DISTRICT OF COLUMBIA

OFFICIAL CODE

TITLE 31.

INSURANCE AND SECURITIES.

CHAPTER 7.

HOLDING COMPANIES.

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DISTRICT OF COLUMBIA OFFICIAL CODE

CHAPTER 7. HOLDING COMPANIES.

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Editor's Notes

Because of the enactment by D.C. Law 11-159 of subchapter II of Chapter 37 of Title 35 [subchapter II of Title 31, 2001 Ed.], the preexisting text, including §§ 35-3701 through 35-3714 [§§ 31-701 through 31-714, 2001 Ed.], was designated as subchapter I.

SUBCHAPTER I. HOLDING COMPANY SYSTEM.

§ 31-701. DEFINITIONS.

For the purposes of this subchapter, the term:

(1) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(1A) "Commissioner" means the Commissioner of Insurance and Securities.

(2) "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. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by § 31-705(k) that control does not exist in fact. The Mayor may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such a determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

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

(3A) "Hospital service plan" means a plan for providing hospital and related services by hospitals and others which entitles a subscriber to certain hospital and related services, or to benefits and indemnification for such services.

(4) "Insurance holding company system" means an arrangement which consists of 2 or more affiliated persons, one or more of whom is an insurer.

(5) "Insurer" includes any company defined by §§ 31-2501.03 and 31-4202, authorized to do the business of insurance in the District, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District, or a state or political subdivision of a state.

(5A) "Medical service plan" means a plan for providing medical services and related services by physicians and others which entitles a subscriber to certain medical and related services, or to benefits and indemnification for such services.

(5B) "Party" means the Mayor and any person or District government agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting the Mayor or any person or agency as a party for limited purposes.

(6) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(7) "Securityholder" means an individual who owns any security of a specified person, including

common stock, preferred stock debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(8) "Subsidiary" means an affiliate controlled by a specified person directly or indirectly through 1 or more intermediaries.

(9) Repealed.

(10) "Voting security" means any security convertible into or evidencing a right to acquire a voting security.

(Oct. 21, 1993, D.C. Law 10-44, § 2, 40 DCR 6027; May 21, 1997, D.C. Law 11-268, § 10(gg)(1), 44 DCR 1730; Dec. 9, 2003, D.C. Law 15-56, § 2(a), 50 DCR 9188; Apr. 13, 2005, D.C. Law 15-354, § 41, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3701.

Effect of Amendments

D.C. Law 15-56 added pars. (3A), (4A), and (5A).

D.C. Law 15-354, in subsec. (a), validated a previously made technical correction.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2(a) of Department of Insurance and Securities Regulation Merger Review Temporary Amendment Act of 2002 (D.C. Law 14-217, March 25, 2003, law notification 50 DCR 2730).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(a) of Department of Insurance and Securities Regulation Merger Review Emergency Amendment Act of 2002 (D.C. Act 14-457, July 23, 2002, 48 DCR 8132).

For temporary (90 day) amendment of section, see § 2(a) of Department of Insurance and Securities Regulation Merger Review Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-513, October 23, 2002, 49 DCR 10475).

For temporary (90 day) amendment of section, see § 2(a) of Department of Insurance and Securities Regulation Merger Review Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-8, January 27, 2003, 50 DCR 1473).

For temporary (90 day) amendment of section, see § 2(a) of Department of Insurance and Securities Regulation Merger Review Emergency Amendment Act of 2003 (D.C. Act 15-205, October 24, 2003, 50 DCR 9845).

For temporary (90 day) amendment of section, see § 2(a) of Department of Insurance and Securities Regulation Merger Review Second Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-257, November 25, 2003, 50 DCR 11006).

Legislative History of Laws

Law 10-44, the "Holding Company System Act of 1993," was introduced in Council and assigned Bill No. 10-132, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 5, 1993, it was assigned Act No. 10-79 and transmitted to both Houses of Congress for its review. D.C. Law 10-44 became effective on October 21, 1993.

Law 11-268, the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11- 415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11-268 became effective May 21, 1997.

Law 15-56, the "Department of Insurance and Securities Merger Review Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-18, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 8, 2003, and September 16, 2003, respectively. Signed by the Mayor on October 6, 2003, it was assigned Act No. 15-175 and transmitted to both Houses of Congress for its review. D.C. Law 15- 56 became effective on December 9, 2003.

For Law 15-354, see notes following § 31-101.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of

Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language.

Delegation of Authority

Delegation of authority pursuant to D.C. Law 10-44, the Holding Company System Act of 1993, see Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

Miscellaneous Notes

Mayor authorized to issue rules: Section 10 of D.C. Law 10-44 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 [subchapter I of Chapter 5 of Title 2, 2001 Ed.], issue rules to implement the provisions of this chapter (now subchapter).

§ 31-702. SUBSIDIARIES OF INSURERS.

(a) Any domestic insurer, either by itself or in cooperation with 1 or more persons, may organize or acquire 1 or more subsidiaries. The subsidiaries may conduct any kind of business and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under the insurance laws of the District, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of 1 or more subsidiaries, amounts which do not exceed the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders; provided that after these investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of these investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(A) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of 1 or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in or in paragraph (1) of this subsection or in §31-2502.18, or in §§ 31- 4435 and 31-4442, applicable to the insurer. For the purposes of this paragraph, the term "the total investment of the insurer" shall include:

(A) Any direct investment by the insurer in an asset; and

(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such a subsidiary; or

(3) With the approval of the Mayor, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of 1 or more subsidiaries; provided, that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (b) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the insurance laws of the District applicable to the investments of insurers.

(d) Whether any investment pursuant to subsection (b) of this section meets the applicable requirements is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within any further time the Mayor may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of the insurance laws of the District, and the insurer has notified the Mayor.

(Oct. 21, 1993, D.C. Law 10-44, § 3, 40 DCR 6027; Mar. 24, 1998, D.C. Law 12-81, § 40(a), 45 DCR 745.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3702.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 31-703. ACQUISITION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER.

(a)(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after consummation, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer.

(2) No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the Mayor and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the Mayor in the manner prescribed by this subchapter.

(b)(1) For purposes of this section, the term "domestic insurer" shall include any person controlling a domestic insurer unless the person, as determined by the Mayor, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such a person shall file a preacquisition notification with the Mayor containing the information set forth in § 31-704(c) 30 days prior to the proposed effective date of the acquisition. Failure to file is subject to § 31-704(e).

(2) For the purposes of this section, the term "person" shall not include any securities broker holding, in the usual and customary brokers function, less than 20% of the voting securities of an insurance company or of any person who controls an insurance company.

(c) The statement to be filed with the Mayor shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsections (a) and (b) of this section is to be effected (hereinafter called "acquiring party"):

(A) If the person is an individual, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes, other than minor traffic violations, during the past 10 years; or

(B) If the person is not an individual, a report of the nature of its business operations during the past 5 years or for any lesser period the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these positions. The list shall include for each individual the information required by subparagraph (A) of this paragraph;

(2) The source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for this purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing the consideration; provided, however, that where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each acquiring party (or for any lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to in subsections (a) and (b) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsections (a) and (b) of this section, and a statement as to the method by which the fairness of the proposal was determined;

(6) The amount of each class of any security referred to in subsections (a) and (b) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsections (a) and (b) of this section in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom any contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any security referred to in subsections (a) and (b) of this section during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;

(9) A description of any recommendations to purchase any security referred to in subsections (a) and (b) of this section made during the 12 calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsections (a) and (b) of this section, and, if distributed, all additional related soliciting material;

(11) The terms of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsections (a) and (b) of this section for tender, and the amount of any resulting fees, commissions, or other compensation to be paid to broker-dealers; and

(12) Any additional information as the Mayor may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(d) If the person required to file the statement referred to in subsections (a) and (b) of this section is a partnership, limited partnership, syndicate or other group, the Mayor may require that the information called for by subsection (c)(1) through (12) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsections (a) and (b) of this section is a corporation, the Mayor may require that the information called for by subsection (c)(1) through (12) of this section shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(e) If any material change occurs in the facts set forth in the statement filed with the Mayor and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the Mayor and sent to the insurer within 2 business days after the person learns of the change.

