

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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*Codification  
District of  
Columbia  
Official Code*

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To prohibit persons and entities from acting as insurers or engaging in any directly or indirectly related activity without first obtaining a certificate of authority; to amend the Insurers Rehabilitation and Liquidation Act of 1993 to reorder the priority of distributions in liquidation proceedings and bring the statute in conformance with recent developments in United States Supreme Court case law; to amend the Fire and Casualty Act to repeal the insurance agent and broker license fee provisions, to authorize the Commissioner to promulgate and amend all producer and license fees, to extend the reach on the limitation of the percentage of loss an insurer can expose itself to on any one risk or hazard, and to repeal the due deference provisions, which provide for the issuance of a certificate of authority to operate as an insurer upon attestation of an independent organization; to amend the the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Act of 1986 to revive the mental parity provisions; to amend the Health Maintenance Organization Act of 1996 to clarify the priority of distributions in liquidation proceedings and to repeal the due deference provisions; to amend the Life Insurance Act of 1934 to repeal the requirement that directors of stock companies own shares thereof and that directors of mutual companies own policies thereof, to repeal the requirement that the Office of the Attorney General review and approve formation documents for life insurance companies, to repeal the ban on political contributions by life insurance companies, and to repeal the due deference provisions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Insurance, Securities and Banking Omnibus Amendment Act of 2006".

TITLE I. UNAUTHORIZED ENTITIES

Sec. 101. Short title.

This title may be cited as the "Unauthorized Entities Act of 2006".

Sec. 102. Unauthorized entities.

No person shall act as an insurer, or engage in any other activity, directly or indirectly, which is regulated in acts codified in Chapters 1 through 55 of Title 31 of the District of Columbia Official Code unless performed within the scope of a certificate of authority issued by the Commissioner as provided by this title. The prohibitions in this title shall not apply to persons or entities engaging in activity pursuant to sections 39 and 40 of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1080; D.C. Official Code §§ 31-2502.39 and 31-2502.40).

Sec. 103. No person shall aid or assist another person in unauthorized activity proscribed by section 102, including selling, soliciting, or negotiating for applications, policies, memberships, or other business.

Sec. 104. Investigations and administrative and judicial enforcement.

(a) The Commissioner may make public or private investigations inside or outside of the District as he considers necessary to determine whether a person has violated, or is about to violate, any provision of this title, or any rule or order hereunder, to aid in the enforcement of this title, or to aid in the prescribing of rules and forms to implement this title.

(b) If the Commissioner determines that a person has engaged, is engaging, or is about to engage in any activity prohibited by this title or any rule or order adopted under this title, and that immediate action against such person is in the public interest, the Commissioner may issue a summary order directing the person to cease and desist from engaging in such activity; provided, that the summary cease and desist order shall give the person:

(1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final, and that the hearing shall be conducted according to the rules for contested cases set forth in Chapter 38 of Title 26 of the District of Columbia Municipal Regulations; and

(2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of service of the order as provided in the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-501 *et seq.*).

(c) If the Commissioner determines after a hearing, unless the right to a hearing is waived, that a person has engaged in any activity prohibited by this title or any rule or order adopted under this title, the Commissioner may, in addition to any other action in which he is authorized:

- (1) Issue a cease and desist order against the person;
- (2) Bar the person from engaging in the business of insurance;

(3) Issue an order against the person imposing a civil fine not exceeding the greater of \$10,000 per day of violation or twice the amount of money received by reason of the violation;

(4) Issue an order for restitution and any other actual loss or damage incurred by other persons; and

(5) Issue an order for payment of costs of the proceedings and reasonable expenses of any investigation.

(d) A person aggrieved by the Commissioner's order may appeal to the District of Columbia Court of Appeals pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-501 *et seq.*).

(e) The Commissioner may request the Office of the Attorney General to seek judicial enforcement of any Commissioner's Order entered against such person as provided in this title.

(f) Administrative and judicial enforcement instituted by the Commissioner or the Office of the Attorney General under this title shall not bar governmental actions pursuant to other provisions of law, including criminal investigation and prosecution.

(g) For purposes of an investigation or proceeding under this title, the Commissioner may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner deems relevant or material to the inquiry.

(h) In case of contumacy by, or refusal to obey a subpoena issued to, a person, the Superior Court of the District of Columbia, upon application by the Commissioner, may issue to the person an order requiring the person to appear before the Commissioner to produce documentary evidence, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished as a contempt of court.

