

Public Law 93-89

AN ACT

To improve the laws relating to the regulation of insurance in the District of Columbia, and for other purposes.

August 14, 1973
[H. R. 4083]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Insurance Act".

District of
Columbia Insur-
ance Act.

TITLE I—DISTRICT OF COLUMBIA POST ASSESSMENT INSURANCE GUARANTY ASSOCIATION ACT

SEC. 101. This title shall be known and may be cited as the "District of Columbia Insurance Guaranty Association Act".

Citation of
title.

SEC. 102. The purpose of this title is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

SEC. 103. This title shall apply to all kinds of direct insurance, except life, title, disability, and mortgage guaranty insurance.

SEC. 104. As used in this title—

Definitions.

(1) The term "Commissioner" means the Commissioner of the District of Columbia or his designated agent.

(2) The term "covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this title applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this title and (a) the claimant or insured is a resident of the District of Columbia at the time of the insured event; or (b) the property from which the claim arises is permanently located in the District of Columbia. Such term shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(3) The term "insolvent insurer" means (a) an insurer authorized to transact insurance in the District of Columbia, either at the time the policy was issued or when the insured event occurred, who has been determined to be insolvent by a court of competent jurisdiction.

(4) The term "member insurer" means any person who (a) writes any kind of insurance to which this title applies, including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in the District of Columbia.

(5) The term "net direct written premiums" means direct gross premiums written in the District on insurance policies to which this title applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

(6) The term "person" includes individuals, corporations, associations, exchanges, and partnerships.

SEC. 105. There is created a nonprofit unincorporated legal entity to be known as the District of Columbia Insurance Guaranty Association (hereafter in this title referred to as the "Association"). All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance in the District of Columbia. The Association shall perform its functions under a plan of operation established and approved by the Commissioner and shall exercise its powers through a Board of Directors (hereafter in this

D.C. Insurance
Guaranty Associ-
ation.
Establishment.

title referred to as the "Board"). For purposes of administration and assessment, the Association shall be divided into three separate accounts: (a) the workmen's compensation insurance account; (b) the automobile insurance account; and (c) the account for all other insurance to which this title applies.

Board members.

SEC. 106. (a) The Board shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the Board shall be selected by member insurers subject to the approval of the Commissioner. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after the effective date of this title, the Commissioner may appoint the initial members of the Board.

Vacancies.

(b) In approving selections to the Board, the Commissioner shall consider among other things whether all member insurers are fairly represented.

Expenses.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board.

Duties.

SEC. 107. (a) The Association shall—

(1) be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that the Association shall pay the full amount of any covered claim arising out of a workmen's compensation policy; except in no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(2) be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately, according to subsection (b) of this section, for each account amounts necessary to pay the obligations of the Association under paragraph (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 112 and other expenses authorized by this title;

(4) investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

(5) notify such persons as the Commissioner directs under section 109(b)(1);

(6) handle claims through its employees or through one or more insurers or other persons designated, subject to the approval of the Commissioner, as servicing facilities, except such designation may be declined by a member insurer; and

(7) reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association, and pay the other expenses of the Association authorized by this title.

Assessments.

(b) The assessments of each member insurer under paragraph (3) of subsection (a) of this section shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than 2 per centum of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(c) The Association may—

(1) employ or retain such persons as are necessary to handle claims and perform other duties of the Association;

(2) borrow funds necessary to effect the purposes of this title in accord with the plan of operation;

(3) sue or be sued;

(4) negotiate and become a party to such contracts as are necessary to carry out the purpose of this title;

(5) perform such other acts as are necessary or proper to effectuate the purpose of this title; and

(6) refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the Board finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the Board for the coming year.

SEC. 108. (a) (1) The Board shall submit to the Commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

Plan of operation.

(2) If the Board fails to submit a suitable plan of operation within ninety days following the effective date of this title or if at any time thereafter the Board fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this title. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Board and approved by the Commissioner.

Rules.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall—

(1) establish the procedures whereby all the powers and duties of the Association under section 107 will be performed;

(2) establish procedures for handling assets of the Association;

(3) establish the amount and method of reimbursing members of the Board under section 106;

(4) establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims;

(5) establish regular places and times for meetings of the Board;

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

(7) provide that any member insurer aggrieved by a final action or decision of the Association may appeal to the Commissioner within thirty days after the action or decision;

(8) establish the procedures whereby selections for the Board will be submitted to the Commissioner; and

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

(d) The plan of operation may provide that any or all powers and duties of the Association, except those under subsections 107 (a) (3) and (c) (2), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this Association, or its equivalent, in two or more States. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the Board and the Commissioner, and may be made only to a corporation, association, or organization which extends protection in a manner substantially similar to that provided by this title.