(f) If any offer, request, invitation, agreement, or acquisition referred to in subsections (a) and (b) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 (15 U.S.C. § 77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsections (a) and (b) of this section may utilize the documents in furnishing the information called for by that statement.

(g)(1)(A) If the acquiring company proposes to acquire a domestic insurer which is not a nonprofit hospital service plan or medical service plan, the Mayor shall approve any merger or other acquisition of control referred to in subsections (a) and (b) of this section unless, after a public hearing, the Mayor finds that:

(i) After the change of control, the domestic insurer referred to in subsections (a) and (b) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in the District or tend to create a monopoly. In applying the competitive standard in this sub-subparagraph:

(I) The informational requirements of § 31-704(c)(1) and the standards of § 31-704(d)(2) shall apply;

(II) The merger or other acquisition shall not be disapproved if the Mayor finds that any of the situations meeting the criteria provided by § 31- 704(d)(3) exist; and

(III) The Mayor may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(iii) The financial condition of any acquiring company is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The plans or proposals which the acquiring company has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer or are not in the public interest;

(v) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(B)(i) If an acquiring company proposes to acquire a domestic insurer which is a nonprofit hospital plan or medical service plan, the same procedure shall apply as provided in subparagraph (A) of this paragraph; provided, that the acquiring company shall have the burden of establishing that the proposed merger or acquisition of control does not result in the existence of any of the conditions set forth in sub-subparagraphs (i) through (vi) of subparagraph (A).

(ii) The determination made by the Mayor as provided in subparagraph (A) of this paragraph shall not become effective until 90 days after the Mayor makes the determination.

(2) The public hearing referred to in paragraph (1) of this subsection shall be held within 120 days after the statement required by subsections (a) and (b) of this section is filed, and at least 20-days notice shall be given by the Mayor to the person filing the statement; provided, that the Mayor may extend the 120-day period if all parties consent to the extension. Not less than 7-days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons designated by the Mayor. The Mayor shall make a determination within 120 days after the conclusion of the hearing; provided, that the Mayor may extend this period if all parties consent to the extension. At the hearing, the person filing the statement, the insurer, and any party shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of the District of Columbia. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of the public hearing.

(3) The Mayor may retain, at the acquiring person's expense, any attorneys, actuaries, accountants, and other experts not otherwise a part of the Mayor's staff as may be reasonably necessary to assist the Mayor in reviewing the proposed acquisition of control. For this purpose, the Mayor shall be exempt from the provisions of Unite A of Chapter 3 of Title 2.

(h) The provisions of this section shall not apply to:

(1) Any transaction which is subject to the laws of the District dealing with the merger or consolidation of 2 or more insurers; or

(2) Any offer, request, invitation, agreement, or acquisition which the Mayor by order shall exempt as:

(A) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(B) Otherwise not comprehended within the purposes of this section.

(i) The following shall be violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a), (b), or (c) of this section; and

(2) The effectuation, or any attempt to effectuate, an acquisition of control of, or merger with, a domestic insurer unless the Mayor has given approval.

(j) Every person not resident, domiciled, or authorized to do business in the District who files a statement with the Mayor under this section shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Mayor to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the Mayor and transmitted by registered or certified mail by the Mayor to the person at his or her last known address.

(Oct. 21, 1993, D.C. Law 10-44, § 4, 40 DCR 6027; Mar. 24, 1998, D.C. Law 12-81, § 40(b), 45 DCR 745; Mar. 25, 2003, D.C. Law 14-236, § 2, 49 DCR 10483; Dec. 9, 2003, D.C. Law 15-56, § 2(b), 50 DCR 9188.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3703.

Effect of Amendments

D.C. Law 14-236, in subsec. (g)(3), added the last sentence.

D.C. Law 15-56, in subsec. (g), rewrote par. (1), and in par. (2), substituted "The public hearing referred to in paragraph (1) of this subsection shall be held within 120 days after the statement required by subsections (a) and (b) of this section is filed, and at least 20-days notice shall be given by the Mayor to the person filing the statement; provided, that the Mayor may extend the 120-day period if all parties consent to the extension." for "The public hearing referred to in paragraph (1) of this subsection shall be held within 30 days after the statement required by subsections (a) and (b) of this section is filed, and at least 20-days notice shall be given by the Mayor to the person filing the statement.", substituted "The Mayor shall make a determination within 120 days after the conclusion of the hearing; provided, that the Mayor may extend this period if all parties consent to the extension." for "The Mayor shall make a determination within 30 days after the conclusion of the hearing.", and substituted "and any party" for "any person to whom notice of hearing was sent, and any other person whose interest may be affected". Prior to amendment, par. (1) of subsec. (g) had read as follows:

"(g)(1) The Mayor shall approve any merger or other acquisition of control referred to in subsections (a) and (b) of this section unless, after a public hearing, the Mayor finds that:

"(A) After the change of control, the domestic insurer referred to in subsections (a) and (b) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

"(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in the District or tend to create a monopoly. In applying the competitive standard in this paragraph:

"(i) The informational requirements of § 31-704(c)(1) and the standards of § 31-704(d)(2) shall apply;

"(ii) The merger or other acquisition shall not be disapproved if the Mayor finds that any of the situations meeting the criteria provided by § 31- 704(d)(3) exist; and

"(iii) The Mayor may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

"(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

"(D) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

"(E) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

"(F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public."

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Department of Insurance and Securities Regulation Procurement Temporary Act of 2002 (D.C. Law 14-159, June 25, 2002, law notification 49 DCR 6495).

For temporary (225 day) amendment of section, see § 2(b) of Department of Insurance and Securities Regulation Merger Review Temporary Amendment Act of 2002 (D.C. Law 14-217, March 25, 2003, law notification 50 DCR 2730).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2 of Department of Insurance and Securities Regulation Procurement Emergency Act of 2002 (D.C. Act 14-314, March 26, 2002, 49 DCR 3451).

For temporary (90 day) amendment of section, see § 2(b) of Department of Insurance and Securities Regulation Merger Review Emergency Amendment Act of 2002 (D.C. Act 14-457, July 23, 2002, 48 DCR 8132).

For temporary (90 day) amendment of section, see § 2(b) of Department of Insurance and Securities Regulation Merger Review Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-513, October 23, 2002, 49 DCR 10475).

For temporary (90 day) amendment of section, see § 2(b) of Department of Insurance and Securities Regulation Merger Congressional Review Emergency Act of 2003 (D.C. Act 15-8, January 27, 2003, 50 DCR 1473).

For temporary (90 day) amendment of section, see § 2 of Department of Insurance and Securities Regulation

Procurement Congressional Review Emergency Act of 2003 (D.C. Act 15-9, January 27, 2003, 50 DCR 1478).