(i) Persons damaged by any activity prohibited by this title shall have a private cause of action for damages, including attorneys' fees, and any other remedies provided by law.

## TITLE II. TECHNICAL AND MODERNIZATION AMENDMENTS

Sec. 201. Section 41(2) through (5) of the Insurers Rehabilitation and Liquidation Act of 1993, approved October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1340(2) through (5)), is amended to read as follows:

Amend  
§ 31-1340

“(2) Class 2. All claims under policies including the claims of the federal or any state or local government for losses incurred ("loss claims"), including third party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support, by

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way of succession at death, as proceeds of life insurance, or as gratuities. No payment by an employer to his or her employee shall be treated as a gratuity.

“(3) Class 3. Claims of the federal or any state or local government, except those under Class 2. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of the claims shall be postponed to the class of claims under paragraph (8) of this section.

“(4) Class 4. Reasonable compensation to employees for services performed to the extent that they do not exceed 2 months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. This priority shall be in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

“(5) Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors, including claims of ceding and assuming companies in their capacity as general creditors.”.

Sec. 202. The Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1063; D.C. Official Code § 31-2502.01 *et seq.*), is amended as follows:

(a) Section 2(b) (D.C. Official Code § 31-2502.02(b)) is repealed.

Amend  
§ 31-2502.02

(b) Section 12 (D.C. Official Code § 31-2502.12) is amended by striking the phrase “any 1 risk or hazard in the District” and inserting the phrase “any one risk or hazard, whether located in the District or outside of the District,” in its place.

Amend  
§ 31-2502.12

(c) Section 41 (D.C. Official Code § 31-2502.41) is amended as follows:

Amend  
§ 31-2502.41

(1) Subsection (a) is amended to read as follows:

“(a) Annual fees to be paid through the Commissioner to the District of Columbia for licenses issued under this Act shall include a \$250 annual renewal fee for registration and certification for Risk Retention and Purchasing Groups and any other fee established pursuant to subsection (e) of this section.”.

(2) Subsections (b) through (d) are repealed.

(3) Subsection (e) is amended to read as follows:

“(e) The Commissioner may promulgate rules to establish and amend all producer and license fees.”.

Sec. 203. Section 6(e) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Act of 1986, effective February 28, 1987 (D.C. Law 6-195; D.C. Official Code § 31-3105), is amended as follows:

Amend  
§ 31-3105

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- (a) Subsection (a) through (d) are hereby revived.
- (b) Subsection (e) is repealed.

Sec. 204. The Health Maintenance Organization Act of 1996, approved April 9, 1997 (D.C. Law 11-235; D.C. Official Code § 31-3401 *et seq.*), is amended as follows:

- (a) Section 4 (D.C. Official Code § 31-3403) is amended by repealing subsections (f) and (g). Amend  
§ 31-3403
- (b) Section 21(c) (D.C. Official Code § 31-3420(c)) is amended to read as follows: Amend  
§ 31-3420
  - “(c) Any provider who is obligated by law or agreement to hold enrollees harmless from liability for services pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of enrollees and enrollee's beneficiaries as described herein, and immediately preceding the priority of distribution assigned to general creditors.”.

Sec. 205. The Life Insurance Act of 1934, approved June 19, 1934 (48 Stat. 1129; D.C. Official Code § 31-4301 *et seq.*), is amended as follows:

- (a) Chapter II is amended as follows: Amend  
§ 31-4304  
Repeal  
§ 31-4324
  - (1) Section 5(b) (D.C. Official Code § 31-4304(b)) is repealed.
  - (2) Section 25 (D.C. Official Code § 31-4324) is repealed.
- (b) Chapter III is amended as follows: Amend  
§ 31-4403
  - (1) Section 3(a) (D.C. Official Code § 31-4403(a)) is amended by striking the phrase “shall submit the proposed articles and other papers so filed with him to the Corporation Counsel of the District, who shall examine the same,” and inserting the phrase “shall examine the proposed articles and other papers so filed with him” in its place.
  - (2) Section 21 (D.C. Official Code § 31-4421) is amended by striking the second sentence. Amend  
§ 31-4421

**TITLE III. FISCAL IMPACT STATEMENT**

Sec. 301. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**TITLE IV. EFFECTIVE DATE**

Sec. 401. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia