (3) Continued as a separate legal entity or protected cell under the law of another jurisdiction;
  - (4) Incorporated independently of the protected cell captive insurer; or
  - (5) Merged with another insurer.
- (c) If a protected cell captive insurer is being liquidated, the liquidation shall not apply with respect to any protected cell of the protected cell captive insurer.
- (d) If a protected cell of a protected cell captive insurer is being liquidated, the liquidation shall not apply with respect to the protected cell captive insurer or any other protected cell of the protected cell captive insurer.
- (e) The court, on the application of a protected cell captive insurer, may determine, in accordance with this chapter, if a liability of the protected cell captive insurer shall be satisfied by its general assets, by the cell assets of a specific protected cell of the company, or by a combination of those assets.
- (f) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a captive insurer, the liquidator shall:
  - (1) Deal with the captive insurer's assets only in accordance with the procedures set out in subsection (h)(6) of this section; and
  - (2) In the discharge of the claims of creditors of the captive insurer, shall apply the captive insurer's assets to those entitled to have recourse thereto under the provisions of § 31-3931.04.
- (g)(1) A petition for a liquidation or rehabilitation order with respect to a protected cell of a protected cell captive insurer may be made by:
  - (A) The protected cell captive insurer;
  - (B) The majority of the directors of the protected cell captive insurer;
  - (C) Any creditor of that protected cell; or
  - (D) The Commissioner.
- (2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a protected cell of a captive insurer shall be served upon:
  - (A) The captive insurer;
  - (B) The Commissioner; and
  - (C) Such other persons as the court may direct.
- (h)(1) Subject to the provisions of this section, the court may make a liquidation or rehabilitation order with respect to a protected cell if, in relation to a captive insurer, the court is satisfied that:
  - (A) The cell assets attributable to a particular protected cell of the captive insurer, and in those cases where creditors of the captive insurer with respect to the protected cell are entitled to have recourse to the captive insurer's general assets, are, or are likely to be, insufficient to discharge the claims of creditors with respect to that protected cell; and
  - (B) An order would achieve the purposes set forth in paragraph (3) of this subsection.



- (2) A liquidation or rehabilitation order may be made with respect to one or more protected cells.
- (3) A liquidation or rehabilitation order shall direct that the business and cell assets of, or attributable to, a protected cell shall be managed by a liquidator or rehabilitator specified in the order for the purpose of:
  - (A) The orderly closing or rehabilitation of the business of, or attributable to, the protected cell; and
  - (B) The distribution of the cell assets, or assets attributable to the protected cell, to those having recourse thereto.
- (i) The liquidator or rehabilitator of a protected cell:
  - (1) Shall have all the functions and powers of the directors responsible for the business and cell assets of, or attributable to, the protected cell;
  - (2) May at any time apply to the court for directions as to the extent or exercise of any function or power, for the liquidation or rehabilitation order to be discharged or varied, or for an order as to any matter occurring during the course of the liquidation or rehabilitation.
  - (3) In exercising his functions and powers, shall act as the agent of the captive insurer and shall not incur personal liability except to the extent that he or she acts fraudulently, recklessly, negligently, or in bad faith.
- (j) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:
  - (1) No proceedings shall be instituted or continued by or against the captive insurer or protected cell in respect of which the liquidation or rehabilitation order was made; and
  - (2) No action shall be taken to enforce any security or in the execution of legal process with respect to the business or cell assets of or attributable to the protected cell with respect to which the liquidation or rehabilitation order was made, except by leave of the court.
- (k) During the period of operation of a liquidation or rehabilitation order:
  - (1) The functions and powers of the directors shall cease with respect to the business of, or attributable to, the protected cell or cell assets for which the order was made; and
  - (2)(A) The liquidator or rehabilitator of the protected cell shall be entitled to be present at all meetings of the captive insurer or protected cell and to vote at such meetings as if he or she were a director of the captive insurer.
    - (B) Unless there are no creditors that are entitled to have recourse to the captive insurer's general assets, the liquidator's or rehabilitator's voting authority shall include matters concerning the captive insurer's general assets.
- (l)(1) The court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.
  - (2) The court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order or adjourn the proceeding.
  - (3) Upon the court issuing an order discharging a liquidation or rehabilitation order for a protected cell on the ground that the purpose for which the order was made had been achieved or substantially achieved, the court may direct that any payment made by the liquidator or rehabilitator to any creditor of the captive insurer, with respect to that protected cell, shall be deemed full satisfaction of the liabilities of the captive insurer to the creditor with respect to the protected cell, and the creditor's claims against the captive insurer with respect to that protected cell shall be of its administrative, regulatory, and marketing activities as prescribed by law.

(Mar. 17, 2005, D.C. Law 15-262, § 6, 52 DCR 1205; Mar. 14, 2007, D.C. Law 16-286, § 2, 54 DCR 957.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 16-286 rewrote this section, which formerly read:

"(a) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a captive insurer, the liquidator:

"(1) Shall deal with the company's assets only in accordance with the procedures set forth in subsection (c)(6) of this section; and

"(2) In the discharge of the claims of creditors of the captive insurer, shall apply the captive insurer's assets to those entitled to have recourse thereto under the provisions of § 31-3931.04.

"(b)(1) A petition for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer may be made by:

"(A) The segregated account captive insurer;

"(B) The majority of the directors of the segregated account captive insurer;

"(C) Any creditor of the segregated account; or

"(D) The Commissioner.

"(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer shall be served upon:

"(A) The captive insurer;

"(B) The Commissioner; and

"(C) Such other persons as the court may direct.

"(c)(1) Subject to the provisions of this section, the court may make a liquidation or rehabilitation order with respect to a segregated account if, in relation to a captive insurer, the court is satisfied that the:

"(A) Segregated account assets attributable to a particular segregated account of the captive insurer, and in those cases where creditors of the captive insurer with respect to that segregated account are entitled to have recourse to the captive insurer's general assets, are or are likely to be insufficient to discharge the claims of creditors with respect to that segregated account; and

"(B) Making of an order under this section would achieve the purposes set forth in paragraph (3) of this subsection.

"(2) A liquidation or rehabilitation order may be made with respect to one or more segregated accounts.

"(3) A liquidation or rehabilitation order shall direct that the business and segregated account assets of, or attributable to, a segregated account shall be managed by a liquidator or rehabilitator specified in the order for the purpose of:

"(A) The orderly closing or rehabilitation of the business of, or attributable to, the segregated account; and

"(B) The distribution of the segregated account assets, or assets attributable to the segregated account, to those having recourse thereto.

"(d) The liquidator or rehabilitator of a segregated account:

"(1) Shall have all the functions and powers of the directors responsible for the business and segregated account assets of, or attributable to, the segregated account;

"(2) May at any time apply to the court for directions as to the extent or exercise of any function or power, for the liquidation or rehabilitation order to be discharged or varied, or for an order as to any matter occurring during the course of the liquidation or rehabilitation; and

"(3) In exercising his functions and powers, shall be deemed to act as the agent of the captive insurer and shall not incur personal liability except to the extent that he acts fraudulently, recklessly, negligently, or in bad faith.

"(e) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:

"(1) No proceedings shall be instituted or continued by or against the captive insurer or segregated account in respect of which the liquidation or rehabilitation order was made; and

"(2) No steps shall be taken to enforce any security or in the execution of legal process in respect of the business or segregated account assets of or attributable to the segregated account in respect of which the liquidation or rehabilitation order was made, except by leave of the court.

"(f)(1) During the period of operation of a liquidation or rehabilitation order:

"(A) The functions and powers of the directors shall cease with respect to the business of, or attributable to, the segregated account or segregated account assets for which the order was made; and

"(B) The liquidator or rehabilitator of the segregated account shall be entitled to be present at all meetings of the captive insurer or segregated account and to vote at such meetings as if he or she were a director of the captive insurer.

"(2) Unless there are no creditors that are entitled to have recourse to the captive insurer's general assets, the liquidator's or rehabilitator's voting authority includes matters concerning the captive insurer's general assets.

"(g)(1) The Court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the Court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.

"(2) The Court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order or adjourn the proceeding.

"(3) Upon the Court issuing an order discharging a liquidation or rehabilitation order for a segregated account on the ground that the purpose for which the order was made had been achieved or substantially achieved, the Court may direct that any payment made by the liquidator or rehabilitator to any creditor of the captive insurer, with respect to that segregated account, shall be full satisfaction of the liabilities of the captive insurer to that

creditor with respect to that segregated account, and the creditor's claims against the captive insurer with respect to that segregated account shall be thereby extinguished."

*Emergency Act Amendments*

For temporary (90 day) addition of section, see § 6 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

*Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For Law 16-286, see notes following § 31-3931.04.

## **§ 31-3931.06. CAPITAL AND SURPLUS.**

(a) In addition to any other capital required to be maintained pursuant to subsection (c) of this section, a captive insurer, authorized to do business in the District, shall at all times maintain a minimum unimpaired capital of \$100,000.

(b) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the capital required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(c) The Commissioner may require a captive insurer, including each segregated account, to maintain additional unimpaired capital based on the type, volume, and nature of the insurance business that is transacted by the captive insurer and may determine the amount of capital, if any, that may be in the form of an irrevocable letter of credit.

(d) A letter of credit used by a captive insurer or segregated account as evidence of capital required pursuant to this section shall:

- (1) Be issued by a bank chartered in the District or by a branch of a bank located in the District if such bank is a member of the United States Federal Reserve System, or its deposits are insured by the Federal Deposit Insurance Corporation;
- (2) Be issued on a form approved by the Commissioner; and
- (3) Include a provision pursuant to which a letter of credit is automatically renewed each year.

(e) The Commissioner may approve an ongoing plan for the payment of dividends or other distributions by a captive insurer or segregated account if, at the time of each payment or distribution, the amount of capital and surplus retained by the captive insurer or segregated account is in excess of the amounts required by the Commissioner. The Commissioner shall adopt by rule:

- (1) A specific amount that a captive insurer or segregated account must have in excess capital and surplus for the approval of an ongoing plan for the payment of dividends or other distributions; or
- (2) A formula pursuant to which the specific amount of required excess capital and surplus may be calculated.

(f) A captive insurer shall not be issued a certificate of authority, and shall not hold a certificate of authority, unless the captive insurer has and maintains, in addition to any other surplus required to be maintained pursuant to subsection (h) of this section, an unencumbered surplus of:

- (1) For a pure captive insurer, not less than \$150,000;
- (2) For an association captive insurer incorporated as a stock insurer, not less than \$300,000;
- (3) For an agency captive insurer, not less than \$300,000;
- (4) For a rental captive insurer, not less than \$300,000;
- (5) For an association captive insurer incorporated as a mutual insurer or reciprocal insurer, not less than \$500,000; and
- (6) For each segregated account, not less than an amount to be established by the Commissioner.

(g) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the surplus required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(h) The Commissioner may prescribe additional requirements relating to surplus based on the type, volume, and nature of the insurance business that is transacted by a captive insurer or segregated account and requirements regarding which surplus, if any, may be in the form of an irrevocable letter of credit.

(i) A letter of credit used by a captive insurer or a segregated account as evidence of surplus required pursuant to this section shall meet the same requirements as a letter of credit issued for paid-in capital found subsection (d) of this section.

(j) The parent of a branch captive insurer shall be subject to the jurisdiction of the United States District Court for the District of Columbia for all matters involving the branch captive insurer.

(k) Except as otherwise provided in this section, a captive insurer or segregated account shall pay dividends out of, or make any other distribution from, its capital or surplus, or both, in accordance with the provisions set forth in subsection (e) of this section. A captive insurer or segregated account shall not pay dividends out of, or make any other distribution out of, its capital or surplus or both, in violation of this section unless the captive insurer or segregated account has obtained the prior written approval of the Commissioner to make the a payment or distribution.

(l) Section 31-2502.12 shall apply to risk retention groups licensed as captive insurers. A risk retention group subject to this section may petition the Commissioner for a waiver of the limitation on exposure to risks or hazards. The Commissioner may issues rules, pursuant to § 31-3931.21, establishing the circumstances under which a risk retention group may obtain, and the conditions a risk retention group shall satisfy to obtain, a waiver of the limitation.

(Mar. 17, 2005, D.C. Law 15-262, § 7, 52 DCR 1205; Mar. 14, 2012, D.C. Law 19-103, § 2(b), 59 DCR 432.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 19-103 added subsec. (l).

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 7 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For history of Law 19-103, see notes under § 31-3931.03.

### **§ 31-3931.07. INVESTMENTS.**

(a) A captive insurer shall file with the Commissioner a schedule of its proposed investments, and any material changes thereto, which the Commissioner may approve if he or she determines that the investments do not threaten the solvency or liquidity of the captive insurer. The Commissioner shall not unreasonably disapprove the investments.

(b) A captive insurer or segregated account may make a loan to its parent or affiliated company if the loan:

- (1) Is first approved in writing by the Commissioner;
- (2) Is evidenced by a note that is in a form that is approved by the Commissioner; and
- (3) Does not include any money that has been set aside as capital or surplus as required by § 31-3931.06(a) or (f).

(c) Notwithstanding subsection (b) of this section, a risk retention group licensed as a captive insurer shall be subject to subchapters I, III, and V of Chapter 13A of this title.

(Mar. 17, 2005, D.C. Law 15-262, § 8, 52 DCR 1205; Mar. 14, 2012, D.C. Law 19-103, § 2(c), 59 DCR 432.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 19-103 added subsec. (c).

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 8 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For history of Law 19-103, see notes under § 31-3931.03.

### **§ 31-3931.08. REINSURANCE.**

(a) A captive insurer or segregated account may provide reinsurance on risks ceded by any other insurer, captive insurer, or segregated account.

(b) A captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to reinsurers in compliance with Chapter 5 of this title. Prior approval of the Commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with Chapter 5 of this title, except for business written by an alien captive insurer outside of the United States.

(c) In addition to reinsurers authorized under Chapter 5 of this title, a captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has been authorized by the Commissioner. The Commissioner may require any other documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the Commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurer or segregated account and for the protection and consequent benefit of the public at large.

(d) For all purposes of this chapter, insurance written by a captive insurer or segregated account of any workers' compensation qualified self-insured plan of its parent or affiliates shall be deemed to be reinsurance.

(Mar. 17, 2005, D.C. Law 15-262, § 9, 52 DCR 1205.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 9 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.09. APPLICATION REQUIREMENTS.**

(a) A captive insurer shall apply to the Commissioner for a certificate of authority. If one or more segregated accounts are established as separate legal entities, each segregated account shall apply for a certificate of authority. The application shall include:

(1) A proposed copy of the organizational documents of the captive insurer if the captive insurer has not been organized, or a certified copy of the organizational documents and evidence of good standing if the captive insurer has been organized;

(2) A pro forma financial statement for the captive insurer that has been prepared by a certified public accountant; and

(3) Any other statements or documents that the Commissioner requires to be filed with the application.

(b) A captive insurer shall include in its application for a certificate of authority evidence of:

(1) The amount of liquidity of its assets relative to the risks to be assumed by the captive insurer;

(2) The expertise, experience, and character of the persons who will manage the captive insurer;

(3) The overall soundness of the plan of operation of the captive insurer;

(4) The adequacy of the programs that the captive insurer is providing for loss prevention by its parent or member organizations, as applicable;

(5) Minimum capital and surplus requirements as set forth in § 31-3931.05(a) and (f); and

(6) Such other information considered to be relevant by the Commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.

(c) An application by a captive insurer or segregated account for a certificate of authority shall include a nonrefundable application fee to be determined by the Commissioner. The Commissioner may require the applicant to retain independent legal, financial, and examination services from outside the Department to review and make recommendations regarding the applicant's qualifications, and to submit those reports and recommendations to the Commissioner for his or her review. The cost of those services shall be paid by the applicant.

(d) If the Commissioner determines that the documents and statements filed by the captive insurer or segregated account of a captive insurer are complete and satisfy the requirements for a certificate of authority, the Commissioner shall issue a certificate of authority to the captive insurer or segregated account within 30 days. Each certificate shall be renewed each year not later than the 30th day of April succeeding the date of its issuance. The Commissioner may impose an administrative fine or penalty on a captive insurer or segregated account that fails to renew its certificate of authority before August 1. The

Commissioner may suspend or revoke the certificate of authority of a captive insurer or segregated account that fails to renew its certificate of authority on or after August 1.

(e) A captive insurer shall pay a fee to be established by the Commissioner for the issuance of a certificate of authority and an annual fee to be established by the Commissioner for the renewal of its certificate of authority. A captive insurer may be required to pay a fee for one or more segregated accounts.

(f) A captive insurer shall include its strategic business plan with its application for the issuance of its certificate of authority. If the captive insurer intends to make any material or substantive changes to its strategic business plan, the captive insurer shall file a copy of the amended strategic business plan with the Commissioner for prior written approval.

(Mar. 17, 2005, D.C. Law 15-262, § 10, 52 DCR 1205.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 10 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

### **§ 31-3931.10. NAME.**

A captive insurer shall not use or adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other insurer licensed in the District.

(Mar. 17, 2005, D.C. Law 15-262, § 11, 52 DCR 1205.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 11 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

### **§ 31-3931.11. REQUIREMENTS FOR TRANSACTING BUSINESS.**

(a) A captive insurer shall not transact business in the District unless the captive insurer and, if applicable, each segregated account of a captive insurer, first obtains a certificate of authority from the Commissioner.

(b) In determining whether to grant the approval required in subsection (a) of this section, the Commissioner shall consider:

- (1) The character, reputation, financial standing, and purposes of the incorporators or organizers;
- (2) The character, reputation, financial responsibility, experience relating to insurance, and business qualifications of the officers and directors (or equivalent managers if other than a corporation) of the captive insurer;
- (3) The competence of any person who, pursuant to a contract with the captive insurer, will manage the affairs of the captive insurer;
- (4) The competence, reputation, and experience of the legal counsel of the captive insurer relating to the regulation of insurance;
- (5) If the captive insurer is a rental captive insurer, the competence, reputation and experience of the underwriter of the captive insurer;
- (6) The strategic business plan of the insurer; and
- (7) Such other aspects of the captive insurer as the Commissioner considers advisable.

(c) A captive insurer shall:

- (1) Maintain an office in the District;
- (2)(A) Appoint a person in the District of Columbia, consistent with the requirements of § 31-202(b), as the agent for service of process and to otherwise act on behalf of the captive insurer in the District.

- (B) If the registered agent cannot be located with reasonable diligence for the purpose of serving notice or demand on the captive insurer, the notice or demand may be served on the Commissioner, who shall be deemed to be the agent for the captive insurer;
- (3) Make adequate arrangements with a bank chartered in the District, or a branch of a bank located in the District if the bank is a member of the United States Federal Reserve System or its deposits are insured by the Federal Deposit Insurance Corporation;
- (4) Employ or enter into a contract with an individual or business organization to manage the affairs of the captive insurer, which individual or business organization shall meet the standards of competence and experience satisfactory to the Commissioner;
- (5) Employ or enter into a contract with a qualified, experienced, certified public accountant or a firm of certified public accountants, which accountant or firm shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner;
- (6) Employ or enter into a contract with qualified, experienced actuaries to perform reviews and evaluations of the operations of the captive insurer; and
- (7) Employ or enter into a contract with an attorney who is licensed to practice law in the District, which attorney shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner.
- (d) The board of directors of a captive insurer shall meet at least one time each year in the District.
- (e) Each a segregated account maintained by a captive insurer shall not have to comply with subsection (c) of this section unless the segregated account is organized as a separate legal entity.
- (f) Notwithstanding subsection (a) of this section, a captive insurer that obtains a provisional certificate of authority may engage in limited activities as part of the initial organization and capitalization of the captive insurer.

(Mar. 17, 2005, D.C. Law 15-262, § 12, 52 DCR 1205.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 12 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.12. TAX ON PREMIUMS COLLECTED.**

- (a) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:
- (1) Two hundred fifty thousandths of one percent on the first \$25 million of its net direct premiums;
  - (2) One hundred fifty thousandths of one percent on the next \$25 million of its net direct premiums; and
  - (3) Fifty thousandths of one percent on each additional dollar of its net direct premiums.
- (a-1) A captive insurer organized as a risk retention group, as defined in § 31-4101(12), shall pay to the District, not later than March 2 of each year, a tax at the rate of:
- (1) Thirty-eight hundredths of 1% on the first \$20 million of its total net direct premiums;
  - (2) Twenty-five hundredths of 1% on the next \$20 million of its total net direct premiums; and
  - (3) Eighteen hundredths of 1% on each additional dollar of its total net direct premiums.
- (b)(1) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:
- (A) Two hundred twenty-five thousandths of one percent on the first \$25 million of revenue from assumed reinsurance premiums;
  - (B) One hundred fifty thousandths of one percent on the next \$25 million of revenue from assumed reinsurance premiums; and
  - (C) Twenty-five thousandths of one percent on each additional dollar of revenue from assumed reinsurance premiums.
- (2) The tax on reinsurance premiums pursuant to this subsection shall not be levied on premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (a) of

this section. A captive insurer shall not pay any reinsurance premium tax pursuant to this subsection on revenue related to the receipt of assets by the captive insurer in exchange for the assumption of loss reserves and other liabilities of another insurer that is under common ownership and control with the captive insurer, if the transaction is part of a plan to discontinue the operation of the other insurer and the intent of the parties to the transaction is to renew or maintain such business with the captive insurer.

(c) If the sum of the taxes to be paid by a captive insurer, other than a risk retention group licensed as an association captive insurer, calculated pursuant to subsections (a) and (b) of this section is less than \$7,500 in any given year, the captive insurer shall pay a minimum tax of \$7,500 for the year.

(d) If the sum of the taxes to be paid by a risk retention group, licensed as an association captive insurer, calculated pursuant to subsections (a-1) and (b) of this section is less than \$15,000 in any given year, the captive insurer shall pay a minimum tax of \$15,000 for the year.

(e) The total tax paid by a captive insurer shall not exceed \$100,000 in any year.

(f) In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the branch captive insurer.

(g) In the case of annuity business, the tax provided for in this section shall not apply.

(h) Notwithstanding any specific statute to the contrary and except as otherwise provided in this subsection, the tax provided for by this section shall constitute all the taxes collectible pursuant to the laws of the District from a captive insurer, and no occupation tax or other taxes shall be levied or collected from a captive insurer by the District, except for real property taxes pursuant to Chapter 8 of Title 47 or personal property taxes pursuant to subchapter II of Chapter 15 of Title 47.

(i) A captive insurer that is issued a certificate of authority during the last quarter of the calendar year may file a written request with the Commissioner for a reduction in the minimum premium tax obligation calculated pursuant to subsections (c) and (d) of this section. The Commissioner may grant the a request pursuant to an appropriate methodology adopted by rule.

(j) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies, contracts, insurance, or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax obligation under this section.