For temporary (90 day) amendment of section, see § 2(b) of Department of Insurance and Securities Regulation Merger Review Emergency Amendment Act of 2003 (D.C. Act 15-205, October 24, 2003, 50 DCR 9845).

For temporary (90 day) amendment of section, see § 2(b) of Department of Insurance and Securities Regulation Merger Review Second Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-257, November 25, 2003, 50 DCR 11006).

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 31-702.

Law 14-236, the "Department of Insurance and Securities Regulation Procurement Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-571, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on October 23, 2002, it was assigned Act No. 14-515 and transmitted to both Houses of Congress for its review. D.C. Law 14-236 became effective on March 25, 2003.

For Law 15-56, see notes following § 31-701.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in (a)(2).

§ 31-704. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE COVERED.

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

(1) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring, directly or indirectly, the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(2) "Involved insurer" means an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(b)(1) Except as provided in paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in the District.

(2) This section shall not apply to the following:

(A) An acquisition subject to approval or disapproval by the Mayor pursuant to § 31-703;

(B) A purchase of securities solely for investment purposes as long as the securities are not used by voting or otherwise to cause, or attempt to cause, the substantial lessening of competition in any insurance market in the District. If a purchase of securities results in a presumption of control as defined in § 31-701(2), it is not solely for investment purposes unless the Commissioner of Insurance or other appropriate official of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary Commissioner to the Mayor;

(C) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the Mayor in accordance with subsection (c)(1) of this section 30 days prior to the proposed effective date of the acquisition. This preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of paragraph (2) of this subsection;

(D) The acquisition of already affiliated persons;

(E)(i) An acquisition if, as an immediate result of the acquisition:

(I) In no market would the combined market share of the involved insurers exceed 5% of the total market;

(II) There would be no increase in any market share; or

(III) In no market would the combined market share of the involved insurers exceed 12% of the total market, and the market share increases by more than 2% of the total market.

(ii) For the purposes of this subparagraph, the term "market" means direct written insurance

premium in the District for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in the District;

(F) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and

(G) An acquisition of an insurer whose domiciliary state insurance commissioner or other appropriate official affirmatively finds that the insurer is in failing condition, there is a lack of a feasible alternative to improving the condition, the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and these findings are communicated by the domiciliary state insurance commissioner or other appropriate official to the Mayor.

(c)(1) An acquisition covered by subsection (b) of this section may be subject to an order pursuant to subsection (e) of this section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The Mayor shall give confidential treatment to information submitted under this subsection in the same manner as provided in § 31-708.

(2) The preacquisition notification shall be in the form and contain the information prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (b)(2)(E) of this section, cause the acquisition not to be exempted from the provisions of this section. The Mayor may require any additional material and information the Mayor deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in the District accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(3) The waiting period required shall begin on the date of receipt by the Mayor of a preacquisition notification and shall end on the earlier of the 30th day after the date of the receipt or termination of the waiting period by the Mayor. Prior to the end of the waiting period, the Mayor, on a one-time basis, may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the Mayor or termination of the waiting period by the Mayor.

(d)(1) The Mayor may enter an order under subsection (e)(1) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to lessen substantially competition in any line of insurance in the District, or tend to create a monopoly therein, or if the insurer fails to file adequate information in compliance with subsection (c) of this section.

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1) of this subsection, the Mayor shall consider the following:

(A) Any acquisition covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standards if the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more.

A highly concentrated market is one in which the share of the 4 largest insurers is 75% or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than 2 insurers are involved, exceeding the total of the 2 columns in the table is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection. For the purposes of this subparagraph, the insurer with the largest share of the market shall be deemed to be Insurer A.

(B) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the 2 largest to the 8 largest, has increased by 7% or more of the market over a period of time extending from any base year 5 to 10

years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is 2% or more.

(C) For the purposes of this paragraph, the term:

(i) "Insurer" includes any company or group of companies under common management, ownership, or control.

(ii) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Mayor shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in the District, and the relevant geographical market is assumed to be the District.

(D) The burden of showing prima facie evidence of violation of the competitive standard rests upon the Mayor.

(E) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, the Mayor may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e)(1) through (4) of this section if:

(A) The acquisition will yield substantial economies of scale or economies in resource utilization that feasibly cannot be achieved in any other way, and the public benefits which would arise from these economies exceed the public benefits which would arise from not lessening competition; or

(B) The acquisition will substantially increase the availability of insurance, and the public benefits of this increase exceed the public benefits which would arise from not lessening competition.

(e)(1) If an acquisition violates the standards of this section, the Mayor may enter an order:

(A) Requiring an involved insurer to cease and desist from doing business in the District with respect to the line or lines of insurance involved in the violation; or

(B) Denying the application of an acquired or acquiring insurer for a license to do business in the District.

(2) An order under this subsection shall not be entered unless:

(A) There is a hearing;

(B) Notice of the hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

(C) The hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the Mayor setting forth findings of fact and conclusions of law.

(3) An order entered under this subsection shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such a plan or other information, the Mayor shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(4) An order pursuant to this subsection shall not apply if the acquisition is not consummated.

(5) Any person who violates a cease and desist order of the Mayor under paragraph (1) of this subsection while such an order is in effect may, after notice and hearing and upon order of the Mayor, be subject, at the discretion of the Mayor, to any one or more of the following:

(A) A monetary administrative penalty of not more than $10,000 for every day of violation; or

(B) Suspension or revocation of the person's license.

(6) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to an administrative fine of not more than $50,000.

(f) Sections 31-709(b) and (c) and 31-711 do not apply to acquisitions covered under subsection (b) of this section.

(Oct. 21, 1993, D.C. Law 10-44, § 5, 40 DCR 6027; May 16, 1995, D.C. Law 10-255, § 32(a), 41 DCR 5193; Apr. 18, 1996, D.C. Law 11-110, § 42, 43 DCR 530.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3704.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Law 11-110, the "Technical Amendment Acts of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 31-705. REGISTRATION OF INSURERS.

(a)(1) Every insurer which is authorized to do business in the District and which is a member of an insurance holding company system shall register with the Mayor, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in the following provisions of this subchapter:

(A) This section;

(B) Section 31-706(a)(1), (b), and (d); and

(C) Either § 31-706(a)(2) or a provision like the following: "Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition.".

(2) Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by April 30 of each year, unless the Mayor for good cause shown extends the time for registration, and then within the extended time. The Mayor may require any insurer authorized to do business in the District which is a member of a holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (c) of this section or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement on a form prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(A) Loans, other investments, or purchases, sales, or exchange of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales, or exchange of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) All management agreements, service contracts, and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Mayor.

(c) All registration statements shall contain a summary outlining all items in the current registration statement which are different from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if the information is not material for the purposes of this section. Unless the Mayor by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of 1% or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(e) Subject to § 31-706(b), each registered insurer shall report to the Mayor all dividends and other distributions to shareholders within 15 business days following their declaration.

(f) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this subchapter.

(g) The Mayor shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(h) The Mayor may require or allow 2 or more affiliated insurers subject to registration to file a consolidated registration statement.

(i) The Mayor may allow an insurer which is authorized to do business in the District and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the Mayor by rule, regulation, or order shall exempt the same from the provisions of this section.

(k) Any person may file with the Mayor a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the Mayor disallows such a disclaimer. The Mayor shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(l) The failure to file a registration statement or any summary of the registration statement required by this section within the time specified for such a filing shall be a violation of this section.