(k) One hundred percent of the revenues collected from the tax imposed pursuant to this section shall be credited to the account for the regulation and supervision of captive insurers created by § 31-1202(b-1).

(l) Repealed.

(Mar. 17, 2005, D.C. Law 15-262, § 13, 52 DCR 1205; Apr. 7, 2006, D.C. Law 16-91, § 102(b), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 54(c), 53 DCR 6794; Aug. 16, 2008, D.C. Law 17-219, § 2014, 55 DCR 7598.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 16-91, in subsec. (k), validated previously made technical corrections.

D.C. Law 16-191, in subsec. (k), validated a previously made technical correction.

D.C. Law 17-219 added subsec. (a-1); in subsec. (d), substituted "subsections (a-1) and (b)" for "subsections (a) and (b)" and substituted "\$15,000" for "\$10,000"; and repealed subsec. (l), which had read as follows:

"(l) In determining the amount of premium taxes payable under this section, any insurance contract entered into by a captive insurance company issued a certificate of authority pursuant to this chapter, regardless of the location of the risk or the domicile of the purchaser, shall be subject to the payment of premium taxes on that transaction to the District of Columbia; provided, that upon presentation of evidence that another jurisdiction has claimed, and the company has paid, premium taxes to that jurisdiction on the same transaction, the company may credit the amount paid to the other jurisdiction against premium taxes owed to the District of Columbia."

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 13 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For Law 16-91, see notes following § 31-3931.02.

For Law 16-191, see notes following § 31-1131.02.

For Law 17-219, see notes following § 31-3403.01.



Short title: Section 2013 of D.C. Law 17-219 provided that subtitle F of title II of the act may be cited as the "Captive Insurance Company Adjustment Amendment Act of 2008".

Section 2015 of D.C. Law 17-219 provides that this subtitle shall apply as of January 1, 2008.

### **§ 31-3931.13. ANNUAL REPORT.**

(a) On or before March 2 of each year, a captive insurer shall submit to the Commissioner, on a form prescribed by the Commissioner by regulation, a report of its financial condition, as prepared by a certified public accountant. A captive insurer shall file a consolidated report on behalf of each of its segregated accounts. A captive insurer shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations thereof that have been approved or accepted by the Commissioner for the type of insurance and kinds of insurers to be reported upon, as supplemented by additional information required by the Commissioner.

(b) A pure captive insurer may apply, in writing, for authorization to file its annual report based on a fiscal year that is consistent with the fiscal year of the parent company of the pure captive insurer. If an alternative date is granted:

- (1) The annual report shall be due not later than 60 days after the end of each fiscal year; and
- (2) The pure captive insurer shall file on or before March 2 of each year such forms as required by the Commissioner by regulation to provide sufficient detail to support its premium tax return filed pursuant to § 31-3931.12.

(c) All risk retention groups licensed as captive insurers shall comply with Chapter 3 of this title, except that the exemption in § 31-314(a) shall not apply to risk retention groups. All risk retention groups licensed as captive insurers shall comply with the actuarial opinion filing requirements set forth in §§ 31-2502.26a and 31-2502.26b.

(Mar. 17, 2005, D.C. Law 15-262, § 14, 52 DCR 1205; Mar. 14, 2012, D.C. Law 19-103, § 2(d), 59 DCR 432.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 19-103 added subsec. (c).

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 14 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For history of Law 19-103, see notes under § 31-3931.03.

### **§ 31-3931.14. FINANCIAL EXAMINATION.**

(a) The Commissioner, or his designee, may visit each captive insurer at such times as he or she considers necessary to thoroughly inspect and examine the affairs of the captive insurer or segregated account of a captive insurer to ascertain:

- (1) The financial condition of the captive insurer;
- (2) The ability of the captive insurer to fulfill its obligations; and
- (3) Whether the captive insurer has complied with the provisions of this chapter and the regulations adopted pursuant thereto.

(b) The Commissioner may require a captive insurer to retain qualified independent legal, financial, and examination services from outside the Department to conduct the examination and make recommendations to the Commissioner. The cost of the examination shall be paid by the captive insurer.

(c) Chapter 14 of this title shall apply to examinations conducted pursuant to this section.

(d) For purposes of subsection (a) of this section, segregated accounts of a captive insurer shall not be separately examined unless the Commissioner has sufficient cause to examine one or more segregated accounts.

(Mar. 17, 2005, D.C. Law 15-262, § 15, 52 DCR 1205.)

*HISTORICAL AND STATUTORY NOTES*

*Emergency Act Amendments*

For temporary (90 day) addition of section, see § 15 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

*Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

**§ 31-3931.15. REVOCATION, SUSPENSION, OR FINE.**

(a) The Commissioner may revoke or suspend the certificate of authority to transact insurance business in the District of a captive insurer which:

- (1) Has failed or refused to comply with any provision or requirement of this chapter;
- (2) Is impaired in capital or surplus;
- (3) Is insolvent;
- (4) Is determined, pursuant to Chapter 21 of this title, to be in such condition that further transaction of business by the company will be hazardous to its policyholders, creditors, or the general public;
- (5) Has failed or refused to submit any report or statement required by law or order of the Commissioner;
- (6) Has failed or refused to comply with any provision of its charter or bylaws;
- (7) Has used any method in transacting insurance business pursuant to this chapter which would be detrimental to the operation of the captive insurer or would make its condition unsound with respect to its policyholders or the general public; or
- (8) Has failed otherwise to comply with the laws of the District or any jurisdiction.

(b) The Commissioner may also impose a fine not to exceed \$5,000 for each violation by a captive insurer of any of the provisions found in subsection (a) of this section.

(Mar. 17, 2005, D.C. Law 15-262, § 16, 52 DCR 1205.)

*HISTORICAL AND STATUTORY NOTES*

*Emergency Act Amendments*

For temporary (90 day) addition of section, see § 16 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

*Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

**§ 31-3931.16. INSOLVENCY.**

(a) A captive insurer shall not join or contribute financially to any risk-sharing plan, risk pool, or insurance insolvency guaranty fund in the District. A captive insurer or its insured, its parent or an affiliated company, or any member organization of its association shall not receive any benefit from the plan, pool, or fund for claims arising out of the operations of the captive insurer.

(b) The terms and conditions set forth in Chapter 13 of this title, pertaining to insurer rehabilitation, insolvency, and receiverships, shall apply in full to captive insurance companies licensed under this chapter and shall apply to the segregated accounts of a captive insurer on an account basis. If there is a conflict between the provisions of this chapter and Chapter 13 of this title, the provisions of this chapter shall prevail.

(Mar. 17, 2005, D.C. Law 15-262, § 17, 52 DCR 1205.)

*HISTORICAL AND STATUTORY NOTES*

*Emergency Act Amendments*

For temporary (90 day) addition of section, see § 17 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

*Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.17. REDOMESTICATION.**

(a) Any captive insurer which is licensed under laws of any jurisdiction may become a domestic captive insurer in the District by complying with all of the requirements of this chapter relative to the organization and licensing of a domestic insurer of the same type and by designating an office at a place within the District. The redomesticated captive insurer may transact business in the District and shall be subject to the authority and jurisdiction of the District.

(b) All insurance contracts which are in existence at the time any captive insurer transfers its insurance domicile to the District by merger, consolidation, or any other lawful method shall continue in full force and effect upon the transfer if the captive insurer is duly qualified to transact the same type of insurance business in the District.

(c) Every transferring insurer shall notify the Commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to application documents filed or required to be filed with the Commissioner.

(d) Any domestic captive insurer, upon the approval of the Commissioner, may transfer its domicile to any state in which it is licensed to transact business as a captive insurance company and, upon the transfer, shall cease to be a domestic insurer. The Commissioner shall approve any proposed transfer unless he or she determines the transfer is not in the best interest of the policyholders.

(Mar. 17, 2005, D.C. Law 15-262, § 18, 52 DCR 1205.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 18 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

#### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.18. RATING ORGANIZATION.**

A captive insurer shall not required to join a rating organization.

(Mar. 17, 2005, D.C. Law 15-262, § 19, 52 DCR 1205.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 19 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

#### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.19. CAPTIVE INSURANCE REGULATORY AND SUPERVISION TRUST ACCOUNT.**

All fees, fines, penalties, and assessments received by the Commissioner under this chapter shall be deposited in, and credited to, the account established by § 31-1202(b-1), and expended in accordance with § 31-1202(b-1).

(Mar. 17, 2005, D.C. Law 15-262, § 20, 52 DCR 1205.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 20 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

#### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.20. JUDICIAL REVIEW; MANDAMUS.**

(a) Any captive insurer aggrieved by any act, determination, rule, regulation, order, or any other action taken by Commissioner pursuant to this chapter, and which was the subject of a contested case, may appeal to the District of Columbia Court of Appeals, in accordance with § 2-510.

(b) The filing of an appeal pursuant to this section shall not stay the application of any rule, regulation, order, or other action of the Commissioner to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant the stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(c) Any captive insurer aggrieved by any failure of the Commissioner to act or make a determination required by this chapter may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Commissioner to act or make such determination forthwith.

(Mar. 17, 2005, D.C. Law 15-262, § 21, 52 DCR 1205.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 21 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.21. REGULATIONS.**

The Commissioner may issue rules and regulations relating to captive insurers as are necessary to enable him or her to carry out the provisions of this chapter.

(Mar. 17, 2005, D.C. Law 15-262, § 22, 52 DCR 1205.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90 day) addition of section, see § 22 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

##### *Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

## **§ 31-3931.22. APPLICABLE LAWS.**

(a) Except as otherwise expressly provided in this chapter, only the following laws relating to insurance shall apply to risk retention groups licensed as captive insurers:

- (1) Chapter 4 of this title notwithstanding the definition of the term "licensed insurer" or "insurer" in § 31-3931.01(7)(A);
- (2) Subchapter I of Chapter 7 of this title;
- (3) Chapter 15 of this title; and
- (4) Chapter 18 of this title.

(b) Except for §§ 31-2002(a)(2) and 31-2003(f), Chapter 20 of this title shall, effective January 1, 2012, apply to risk retention groups licensed as captive insurers; provided, that the Commissioner may waive the requirement that a risk retention group licensed as a captive insurer file a Risk Based Capital Plan under Chapter 20 of this title if the insurer is in compliance with its approved plan of operation and any additional requirements imposed by the Commissioner by rule pursuant to § 31-3931.21.

(Mar. 17, 2005, D.C. Law 15-262, § 23, 52 DCR 1205; Mar. 14, 2012, D.C. Law 19-103, § 2(e), 59 DCR 432.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 19-103 rewrote the section, which formerly read:

"Except as provided in this chapter, no law relating to the insurance industry shall apply to captive insurers other than this chapter."

*Emergency Act Amendments*

For temporary (90 day) addition of section, see § 23 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

*Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For history of Law 19-103, see notes under § 31-3931.03.

## **§ 31-3931.23. REPEAL AND TRANSITION PROVISIONS.**

(a) Chapter 39 of this title is repealed, subject to the provisions of this section.

(b) All existing fees set forth in Chapter 39 of this title, shall remain in effect under the corresponding provisions of this chapter, and shall be applicable to segregated accounts, unless modified or repealed by rules promulgated by the Commissioner.

(c) All effective certificates of authority and all conditions imposed on the certificates of authority shall apply to the extent they would have applied under prior law.

(d) All captive insurers granted a certificate of authority as sponsored captive insurers under prior law shall comply with all of the provisions found in this chapter.

(Mar. 17, 2005, D.C. Law 15-262, § 24, 52 DCR 1205; Mar. 2, 2007, D.C. Law 16-191, § 54(d), 53 DCR 6794.)

*HISTORICAL AND STATUTORY NOTES*

*Effect of Amendments*

D.C. Law 16-191, in subsec. (b), validated a previously made technical correction.

*Emergency Act Amendments*

For temporary (90 day) addition of section, see § 24 of Captive Insurance Company Emergency Act of 2004 (D.C. Act 15-640, November 30, 2004, 52 DCR 1238).

*Legislative History of Laws*

For Law 15-262, see notes following § 31-3931.01.

For Law 16-191, see notes following § 31-1131.02.

## **SUBCHAPTER II. SPECIAL PURPOSE FINANCIAL CAPTIVE INSURANCE COMPANIES.**

### **§ 31-3932.01. PURPOSE.**

This subchapter provides for the creation of special purpose financial captive insurance companies for the exclusive purpose of facilitating the securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. Their creation is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden insurers' access to sources of capital, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development of the District of Columbia through its captive insurance program.

(Mar. 17, 2005, D.C. Law 15-262, § 201, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

Law 16-285, the "Special Purpose Financial Captive Authorization Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-897, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-644 and transmitted to both Houses of Congress for its review. D.C. Law 16-285 became effective on March 14, 2007.

### **§ 31-3932.02. DEFINITIONS.**

In addition to the terms defined in § 31-3931.01, for the purposes of this subchapter, the term:

(1)(A) "Control" (including the terms "controlling", "controlled by", and "under common control with") 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.

(B) Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of another person, but this presumption may be rebutted by a showing that control does not exist.

(C) The fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract shall not by itself constitute common control between the SPFC and the ceding insurer.

(2) "Counterparty" means the insurer that cedes risk to an SPFC and which, unless otherwise approved by the Commissioner, is the parent or an affiliated company of the SPFC.

(3) "Fair value" means:

(A) As to cash, the amount of it; and

(B) As to an asset other than cash:

(i) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties.

(ii) The quoted mid-market price for the asset in active markets must be used if available.

(iii) If a quoted mid-market price is not available, a value determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset.

(4) "Insolvency" or "insolvent" means an inability to pay obligations when they are due, unless those obligations are the subject of a bona fide dispute.

(5) "Insurance securitization" means a package of related risk-transfer instruments, capital market offerings, and facilitating administrative agreements by which proceeds are obtained by an SPFC directly or indirectly through the issuance of securities, and which proceeds are held in trust pursuant to the provisions of this subchapter to secure the obligations of the SPFC under one or more SPFC contracts with a counterparty, where investment risk to the holders of these securities is contingent upon the obligations of the SPFC to the counterparty under the SPFC contract in accordance with the terms of the transaction.

(6) "Management" means the board of directors, managing board, or other individuals vested with overall responsibility for the management of the affairs of an SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC.

(7) "Organizational document" means the articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish an SPFC as a legal entity.

(8) "Permitted investments" means those investments that meet the qualifications set forth in § 31-3932.07.

(9) "Qualified United States financial institution" means a financial institution that is eligible to act as a fiduciary of a trust and is:

(A) Organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States, any state of the United States, or the District of Columbia; and

(B) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(10) "Securities" has the same meaning as the term "security" in § 31-5601.01(31).

(11) "SPFC" or "Special Purpose Financial Captive" means a captive insurer that is formed for the purpose of an insurance securitization and that only insures or reinsures the risks of its counterparty.

(12) "SPFC contract" means a contract between an SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.

(13) "SPFC securities" means securities issued by an SPFC.

(14) "Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3 of the Statement of Statutory Accounting Principles No. 41, as amended, National Association of Insurance Commissioners.

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.03. APPLICATION OF SUBCHAPTER I OF THIS CHAPTER.**

(a) Except as otherwise provided, §§ 31-3931.03, 31-3931.04, 31-3931.05, 31-3931.09, 31-3931.10, 31-3931.11, 31-3931.12, 31-3931.13, 31-3931.14, 31-3931.15, 31-3931.16, 31-3931.17, 31-3931.18, 31-3931.19, 31-3931.20, 31-3931.21, and 31-3931.22 shall apply under this subchapter to SPFCs.