(Oct. 21, 1993, D.C. Law 10-44, § 6, 40 DCR 6027; May 16, 1995, D.C. Law 10-255, § 32(b), 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-255, § 43, 44 DCR 1271.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3705.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

For legislative history of D.C. Law 10-255, see Historical and Statutory Notes following § 31-701.

Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has

been substituted for "chapter" in the introductory language of (a)(1) and in (f).

§ 31-706. STANDARDS AND MANAGEMENT OF AN INSURER WITHIN A HOLDING COMPANY SYSTEM.

(a)(1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) Charges or fees for services performed shall be reasonable;

(C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(D) The books, accounts, and records of each party to all the transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including any accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

(E) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Mayor in writing of its intention to enter into such a transaction at least 30 days prior thereto, or any shorter period as the Mayor may permit, and the Mayor has not disapproved it within such a period:

(A) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders as of December 31st next preceding; or

(ii) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st next preceding;

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders as of December 31st next preceding; or

(ii) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st next preceding;

(C) Reinsurance agreements or modifications in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to 1 or more affiliates of the insurer;

(D) All management agreements, service contracts, and all cost-sharing arrangements; and

(E) Any material transactions, specified by regulation, which the Mayor determines may adversely affect the interests of the insurer's policyholders.

(3) Nothing contained in paragraph (2) of this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(4) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Mayor determines that any separate transactions were entered into over any 12-month period for that purpose, the Mayor may exercise authority provided under § 31-710.

(5) The Mayor, in reviewing transactions pursuant to subsection (a)(2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (a)(1) of this section and whether they may adversely affect the interests of policyholders.

(6) The Mayor shall be notified within 30 days of any investment of the domestic insurer in any one

corporation if the total investment in such corporation by the insurance holding company system exceeds 10% of such corporation's voting securities.

(b)(1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty days after the Mayor has received notice of the declaration and has not within this period disapproved the payment; or

(B) The Mayor shall have approved the payment within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the lesser of 10% of the insurer's surplus as regards policyholders as of the 31st day of December next preceding, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous 2 calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Mayor's approval, and such a declaration shall confer no rights upon shareholders until the Mayor has approved the payment of such a dividend or distribution, or the Mayor has not disapproved the payment within the 30-day period referred to above.

(c)(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this subchapter.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with 1 or more other persons under arrangements meeting the standards of subsection (a)(1) of this section.

(3) Not less than 1/3 of the directors of a domestic insurer and not less than 1/3 of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or such an entity. At least 1 such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee.

(4) The board of directors of a domestic insurer shall establish 1 or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer, and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not apply to a domestic insurer if the person controlling the insurer is an insurer having a board of directors and committees that meet the requirements of paragraphs (3) and (4) of this subsection.

(d) For purposes of this subchapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The Mayor may treat such an investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such an investment so warrants.

(Oct. 21, 1993, D.C. Law 10-44, § 7, 40 DCR 6027; Apr. 26, 1994, D.C. Law 10-103, § 8, 41 DCR 1005; Feb. 27, 1996, D.C. Law 11-90, §§ 8(a), 8(b), 42 DCR 7155.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3706.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 8 of the Insurance Omnibus Temporary Amendment Act of 1993 (D.C. Law 10-76, March 17 1994, law notification 41 DCR 1626).

For temporary (225 day) amendment of section, see § 8(a), (b) of Insurance Omnibus Temporary Amendment Act of 1995 (D.C. Law 11-36, September 8, 1995, law notification 42 DCR 5305).

Emergency Act Amendments

For temporary amendment of section, see § 9(a) and (b) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 8(a) and (b) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Law 10-103, the "Insurance Omnibus Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

Law 11-90, the "Insurance Omnibus Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in (c)(1) and (d).

§ 31-707. EXAMINATION.

(a) Subject to the limitations contained in this section and in addition to the powers which the Mayor has under the insurance laws of the District relating to the examination of insurers, the Mayor may order any insurer registered under § 31-705 to produce records, books, or other information papers in the possession of the insurer or its affiliates reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this subchapter. In the event the insurer fails to comply with the order, the Mayor shall have the power to examine such affiliates to obtain the information.

(b) The Mayor may retain, at the registered insurer's expense, those attorneys, actuaries, accountants and other experts not otherwise a part of the Mayor's staff reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any person so retained shall be under the direction and control of the Mayor and shall act in a purely advisory capacity.

(c) Each registered insurer producing records, books and papers for examination pursuant to subsection (a) of this section shall be liable for and shall pay the expense of the examination in accordance with Chapter 14 of this title governing cost of examinations.

(Oct. 21, 1993, D.C. Law 10-44, § 8, 40 DCR 6027.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3707.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in (a).

§ 31-708. CONFIDENTIAL TREATMENT.

(a) Documents, materials, or other information in the possession or control of the Department of Insurance, Securities, and Banking that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made under § 31-707, and all information reported under §§ 31-705 and 31-706, shall be confidential and privileged; shall not be subject to subchapter II of Chapter 5 of Title 2; shall not be subject to subpoena; and shall not be subject to discovery or admissible in evidence in a private civil action; provided, that:

(1) The Commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(2) The Commissioner may make the documents, materials, or other information public with the prior written consent of the insurer to which it pertains.

(3) If the Commissioner, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication of the documents, materials, or other information, the Commissioner may publish all or any part of the documents, materials, or other information in the manner that the Commissioner considers appropriate.

(b) The Commissioner or any person who received documents, materials, or other information while acting under the authority of the Commissioner shall not be permitted or required to testify in a private civil action concerning confidential documents, materials, or other information subject to subsection (a) of this section.

(c) To assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies; with the National Association of Insurance Commissioners, including its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities; provided, that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, or other information;

(2) May receive documents, materials, or other information, including confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners, including its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information; or

(3) May enter into agreements governing the sharing and use of information consistent with this section.

(d) No waiver of an applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner under this section or of sharing as authorized in subsection (c) of this section. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed.

(Oct. 21, 1993, D.C. Law 10-44, § 9, 40 DCR 6027; Oct. 21, 2000, D.C. Law 13-191, § 3, 47 DCR 7311; June 11, 2004, D.C. Law 15-166, § 4(e), 51 DCR 2817.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3708.

Effect of Amendments

D.C. Law 13-191 rewrote this section which formerly provided:

"All information, documents, and copies obtained by or disclosed to the Mayor or any other person in the course of an examination or investigation made pursuant to § 35-3707 and all information reported pursuant

to §§ 35-3705 and 35-3706 shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the Mayor, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains, unless the Mayor, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the Mayor may publish all or any part in such a manner as he or she deems appropriate."

D.C. Law 15-166, in subsec. (a), substituted "Department of Insurance, Securities, and Banking" for "Department of Insurance and Securities Regulation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 4(e) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Law 13-191, the "Insurer Confidentiality and Information Sharing Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-706, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 4, 2000, it was assigned Act No. 13-419 and transmitted to both Houses of Congress for its review. D.C. Law 13- 191 became effective on October 21, 2000.

For Law 15-166, see notes following § 31-101.

§ 31-709. INJUNCTIONS, PROHIBITIONS AGAINST VOTING SECURITIES, SEQUESTRATION OF VOTING SECURITIES.