(b) The Commissioner, by rule or order, may exempt an SPFC, on a case-by-case basis, from the provisions of this title that the Commissioner determines to be inappropriate given the nature of the risks to be insured.

(Mar. 17, 2005, D.C. Law 15-262, § 203, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944; Mar. 25, 2009, D.C. Law 17-353, § 165(a), 56 DCR 1117.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 17-353 validated a previously made technical correction in subsec. (a).

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

For Law 17-353, see notes following § 31-1131.06.

### **§ 31-3932.04. APPLICATION REQUIREMENTS.**

(a)(1) An SPFC shall apply to the Commissioner for a certificate of authority. The application for a certificate of authority shall include the items required by § 31-3931.09.

(2) If an SPFC will have one or more protected cells, the SPFC shall include in its application for a certificate of authority:

(A) A strategic business plan demonstrating the manner in which the SPFC will:

(i) Account for the loss and expense experience of each segregated account at a level of detail found to be sufficient by the Commissioner; and

(ii) How it will report the experience to the Commissioner;

(B) A statement acknowledging that all financial records of the SPFC, including records pertaining to any protected cells, will be made available for inspection or examination by the Commissioner;

(C) All contracts or sample contracts between the SPFC and any counterparty related to each protected cell; and

(D) Evidence that expenses are allocated to each segregated account in an equitable manner.

(b) An SPFC's strategic business plan shall include:

(1) A description of the contemplated insurance securitization, the SPFC contract, and related transactions;

(2) Draft documentation or, at the discretion of the Commissioner, a written summary of all material agreements that are entered into to effectuate the SPFC contract and the insurance securitization, which shall include the name of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;

(3) The investment policy of the SPFC and a description of its investment strategy;

(4) A description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled; and

(5) Pro forma balance sheets and income statements illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.

(c) Section 31-1407, shall apply to examinations, investigations, and processing conducted pursuant to this subchapter.

(d) In determining whether to issue a certificate of authority, the Commissioner shall consider, in addition to the matters specified in § 31-3931.11(b), whether:

- (1) The proposed strategic business plan provides a reasonable and expected successful operation;
  - (2) The terms of the SPFC contract and related transactions comply with this subchapter; and
  - (3) The proposed strategic business plan is not hazardous to any counterparty.
- (e) The Commissioner shall not issue a certificate of authority to an SPFC until the Commissioner has received written notification, or other assurance satisfactory to the Commissioner, from the commissioner of the state of domicile of each counterparty that such commissioner has approved, or not disapproved, the transaction.
- (f) The SPFC shall provide a complete set of the documentation of the insurance securitization to the Commissioner upon closing of the transactions, including an opinion of legal counsel with respect to compliance with this chapter and any other applicable laws as of the effective date of the transaction.
- (g) Any material change of the SPFC's strategic business plan shall require prior approval of the Commissioner; provided, that:
- (1) If initially approved in the strategic business plan, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of part or all of the securities issued pursuant to initial insurance securitization transactions may not be considered a material change; and
  - (2) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to the provisions of this subchapter shall not be considered a material change if the replacement swap counterparty carries a similar or higher rating to its predecessor with 2 or more nationally recognized rating agencies.
- (h) Upon termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with the SPFC contract, the certificate of authority granted by the Commissioner shall expire or, in the case of retiring and surviving protected cells, shall be modified, and the SPFC shall no longer be authorized to conduct activities unless and until a new or modified certificate of authority is issued pursuant to a new filing pursuant to the provisions of this section or as agreed by the Commissioner.

(Mar. 17, 2005, D.C. Law 15-262, § 204, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944; Mar. 25, 2009, D.C. Law 17-353, § 165(b), 56 DCR 1117.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 17-353 validated a previously made technical correction in subsecs. (d), (g) and (h).

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

For Law 17-353, see notes following § 31-1131.06.

### **§ 31-3932.05. CAPITAL AND SURPLUS.**

- (a) In addition to any other capital required to be maintained pursuant to subsection (c) of this section, an SPFC authorized to do business in the District shall at all times maintain a minimum unimpaired capital of \$100,000.
- (b) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the capital required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.
- (c) The Commissioner may require an SPFC, including each protected cell, to maintain additional unimpaired capital based on the type, volume, and nature of the insurance business that is transacted by the SPFC and may determine the amount of capital, if any, that may be in the form of an irrevocable letter of credit.
- (d) A letter of credit used by an SPFC or segregated account as evidence of capital required pursuant to this section shall:
- (1) Be issued by a bank chartered in the District or by a branch of a bank located in the District if such bank is a member of the United States Federal Reserve System, or its deposits are insured by the Federal Deposit Insurance Corporation;
  - (2) Be issued on a form approved by the Commissioner; and
  - (3) Include a provision pursuant to which the letter of credit is automatically renewed each year.
- (e) An SPFC shall not be issued a certificate of authority, and shall not hold a certificate of authority, unless the SPFC has and maintains, in addition to any other surplus required to be maintained pursuant to



subsection (g) of this section, an unencumbered surplus of not less than \$150,000.

(f) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the surplus required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(g) The Commissioner may prescribe additional requirements relating to surplus based on the type, volume, and nature of the insurance business that is transacted by an SPFC or protected cell and requirements regarding which surplus, if any, may be in the form of an irrevocable letter of credit.

(h) A letter of credit used by an SPFC or segregated account as evidence of surplus required pursuant to this section shall meet the same requirements as a letter of credit issued for paid in capital found subsection (d) of this section.

(Mar. 17, 2005, D.C. Law 15-262, § 205, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.06. SECURITIES OF SPFCs.**

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved strategic business plan, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of such securities.

(c) Subject to the approval of the Commissioner, an SPFC may:

(1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting;

(2) Submit for prior approval of the Commissioner periodic written requests for payments of interest on and repayments of principal of surplus notes.

(d) Surplus notes issued by an SPFC constitute surplus or contribution notes of the type described in § 31-1340(7).

(e) The Commissioner may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with his ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(f) The obligation to repay principal or interest, or both, on the securities issued by the SPFC shall reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract.

(Mar. 17, 2005, D.C. Law 15-262, § 206, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.07. AUTHORIZED CONTRACTS.**

(a) An SPFC shall insure only the risks of a counterparty and shall not issue a contract for assumption of risk or indemnification of loss other than an SPFC contract; provided, that an SPFC may cede risks assumed through an SPFC contract to third party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the Commissioner.

(b) An SPFC may enter into agreements with affiliated companies and third parties and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of an SPFC contract and insurance securitization contemplated by the strategic business plan approved by the Commissioner. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements.

(c) An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of an SPFC under an SPFC contract.

(d) An SPFC contract shall:

- (1) Obligate the SPFC to indemnify the counterparty for losses;
- (2) Require that contingent obligations of the SPFC under the SPFC contract that are securitized through an SPFC insurance securitization be funded and secured with assets held in trust for the benefit of the counterparty;
- (3) Require the SPFC to:
  - (A) Enter into a trust agreement that meets the criteria set forth in this section and specifies the recoverables or reserves, or both, to covered; and
  - (B) Establish a trust account for the benefit of the counterparty;
- (4) Stipulate that assets deposited in the trust account shall be valued according to their current fair value and shall consist only of permitted investments;
- (5) Require the SPFC, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may transfer whenever necessary the assets without consent or signature from the SPFC or another entity;
- (6) Require that all settlements of account between the counterparty and the SPFC be made in cash or its equivalent; and
- (7) Stipulate that the SPFC and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the SPFC contract:
  - (A) May be withdrawn by the counterparty at any time, notwithstanding any other provisions in the SPFC contract; and
  - (B) Shall be utilized and applied by the counterparty or any successor by operation of law of the counterparty, including, subject to the provisions of § 31-3932.11, but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the following purposes:
    - (i) To transfer all of the assets into one or more trust accounts for the benefit of the counterparty pursuant to and in accordance with the terms of the SPFC contract and in compliance with the provisions of this subchapter; and
    - (ii) To pay any other incurred and paid amounts that the counterparty claims are due pursuant to and under the terms of the SPFC contract and in compliance with this subchapter.