(a) Whenever it appears to the Mayor that any insurer or any director, officer, employee, or agent has committed, or is about to commit, a violation of this subchapter or of any rule, regulation, or order issued by the Mayor, the Mayor may apply to the Superior Court of the District of Columbia for an order enjoining the insurer or the director, officer, employee, or agent from violating or continuing to violate this subchapter or any rule, regulation, or order, and for any other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(b)(1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired, or to be acquired, in contravention of the provisions of this subchapter, or of any rule, regulation, or order issued by the Mayor pursuant to this subchapter, may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at such a meeting shall be invalidated by the voting of these securities, unless the action would materially affect control of the insurer or unless the courts of the District of Columbia have so ordered.

(2) If an insurer or the Mayor has reason to believe that any security of the insurer has been, or is about to be, acquired in contravention of the provisions of this subchapter or of any rule, regulation, or order issued by the Mayor pursuant to this subchapter, the insurer or the Mayor may apply to the Superior Court of the District of Columbia to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of § 31-703 or any rule, regulation, or order issued by the Commissioner to enjoin the voting of any security so acquired, to void any vote of such a security already cast at any meeting of shareholders, and for any other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) In any case where a person has acquired, or is proposing to acquire, any voting securities in violation of this subchapter or any rule, regulation, or order issued by the Mayor pursuant to this subchapter, the Superior Court of the District of Columbia may, on that notice the court deems appropriate and upon the application of the insurer or the Mayor, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue an order appropriate to effectuate the provisions of this subchapter.

(d) Notwithstanding any other provisions of law, for the purposes of this subchapter the sites of the ownership of the securities of domestic insurers shall be deemed to be in the District.

(Oct. 21, 1993, D.C. Law 10-44, § 11, 40 DCR 6027; Sept. 8, 1995, D.C. Law 11-36, § 8(c), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 8(c), 42 DCR 7155; May 21, 1997, D.C. Law 11-268, § 10(gg)(2), 44 DCR 1730.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3709.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 8(c) of Insurance Omnibus Temporary Amendment Act of 1995 (D.C. Law 11-36, September 8, 1995, law notification 42 DCR 5305).

Emergency Act Amendments

For temporary amendment of section, see § 9(c) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 8(c) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

For legislative history of D.C. Law 11-90, see Historical and Statutory Notes following § 31-706.

For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 31-701.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" throughout the section.

§ 31-710. SANCTIONS.

(a)(1) Any insurer failing, without just cause, to file any registration statement as required in this subchapter shall be required, after notice and hearing, to pay an administrative penalty of $1,000 for each day's delay, to be recovered by the Mayor and the penalty so recovered shall be paid into the District of Columbia Treasury. The maximum penalty under this section shall be $100,000.

(2) The Mayor may reduce the penalty if the insurer demonstrates to the Mayor that the imposition of the penalty would constitute a financial hardship to the insurer.

(3) Adjudication of infractions under this section shall be pursuant to Chapter 18 of Title 2.

(b)(1) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to § 31-705(a) or § 31-706(a)(2) or (b), or which violate this subchapter, shall pay, in their individual capacity, a civil administrative penalty of not more than $1,000 per violation, after notice and hearing before the Mayor.

(2) In determining the amount of the civil administrative penalty, the Mayor shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Adjudication of any infraction of this subsection shall be pursuant to Chapter 18 of Title 2.

(c)(1) Whenever it appears to the Mayor that any insurer subject to this subchapter, or any director, officer, employee, or agent, has engaged in any transaction or entered into a contract which is subject to § 31-706 and which would not have been approved had approval been requested, the Mayor may order the insurer to immediately cease and desist any further activity under that transaction or contract.

(2) After notice and hearing the Mayor may also order the insurer to void any contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(d)(1) Whenever it appears to the Mayor that any insurer, or any director, officer, employee, or agent, has committed a willful violation of this subchapter, the Mayor may cause criminal proceedings to be instituted in the Superior Court of the District of Columbia against the insurer or the responsible director, officer, employee, or agent.

(2) Any insurer that willfully violates this subchapter may be fined not more than $1,000,000.

(3) Any individual who willfully violates this subchapter may be fined in his or her individual capacity not more than $750,000 or be imprisoned for not more than 1 to 3 years, or both.

(e) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to, or makes or causes to be made, any false statements, false reports, or false filings with the intent to deceive the Mayor in the performance of his or her duties under this subchapter, upon conviction, shall be imprisoned for not more than 3 to 5 years or fined $100,000, or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter,

pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Oct. 21, 1993, D.C. Law 10-44, § 12, 40 DCR 6027.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3710.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" throughout the section.

§ 31-711. RECEIVERSHIP.

Whenever it appears to the Mayor that any person has committed a violation of this subchapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the Commissioner may proceed as provided under the insurance laws of the District to take possession of the property of such a domestic insurer and to conduct its business, or take any other actions as the Mayor, at the Mayor's discretion, deems appropriate.

(Oct. 21, 1993, D.C. Law 10-44, § 13, 40 DCR 6027; May 21, 1997, D.C. Law 11-268, § 10(gg)(2), 44 DCR 1730.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3711.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 31-701.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 31-712. RECOVERY.

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment pursuant to clause (i) or (ii) of this subsection is made at any time during the 1 year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d) of this section.

(b) No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c)(1) Any person that was a parent corporation, holding company, or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable, under subsection (a) of this section, up to the amount of distributions or payments such a person received.

(2) Any person that otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions the person would have received if they had been paid immediately.

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

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation, holding company, or person who otherwise controlled it.

(Oct. 21, 1993, D.C. Law 10-44, § 14, 40 DCR 6027; July 25, 1995, D.C. Law 11-30, § 8, 42 DCR 1547.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3712.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

§ 31-713. REVOCATION, SUSPENSION, OR NONRENEWAL OF INSURER'S LICENSE.

Whenever it appears to the Mayor that any person has committed a violation of this subchapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Mayor may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the insurer's license or authority to do business in the District for such a period as the Mayor finds is required for the protection of policyholders or the public. Any determination shall be accompanied by specific findings of fact and conclusions of law.

(Oct. 21, 1993, D.C. Law 10-44, § 15, 40 DCR 6027.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3713.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 31-714. JUDICIAL REVIEW; MANDAMUS.

(a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the Mayor pursuant to this subchapter 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 such rule, regulation, order, or other action of the Mayor to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant such a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(c) Any person aggrieved by any failure of the Mayor to act or make a determination required by this subchapter 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 Mayor to act or make such determination forthwith.

(Oct. 21, 1993, D.C. Law 10-44, § 16, 40 DCR 6027.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3714.

Legislative History of Laws

For legislative history of D.C. Law 10-44, see Historical and Statutory Notes following § 31-701.

Editor's Notes

Because of the codification of D.C. Law 11-159 as subchapter II of Chapter 37 of Title 35 [subchapter II of Chapter 7 of Title 31, 2001 Ed.], and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in (a) and (c).

SUBCHAPTER II. MUTUAL HOLDING COMPANIES.

§ 31-731. FORMATION OF A MUTUAL HOLDING COMPANY.

(a) A domestic mutual insurance company, upon approval of the Commissioner, may reorganize by directly or indirectly forming an insurance holding company based upon a mutual plan. The reorganized insurance company shall continue, without interruption, its corporate existence as a stock insurance company subsidiary to the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is subsidiary to the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 31-703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, shall approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 31- 703(g)(3). A reorganization pursuant to this section is subject to § 31- 703(a), (b), and (c). The Commissioner shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company.