(e)(1) An SPFC contract may allow the SPFC to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, and to transfer the assets to the SPFC; provided, that,

- (A) At the time of the withdrawal, the SPFC shall replace the withdrawn assets, excluding any income withdrawn, with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of this section; and
- (B) After the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPFC under the SPFC contract shall be no less than the amount needed to satisfy the funded requirement of the SPFC contract.

(2) The counterparty shall be the sole judge as to the application of these provisions, but shall not unreasonably or arbitrarily withhold its approval.

(f) In fulfilling its function, an SPFC shall comply with, and, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with, the following requirements and guidelines:

- (1) The assets by the SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the insurance securitization and other related agreements.
- (2) Assets held by the SPFC in trust shall be valued at their fair value.
- (3) The proceeds from the sale of securities pursuant to the insurance securitization shall be deposited with the trustee to the extent required to secure its obligations under the SPFC contract as provided by this subchapter and shall be held or invested by the trustee pursuant to the provisions of this section and the asset management agreement, if any, filed with the Department.
- (4)(A) Assets of the SPFC, other than those held in trust for the counterparty, and income on trust assets received by the SPFC may be used to pay interest on, or other consideration with respect to, any securities, outstanding debt, or other obligation of the SPFC.
  - (B) This paragraph shall not prevent an SPFC from entering into a swap agreement or other asset management transaction that has the effect of hedging or guaranteeing the fixed or floating interest

rate returns paid on the assets in trust or required for the securities issued by the SPFC generated from or other consideration or payment flows in the transaction.

(5) In the SPFC insurance securitization, the contracts or other relating documentation shall identify the SPFC.

(g) Unless otherwise approved by the Commissioner, an SPFC shall not:

- (1) Issue or otherwise administer primary insurance policies;
- (2) Enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;
- (3) Assume or retain exposure to insurance or reinsurance losses for its own account that is not funded by proceeds from an SPFC securitization that complies with the provisions of this subchapter; provided, that the SPFC may wholly or partially reinsure or retrocede the risks assumed to a third party reinsurer on terms approved by the Commissioner;
- (4) Have any direct obligation to the policyholders or reinsureds of the counterparty; or
- (5) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

(Mar. 17, 2005, D.C. Law 15-262, § 207, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.08. TRUST ARRANGEMENTS.**

(a) Assets of the SPFC that are pledged to secure obligations of the SPFC to a counterparty under an SPFC contract shall be held in trust that is administered by a qualified United States financial institution. The qualified United States financial institution shall not control, be controlled by, or be under common control with, the SPFC or the counterparty.

(b) Assets of the SPFC held in trust to secure obligations under the SPFC contract shall at all times be held in:

- (1) Cash and cash equivalents;
- (2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets under statutory accounting convention in its state of domicile; or
- (3) Another form of security acceptable to the Commissioner.

(c) Assets of an SPFC held in trust to secure obligations under an SPFC contract shall be held by the trustee at one of the trustee's offices or branch offices in the United States and may be held in certificated or electronic form.

(d) The provisions for withdrawal by the counterparty of assets from the trust shall be clean and unconditional, subject only to the following requirements:

- (1) The counterparty may withdraw assets from the trust account at any time, without notice to the SPFC, subject only to written notice to the trustee from the counterparty that funds in the amount requested are due and payable by the SPFC, pursuant to the terms of the SPFC contract.
- (2) Presentment of a statement or document shall not be required to withdraw assets, except that the counterparty may be required to acknowledge receipt of withdrawn assets.
- (3) The trust agreement shall indicate that it is not subject to any conditions or qualifications outside of the trust agreement.
- (4) The trust agreement shall not contain references to any other agreements or documents.

(e) The trust agreement shall be established for the sole use and benefit of the counterparty at least to the full extent of the obligations of the SPFC to the counterparty under the SPFC contract. If there is more than one counterparty, a separate trust agreement shall be entered into with each counterparty and, if there more than one SPFC contract with the same counterparty, a separate trust account shall be maintained for each SPFC contract with the counterparty, in each case unless otherwise approved by the Commissioner.

(f) The trust agreement shall provide for the trustee to:

- (1) Receive assets and hold all assets in a safe place;
- (2) Determine that all assets are in a form that the counterparty or the trustee, upon direction by the counterparty, may transfer, whenever necessary, the assets, without consent or signature from the SPFC or another person or entity;
- (3) Furnish to the SPFC, the Commissioner, and the counterparty a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;
- (4) Notify the SPFC and the counterparty, within 10 days, of any deposits to or withdrawals from the trust account;
- (5) Upon written demand of the counterparty, immediately take the necessary steps to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the counterparty and deliver physical custody of the assets to the counterparty; and
- (6) Allow no substitutions or withdrawals of assets from the trust account, except pursuant to the trust agreement or SPFC contract, or as otherwise permitted by the counterparty.

(g) The trust agreement:

- (1) Shall create one or more trust accounts into which all pledged assets shall be deposited and held until distributed in accordance with the trust agreement;
- (2) Shall provide that at least 30 days, but not more than 45 days, before termination of the trust account, written notification of termination shall be delivered by the trustee to the counterparty with a copy of the notice provided to the Commissioner;
- (3) May be made subject to and governed by the laws of any state; provided, that the state shall be disclosed in the strategic business plan filed with and approved by the Commissioner;
- (4) Shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee; and
- (5) Shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.

(h)(1) Notwithstanding the provisions of subsection (d)(3) and (4) of this section, when a trust agreement is established in conjunction with an SPFC contract, the trust agreement or SPFC contract, or both, may provide that the counterparty shall undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the counterparty or the SPFC, only for one or more of the following purposes:

- (A) To pay or reimburse the counterparty for payment of the SPFC's share of premiums to be returned to owners of the counterparty's policies covered under the SPFC contract on account of cancellations of the policies under the counterparty's policies;
- (B) To pay or reimburse the counterparty for payment of the SPFC's share of surrenders, benefits, losses, or other benefits covered and payable pursuant to the provisions of the SPFC contract;
- (C) To fund an account with the counterparty in an amount to secure the credit or reduction from liability for reinsurance coverage provided under the SPFC contract; or
- (D) To pay any other amounts the counterparty claims are due under the SPFC contract.

(2) Any assets deposited into an account of the counterparty pursuant to paragraph (1)(C) of this subsection, or withdrawn by the counterparty pursuant to subparagraph (1)(D) of this subsection, and any interest or other earnings on them, shall be held by the counterparty in trust and separate and apart from any general assets of the counterparty, for the sole purpose of funding the payments and reimbursements of the SPFC contract described in paragraph (1) of this subsection.

(3) The counterparty shall return to the SPFC:

- (A) Amounts withdrawn under paragraph (1) of this subsection in excess of actual amounts required under paragraph (1)(A) through (C) of this subsection, and in excess of the amounts subsequently determined to be due under paragraph (1)(D) of this subsection;
- (B) Interest at a rate not in excess of the prime rate for the amounts held pursuant to paragraph (1) of this subsection, unless a higher rate of interest has been awarded by a panel of arbitration; and
- (C) Any net costs or expenses, including attorneys' fees, awarded by a panel of arbitration.