(d) Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

(Sept. 20, 1996, D.C. Law 11-159, § 2, 43 DCR 3714; Mar. 24, 1998, D.C. Law 12-81, § 41(a), 45 DCR 745; Mar. 26, 1999, D.C. Law 12-188, § 2(a), 45 DCR 7807.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3721.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2(a) of the Mutual Holding Company Mergers and Acquisition Temporary Amendment Act of 1998 (D.C. Law 12- 119, June 11, 1998, law notification 45 DCR 4036).

Emergency Act Amendments

For temporary addition of §§ 35-3721 through 35-3728 [1981 Ed.], see § 2-9 of the Mutual Holding Company Emergency Act of 1996 (D.C. Act 11-288, July 1, 1996, 43 DCR 3707).

For temporary addition of §§ 35-3721 through 35-3728 [1981 Ed.], see § 2-9 of the Mutual Holding Company Congressional Review Emergency Act of 1996 (D.C. Act 11-368, August 21, 1996, 43 DCR 3721).

For temporary repeal of the Mutual Holding Company Emergency Act of 1996 (D.C. Act 11-288, July 1, 1996, 43 DCR 3707), see § 12 of the Mutual Holding Company Congressional Review Emergency Act of 1996 (D.C. Act 11-368, August 21, 1996, 43 DCR 4633).

For temporary amendment of section, see § 2(a) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(a) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12- 364, June 5, 1998, 45 DCR 3875), and § 2(a) of the Mutual Holding Company Mergers and

Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Legislative History of Laws

Law 11-159, the "Mutual Holding Company Act of 1996," was introduced in Council and assigned Bill No. 11-623, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 21, 1996, it was assigned Act No. 11-290 and transmitted to both Houses of Congress for its review. D.C. Law 11-159 became effective on September 20, 1996.

For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 31-702.

Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

§ 31-732. MERGER OF POLICYHOLDER MEMBERSHIP INTERESTS.

(a) A domestic mutual insurance company, upon the approval of the Commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to this section and continuing the corporate existence of the reorganizing insurance company as a stock insurance company or as a stock insurance company subsidiary to an intermediate holding company which is a subsidiary to the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 31-703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, shall approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 31-703(g)(3). A merger pursuant to this section is subject to § 31-703(a), (b), and (c). The Commissioner shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company. A merger of policyholders' membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to § 31-703 and § 31-703 is also applicable.

(Sept. 20, 1996, D.C. Law 11-159, § 3, 43 DCR 3714; Mar. 24, 1998, D.C. Law 12-81, § 41(b), 45 DCR 745.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3722.

Emergency Act Amendments

See notes to § 35-3721.

Legislative History of Laws

For legislative history of D.C. Law 11-159, see Historical and Statutory Notes following § 31-731.

For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 31-702.

§ 31-733. INCORPORATION OF HOLDING COMPANY; AMENDMENT OF ARTICLES OF INCORPORATION.

(a) A mutual insurance holding company resulting from a reorganization of a domestic mutual insurance company organized under Chapter 44 of this title shall be incorporated pursuant to Chapter 44 of this title. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the Commissioner and Corporation Counsel of the District in the same manner as those of an insurance company. The Commissioner and Corporation Counsel shall

promptly examine the articles of incorporation, and if they find that the articles of incorporation comply with the law, the Commissioner and Corporation Counsel shall endorse their approval upon each of the originals, place one on file in the Commissioner's office, and return the remaining sets to the incorporators. The incorporators shall promptly file such endorsed articles of incorporation with the D.C. Office of Corporations. The endorsed articles of incorporation shall be deemed effective as of the effective date of a reorganization accomplished pursuant to this act, upon the filing of the articles with the D.C. Office of Corporations.

(b) A domestic mutual insurance holding company may amend its articles of incorporation by vote of 2/3rds of those members who vote either in person or by proxy at a lawful meeting of its members, if the notice given members included due notice of the proposal to amend. Upon adoption of an amendment, the mutual holding company shall make under its corporate seal a certificate thereof, setting forth the amendment and the date and manner of the adoption thereof, which certificate shall be executed by the mutual insurance holding company's president or vice president and secretary or assistant secretary, and acknowledged before an officer authorized to take acknowledgments. The mutual insurance holding company shall deliver the originals of the certificate to the Commissioner and Corporation Counsel. The Commissioner and Corporation Counsel shall promptly examine the certificate of amendment, and, if the Commissioner and Corporation Counsel find that the certificate and the amendment comply with law, the Commissioner and Corporation Counsel shall endorse their approvals upon each of the originals, place one on file in the Commissioner's office, and return the remaining sets to the mutual insurance holding company. The mutual insurance holding company shall promptly file such endorsed certificates of amendment with the D.C. Office of Corporations. The D.C. Office of Corporations shall accept the endorsed certificates of amendment without further review or approval. The amendment shall be effective when filed with the D.C. Office of Corporations.

(Sept. 20, 1996, D.C. Law 11-159, § 4, 43 DCR 3714; Mar. 24, 1998, D.C. Law 12-81, § 41(c), 45 DCR 745; Mar. 26, 1999, D.C. Law 12-188, § 2(b), 45 DCR 7807.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3723.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2(b) of the Mutual Holding Company Mergers and Acquisition Temporary Amendment Act of 1998 (D.C. Law 12- 119, June 11, 1998, law notification 45 DCR 4036).

Emergency Act Amendments

See notes to § 35-3721.

For temporary amendment of section, see § 2(b) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(b) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12- 364, June 5, 1998, 45 DCR 3875), and § 2(b) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Legislative History of Laws

For legislative history of D.C. Law 11-158, see Historical and Statutory Notes following § 31-731.

For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 31-702.

Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

References in Text

"This act," referred to in (a), is D.C. Law 12-188.

§ 31-734. INSURERS REHABILITATION AND LIQUIDATION.

(a) A mutual insurance holding company is deemed to be an insurer subject to Chapter 13 of this title, and shall automatically be a party to any proceeding under Chapter 13 of this title involving an insurance company, which as a result of a reorganization pursuant to § 31-731 or § 31-732 is a subsidiary of the mutual insurance holding company. In any proceeding under Chapter 13 of this title involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be

assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders.

(b) A mutual insurance holding company shall not dissolve or liquidate without the approval of the Commissioner or as ordered by the District Court pursuant to Chapter 13 of this title.

(Sept. 20, 1996, D.C. Law 11-159, § 5, 43 DCR 3714; Mar. 24, 1998, D.C. Law 12-81, § 41(d), 45 DCR 745.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3724.

Emergency Act Amendments

See notes to § 35-3721.

Legislative History of Laws

For legislative history of D.C. Law 11-159, see Historical and Statutory Notes following § 31-731.

For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 31-702.

§ 31-735. APPLICABILITY; MEMBERSHIP INTEREST; POWERS.

(a) Section 19 of the Life Insurance Act is not applicable to a reorganization or merger pursuant to this section.

(b) A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in § 31-603.

(c) A mutual holding company created under this subchapter shall have the same powers to borrow or assume liability as a mutual insurance company organized under the provisions of District law.

(d) The requirement of § 31-4421 that every director of a stock company organized under the Chapter 44 of this title shall be a stockholder thereof is not applicable to a mutual insurance holding company, any intermediate insurance holding company, or any reorganized insurance company established pursuant to this subchapter. Every director of a mutual insurance holding company, any intermediate holding company, and any reorganized insurance company shall be a policyholder of the reorganized insurance company, having purchased a policy in a manner that shall not unfairly discriminate in favor of such director, either before or after the reorganization pursuant to § 31- 731 or § 31-732.

(e)(1) A mutual insurance holding company shall not be authorized to pay dividends or make distributions to any mutual insurance holding company member except as may be expressly provided by the Commissioner.

(2) Neither the adoption nor the implementation of a plan of reorganization, or a plan of merger or other affiliation, involving a mutual insurance holding company, shall be deemed to give rise to any obligation by or on behalf of a mutual insurance company or a mutual insurance holding company to make any distribution or payment to any member or policyholder, or to any other person, fund, or entity of any nature whatsoever, in connection with the ownership, control, benefits, policies, purpose, or nature of a mutual insurance company or a mutual insurance holding company, or otherwise, except as expressly provided in a plan of reorganization, a plan of merger or other affiliation involving a mutual insurance holding company, or as expressly approved by the Commissioner.

(f) A mutual insurance holding company created under this subchapter shall exercise any other power or engage in any activity permitted to a mutual insurance company organized under District laws.

(Sept. 20, 1996, D.C. Law 11-159, § 6, 43 DCR 3714; Mar. 26, 1999, D.C. Law 12-188, § 2(c), 45 DCR 7807.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3725.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2(c) of the Mutual Holding Company Mergers and Acquisition Temporary Amendment Act of 1998 (D.C. Law 12- 119, June 11, 1998, law notification 45 DCR 4036).

Emergency Act Amendments

See notes to § 35-3721.

For temporary amendment of section, see § 2(c) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(c) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12- 364, June 5, 1998, 45 DCR 3876), and § 2(c) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Legislative History of Laws

For legislative history of D.C. Law 11-159, see Historical and Statutory Notes following § 31-731.

Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

References in Text

"Section 19 of the Life Insurance Act," which is referred to in (a), is probably a reference to former § 35-418 [§ 31-4318, 2001 Ed.]; it may also be a reference to § 31-4419.

§ 31-736. FAILURE TO GIVE NOTICE.

If the mutual company complies substantially and in good faith with the notice requirements of this subchapter, the mutual company's failure to give any member or members any required notice does not impair the validity of any action taken under this subchapter.

(Sept. 20, 1996, D.C. Law 11-159, § 7, 43 DCR 3714.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3726.

Emergency Act Amendments

See notes to § 35-3721.

Legislative History of Laws

For legislative history of D.C. Law 11-159, see Historical and Statutory Notes following § 31-731.

§ 31-737. LIMITATIONS OF ACTIONS.

Any action challenging the validity of or arising out of acts taken or proposed to be taken under this subchapter shall be commenced within 30 days after the date of the issuance of any order by the Commissioner pursuant to this subchapter. In any action challenging the validity of or arising out of acts taken or proposed to be taken under this subchapter, or charging that the directors of the mutual insurance holding company or any of its subsidiaries have acted improperly in connection with any aspect of the acts taken or proposed to be taken under this subchapter, the mutual insurance holding company or any of its subsidiaries in whose right such action is brought, or the defendant(s) shall be entitled at any state of the proceedings before final judgment to require the plaintiff(s) to give security for the reasonable expenses, including attorney fees, which may be incurred by the mutual insurance holding company or any of its subsidiaries or any other defendant(s) in connection with such action. Thereafter, the amount of such security, from time to time, may be increased or decreased in the discretion of the court having jurisdiction of such action upon a showing that the security provided has or may become inadequate or excessive.

(Sept. 20, 1996, D.C. Law 11-159, § 8, 43 DCR 3714; Apr. 9, 1997, D.C. Law 11-202, § 4, 43 DCR 6054; Mar. 26, 1999, D.C. Law 12-188, § 2(d), 45 DCR 7807.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3727.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2(d) of the Mutual Holding Company Mergers and Acquisition Temporary Amendment Act of 1998 (D.C. Law 12- 119, June 11, 1998, law notification 45 DCR 4036).

Emergency Act Amendments

See notes to § 35-3721.

For temporary amendment of section, see § 2 of the Mutual Holding Company Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-449, December 10, 1996, 43 DCR 6866), and § 2 of the Mutual Holding Company Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-6, March 3, 1997, 44 DCR 1619).

For temporary amendment of § 8 of the Mutual Holding Company Act of 1996 (D.C. Act 11-290) to conform with this section, see § 11 of the Mutual Holding Company Congressional Review Emergency Act of 1996 (D.C. Act 11-368, August 21, 1996, 43 DCR 4633).

For temporary amendment of section, see § 2 of the Mutual Holding Company Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-449, December 10, 1996, 43 DCR 6866), and § 2 of the Mutual Holding Company Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-6, March 3, 1997, 44 DCR 1619).

For temporary amendment of section, see § 2(d) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(d) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12- 364, June 5, 1998, 45 DCR 3877), and § 2(d) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Legislative History of Laws

Law 11-202, the "Medicare Supplement Insurance Minimum Standards Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-627. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 5, 1996, it was assigned Act No. 11-367 and transmitted to both Houses of Congress for its review. D.C. Law 11- 202 became effective on , 1996. D.C. Law 11-202 became effective on April 9, 1994.

Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

§ 31-737.01. MERGERS AND ACQUISITIONS.

(a) Subject to applicable requirements of this subchapter and subchapter I of this chapter, a mutual insurance holding company may:

(1) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed pursuant to this subchapter or any similar entity organized pursuant to laws of any other state;

(2) Either alone or together with one or more intermediate stock holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this subchapter or the law of its state of organization;

(3) Together with one or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;

(4) Acquire a stock insurance company through the merger of such stock insurance company with a stock insurance company or interim stock insurance company subsidiary of the mutual insurance holding company; or

(5) Acquire the stock or assets of any other person to the same extent as would be permitted for any District stock corporation or, if the mutual insurance holding company writes insurance, a mutual insurance company.

(b) A merger or acquisition pursuant to this section is subject to the applicable procedures prescribed by the District laws applying to mutual insurance companies, except as otherwise provided in this subsection. The Commissioner may retain, at the expense of the mutual insurance company, any attorneys, actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed merger or acquisition.

(1) The plan and agreement for merger shall be submitted to and approved by vote of 2/3rds of those members of any domestic mutual insurance holding company involved in the merger who vote either in person or by proxy thereon at a lawful meeting called for the purpose pursuant to such reasonable notice and procedure as has been approved by the Commissioner.

(2) No such merger shall be effectuated unless in advance thereof, the plan and agreement therefor have been filed with the Commissioner and approved by him. The Commissioner shall give such

approval unless he finds such plan or agreement:

(A) Is inequitable to the policyholders of any domestic insurer involved in the merger or the members of any domestic mutual insurance holding company involved in the merger; or

(B) Would substantially reduce the security of and service to be rendered to policyholders of a domestic insurer in the District.

(September 20, 1996, D.C. Law 11-159, § 8a, as added Mar. 26, 1999, D.C. Law 12-188, § 2(e), 45 DCR 7807.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3727.1.

Temporary Addition of Section

For temporary (225 day) addition, see § 2(e) of the Mutual Holding Company Mergers and Acquisition Temporary Amendment Act of 1998 (D.C. Law 12-119, June 11, 1998, law notification 45 DCR 4036).

Emergency Act Amendments

For temporary addition of section, see § 2(e) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(e) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12- 364, June 5, 1998, 45 DCR 3877), and § 2(e) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Legislative History of Laws

Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

§ 31-738. RULEMAKING.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules and regulations to implement the provisions of this subchapter.