(4) If the counterparty has received notification of termination of the trust account, and if the SPFC's entire obligations secured under the specific SPFC contract remain unliquidated and undischarged 10 days before the termination date, the trust agreement shall permit the counterparty to withdraw amounts equal to the obligations and deposit the amounts in a separate account, in the name of the counterparty, in a qualified United States financial institution, separate and apart from the counterparty's general assets, to the extent the obligations or liabilities have not been funded by the SPFC, in trust only for those uses and purposes specified in paragraph (1)(A) of this subsection as

may remain executory after the withdrawal and for any period after the termination date until discharged.

(Mar. 17, 2005, D.C. Law 15-262, § 208, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.09. DIVIDENDS AND DISTRIBUTIONS.**

(a) Dividends may be declared by the management of an SPFC if the dividends do not violate the provisions of this subchapter or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction documents and other provisions of this subchapter.

(b) An SPFC shall not declare or pay dividends in any form other than in accordance with the insurance securitization transaction agreements and shall not declare or pay dividends which decrease the capital and surplus of the SPFC below \$250,000.

(c) An SPFC or protected cell of an SPFC shall not pay dividends out of, or make any other distribution out of, its capital or surplus, or both, unless the SPFC or protected cell has obtained the prior written approval of the Commissioner to make the payment or distribution. After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the Commissioner that the SPFC can meet its obligations.

(d) The Commissioner may approve an ongoing plan for the payment of dividends or other distributions by an SPFC or protected cell of an SPFC. Approval by the Commissioner of an ongoing plan for the payment of dividends or other distribution shall be conditioned upon the retention, at the time of each payment, of capital and surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC or protected cell by, the Commissioner.

(Mar. 17, 2005, D.C. Law 15-262, § 209, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.10. CONFIDENTIALITY OF EXAMINATION REPORTS; DISCLOSURE OF INFORMATION.**

(a) Except as provided in this section, all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and copies of documents produced by, obtained by, or disclosed to, the Commissioner or any other person in the course of an examination made pursuant to this section shall be confidential, shall not be subject to subpoena, and shall not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the SPFC. This subsection shall not prevent the Commissioner from using this information in furtherance of the Commissioner's regulatory authority as provided by this subchapter. The Commissioner may grant access to this information to public officers having jurisdiction over the regulation of insurance in another state or country, or to law enforcement officers of the District or another state or agency of the federal government at any time; provided, that the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Information submitted pursuant to this subchapter shall be confidential and shall not be made public by the Commissioner or an agent or employee of the Commissioner without the prior written consent of the SPFC; provided, that:

(1) Information submitted pursuant to the provisions of this subchapter shall be discoverable by a party in a civil action or contested case to which the submitting SPFC is a party upon a specific finding by the court that:

(A) The SPFC is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this subchapter;

(B) The party seeking the information demonstrates by a clear and convincing standard that the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in the action; and

(C) The information sought is unavailable from other nonconfidential sources.

(2) The Commissioner may disclose the information to the public official having jurisdiction over the regulation of insurance in another state if:

(A) The public official agrees in writing to maintain the confidentiality of the information; and

(B) The laws of the state in which the public official serves require the information to be confidential.

(Mar. 17, 2005, D.C. Law 15-262, § 210, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.11. REINSURANCE.**

An SPFC contract which complies with this subchapter shall be granted credit for reinsurance treatment or otherwise qualifies as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to an SPFC as an assuming insurer pursuant to § 31-502, for the benefit of the counterparty; provided, that:

(1) Credit shall be granted only to the extent of the fair value of the assets held in trust for, or irrevocable letters of credit issued by a bank chartered by the District or a member bank of the Federal Reserve System or as approved by the Commissioner, for the benefit of the counterparty under the SPFC contract;

(2) The assets are held in trust pursuant to this subchapter;

(3) The assets are administered in the manner and pursuant to arrangements as provided in this subchapter; and

(4) The assets are held or invested in one or more of the forms allowed by § 31-3932.07.

(Mar. 17, 2005, D.C. Law 15-262, § 211, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.12. LIQUIDATION AND REHABILITATION.**

(a)(1) Notwithstanding the provisions of Chapter 13 of this title, the Commissioner may apply to the Superior Court of the District of Columbia for an order authorizing the Commissioner to conserve, rehabilitate, or liquidate an SPFC domiciled in the District on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities; or

(B) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to conservation, rehabilitation, or liquidation pursuant to this subchapter.

(2) The court shall not grant relief provided by paragraph (1)(A) of this subsection unless, after notice and a hearing, the Commissioner, who shall have the burden of proof, establishes by clear and convincing evidence that relief should be granted.

(b) Notwithstanding another provision in this subchapter, rules promulgated under this subchapter, or another applicable law or rule, upon any order of conservation, rehabilitation, or liquidation of an SPFC, the receiver shall manage the assets and liabilities of the SPFC pursuant to this subchapter.

(c)(1) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

(2) Notwithstanding the provisions of Chapter 13 of this title, an application or petition, or a temporary restraining order or injunction issued pursuant to Chapter 13 of this title, with respect to a counterparty shall not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.

(3) Notwithstanding the provisions of Chapter 13 of this title, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to an SPFC, and any order issued by the court, shall not prohibit:

- (A) The payment by an SPFC made pursuant to an SPFC security or SPFC contract; or
  - (B) The SPFC from taking any action required to make the payment.
- (d) Notwithstanding Chapter 13 of this title, or other laws of the District:
- (1) A receiver of a counterparty shall not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract; and
  - (2) A receiver of an SPFC shall not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.
- (e) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this subchapter or other laws of the District, the assets of an SPFC, including assets held in trust, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this subchapter for any purpose, including, distribution to creditors of the counterparty.

(Mar. 17, 2005, D.C. Law 15-262, § 212, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944; Mar. 25, 2009, D.C. Law 17-353, § 165(c), 56 DCR 1117.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 17-353 validated a previously made technical correction in subsecs. (a)(1) and (c)(3).

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

For Law 17-353, see notes following § 31-1131.06.

### **§ 31-3932.13. DISCOUNT ON RESERVES; REPORT ON RESERVES.**

- (a) An SPFC may discount its reserves at discount rates as approved by the Commissioner.
- (b) An SPFC shall file annually an actuarial opinion on reserves provided by an approved independent actuary.

(Mar. 17, 2005, D.C. Law 15-262, § 213, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

### **§ 31-3932.14. STANDARDS AND CRITERIA APPLICABLE IN A CONTESTED CASE BROUGHT BY A THIRD PARTY AND CERTAIN ACTIONS BY THE COMMISSIONER.**

- (a) A contested case brought by a third party based on a decision of the Commissioner pursuant to this subchapter shall be governed by applicable civil law; provided, that, the aggrieved party shall:
  - (1) Prove the appeal through clear and convincing evidence;
  - (2) Demonstrate irreparable harm;
  - (3) Not have another adequate remedy at law; and
  - (4) Post a bond of sufficient surety to protect the interests of the holders of the SPFC securities and policyholders in an amount not less than 15% of the total amount of the securitized transaction.
- (b) If the Commissioner decides to reverse, amend, or modify a certificate of authority issued to an SPFC or the order issued in connection with them for a reason other than that specified in § 31-3931.15, the Commissioner shall meet the standards and criteria provided in subsection (a) of this section.

(Mar. 17, 2005, D.C. Law 15-262, § 214, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.

## **§ 31-3932.15. RULEMAKING.**

The Commissioner may promulgate rules necessary to effectuate the purposes of this subchapter. Rules promulgated pursuant to this section shall not affect an SPFC insurance securitization in effect at the time of the promulgation.

(Mar. 17, 2005, D.C. Law 15-262, § 215, as added Mar. 14, 2007, D.C. Law 16-285, § 2(b), 54 DCR 944.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Legislative History of Laws*

For Law 16-285, see notes following § 31-3932.01.