(Sept. 20, 1996, D.C. Law 11-159, § 9, 43 DCR 3714.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3728.

Emergency Act Amendments

See notes to § 35-3721.

Legislative History of Laws

For legislative history of D.C. Law 11-159, see Historical and Statutory Notes following § 31-731.

SUBCHAPTER III. RECIPROCAL INSURANCE COMPANY CONVERSION.

§ 31-751. DEFINITIONS.

For the purposes of this subchapter, the term:

(1) "Reciprocal insurance company" includes an interinsurance exchange but shall not include a risk retention group as defined in § 31-4101(12).

(2) "Voting shares" means shares entitling the holder to vote for the election of directors of the issuer except that shares which can be voted only in the case of the occurrence of an event or an extraordinary action are not voting shares.

(May 12, 1998, D.C. Law 12-112, § 2, 45 DCR 1792.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3741.

Emergency Act Amendments

For temporary addition of this subchapter, comprised of §§ 35-3741 through 35- 3750 [1981 Ed.] see §§ 2-11 of the Reciprocal Insurance Company Conversion Emergency Amendment Act of 1998 (D.C. Act 12-298, March 4, 1998, 45 DCR 1775).

Legislative History of Laws

Law 12-112, the "Reciprocal Insurance Company Conversion Act of 1998," was introduced in Council and assigned Bill No. 12-445. The Bill was adopted on first and second readings on January 6, 1998, and February 3, 1998, respectively. Signed by the Mayor on February 24, 1998, it was assigned Act No. 12-301 and transmitted to both Houses of Congress for its review. D.C. Law 12-112 became effective on May 12, 1998.

§ 31-752. FORMATION OF A MUTUAL INSURANCE HOLDING COMPANY FROM A RECIPROCAL INSURANCE COMPANY.

(a) Upon approval of the Commissioner, a domestic reciprocal insurance company may form a mutual insurance holding company that directly or indirectly owns the insurance company, based upon a conversion plan. The reorganized insurance company shall continue, without interruption, its existence as a stock insurance company subsidiary of the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is a subsidiary of the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 31-703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the conversion plan is fair and equitable to the policyholders, shall approve the proposed conversion plan and may require as a condition of approval such modifications of the proposed conversion plan as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 31-703(g)(3). A conversion pursuant to this section shall be subject to § 31-703(a), (b), and (c). The Commissioner shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company.

(d) Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

(May 12, 1998, D.C. Law 12-112, § 3, 45 DCR 1792.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3742.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

§ 31-753. MERGER OF POLICYHOLDER MEMBERSHIP INTERESTS.

(a) Upon approval of the Commissioner, a domestic or foreign reciprocal or mutual insurance company may merge its policyholders' membership interests into a mutual insurance holding company formed pursuant to this section and continue, without interruption, the existence of the insurance company as a stock insurance company subsidiary of the mutual insurance holding company or as a stock insurance company subsidiary of an intermediate holding company which is a subsidiary of the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 31-703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, shall approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 31-703(g)(3). A merger pursuant to this section shall be subject to § 31-703(a), (b), and (c). The Commissioner shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company.

(d) Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times directly or indirectly own a majority of the voting shares of the capital stock of the reorganized insurance company. A merger of policyholders' membership interests in a reciprocal or mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to § 31-703 which shall be applicable.

(May 12, 1998, D.C. Law 12-112, § 4, 45 DCR 1793.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3743.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

§ 31-754. INCORPORATION OF HOLDING COMPANY.

A mutual insurance holding company resulting from a conversion of a domestic reciprocal insurance company shall be incorporated pursuant to Chapter 3 of Title 29 and shall be subject to Chapters 1, 2, and 3 of Title 29 to the extent that those provisions are not in conflict with this subchapter. The articles of incorporation and any amendments to such articles of incorporation of the mutual insurance holding company shall be subject to approval of the Commissioner and Corporation Counsel of the District in the same manner as those of an insurance company.

(May 12, 1998, D.C. Law 12-112, § 5, 45 DCR 1794; July 2, 2011, D.C. Law 18-378, § 3(u), 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3744.

Effect of Amendments

D.C. Law 18-378 substituted "Chapter 3 of Title 29 and shall be subject to Chapters 1, 2, and 3 of Title 29" for "Chapter 1 of Title 29 ('Business Corporation Act'), and shall be subject to the provisions of the Business Corporation Act".

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

Law 18-378, the "District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009", was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

§ 31-755. INSURERS REHABILITATION AND LIQUIDATION.

(a) A mutual insurance holding company shall be deemed to be an insurer subject to Chapter 13 of this title ("Insurers Rehabilitation and Liquidation Act"), and shall automatically be a party to any proceeding under the Insurers Rehabilitation and Liquidation Act involving an insurance company, which as a result of a conversion or merger pursuant to § 31-702 or § 31-703 is directly or indirectly a subsidiary of the mutual insurance holding company. In any proceeding under the Insurers Rehabilitation and Liquidation Act involving the converted or merged insurance company, the assets of the mutual insurance holding company shall be deemed to be assets of the estate of the converted or merged insurance company for purposes of satisfying the claims of the converted or merged insurance company's policyholders.

(b) A mutual insurance holding company shall not dissolve or liquidate without the approval of the Commissioner or as ordered by a District of Columbia court pursuant to the Insurers Rehabilitation and Liquidation Act.

(May 12, 1998, D.C. Law 12-112, § 6, 45 DCR 1794.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3745.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

§ 31-756. APPLICABILITY; MEMBERSHIP INTEREST; POWERS.

(a) A membership interest in a mutual insurance holding company shall not constitute an equity security as defined in § 31-603.

(b) A mutual insurance holding company created under this subchapter shall have the same powers to borrow or assume liability as a reciprocal insurance company organized under District law.

(May 12, 1998, D.C. Law 12-112, § 7, 45 DCR 1794.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3746.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

§ 31-757. FAILURE TO GIVE NOTICE.

If the reciprocal insurance company complies substantially and in good faith with the notice requirements of this subchapter, the reciprocal insurance company's failure to give any member or members any required notice shall not impair the validity of any action taken under this subchapter.

(May 12, 1998, D.C. Law 12-112, § 8, 45 DCR 1795.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3747.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

§ 31-758. LIMITATIONS OF ACTIONS.

Any action challenging the validity of, or arising out of acts taken or proposed to be taken under, this subchapter shall be commenced within 30 days after the effective date of any plan submitted for approval pursuant to this subchapter.

(May 12, 1998, D.C. Law 12-112, § 9, 45 DCR 1795.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3748.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

§ 31-759. CONVERSION OF MUTUAL INSURANCE HOLDING COMPANY.

Chapter 9 of this title shall be applicable to the conversion of a mutual insurance holding company formed under this subchapter to a stock company as if the mutual insurance holding company were a mutual insurance company.

(May 12, 1998, D.C. Law 12-112, § 10, 45 DCR 1795.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3749.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.

§ 31-760. RULEMAKING.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 may issue rules and regulations to implement the provisions of this subchapter.

(May 12, 1998, D.C. Law 12-112, § 11, 45 DCR 1795.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3750.

Emergency Act Amendments

See Historical and Statutory Notes following § 31-751.

Legislative History of Laws

For legislative history of D.C. Law 12-112, see Historical and Statutory Notes following § 31-751.