(e) Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of such claims shall be periodically submitted to the Association or similar organization in another State by the receiver or liquidator.

SEC. 109. (a) The Commissioner shall—

(1) notify the Association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency; and

(2) upon request of the Board provide the Association with a statement of the net direct written premiums of each member insurer.

(b) The Commissioner may—

(1) require that the Association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this title by mail at their last known address, where available, or by publication in a newspaper of general circulation, if sufficient information for notification by mail is not available;

(2) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in the District of Columbia of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation, or levy a fine on any member insurer which fails to pay an assessment when due, except such fine shall not exceed 5 per centum of the unpaid assessment per month, except that no fine shall be less than \$100 per month; and

Delegation of
powers.

(3) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(c) All final orders or decisions of the Commissioner made under this Act shall be subject to review in accordance with section 11 of the District of Columbia Administrative Procedures Act (D.C. Code, sec. 1-1510).

SEC. 110. (a) Any person recovering under this title shall be deemed to have assigned his rights under the policy to the Association to the extent of his recovery from the Association. Every insured or claimant seeking the protection of this title shall cooperate with the Association to the same extent as such person would have been required to cooperate with the insolvent insurer. The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the Association shall not operate to reduce the insured's liability to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another State. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this title against the assets of the insolvent insurer.

(c) The Association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the Association which shall preserve the rights of the Association against the assets of the insolvent insurer.

SEC. 111. (a) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this title shall be reduced by the amount of any recovery under such insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this title shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

SEC. 112. (a) To aid in the detection and prevention of insurer insolvencies—

82 Stat. 1209;
84 Stat. 582.
Rights, assignment.

Insurer insolvencies, prevention.

(1) it shall be the duty of the Board, upon majority vote, to notify the Commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public; and

(2) the Board may, upon majority vote, request that the Commissioner order an examination of any member insurer which the Board in good faith believes may be in a financial condition hazardous to the policyholders or the public.

(b) An examination may be conducted, under this section, as a National Association of Insurance Commissioner examination or may be conducted by such person as the Commissioner designates. The cost of such examination shall be paid by the Association and the examina-

tion report shall be treated as are other examination reports. In no event shall such examination report be released to the Board prior to its release to the public, but this shall not preclude the Commissioner from complying with subsection (c) of this section. The Commissioner shall notify the Board when the examination is completed. The request for an examination shall be kept on file by the Commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(c) It shall be the duty of the Commissioner to report to the Board when he has reasonable cause to believe that any member insurer examined or being examined at the request of the Board may be insolvent or in a financial condition hazardous to the policyholders or the public.

Reports.

(d) The Board may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

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

(f) The Board shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the Association, and submit such report to the Commissioner.

SEC. 113. The Association shall be subject to examination and regulation by the Commissioner. The Board shall submit, not later than March 30 of each year, a financial report for the preceding calendar year on a form approved by the Commissioner.

Tax exemption.

SEC. 114. The Association shall be exempt from payment of all fees and taxes levied or collected by the District of Columbia, except taxes levied on real or personal property.

SEC. 115. The rates and premiums charged for insurance policies to which this title applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association by the member insurer less any amounts returned to the member insurer by the Association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

SEC. 116. There shall be no liability on the part of and no cause of action of any nature shall rise against any member insurer, the Association or its agents or employees, the Board, or the Commissioner or his representatives for any action taken by them in the performance of their powers and duties under this title.

SEC. 117. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in the District of Columbia shall be stayed for sixty days from the date the insolvency is determined to permit proper defense by the Association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the Association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits.

SEC. 118. (a) The Commissioner shall by order terminate the operation of the District of Columbia Insurance Guaranty Association as

to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which—

(1) is a permanent plan which is adequately funded or for which adequate funding is provided; and

(2) extends or will extend to District of Columbia policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents and the protection and benefits provided with respect to such kind of insurance under this title.

(b) The Commissioner shall by the same such order authorize discontinuance of future payments by insurers to the District of Columbia Insurance Guaranty Association with respect to the same kinds of insurance, except assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(c) In the event the operation of any account of the District of Columbia Insurance Guaranty Association shall be so terminated as to all kinds of insurance otherwise within its scope, the Association as soon as possible thereafter shall distribute the balance of moneys and assets remaining in said account (after discharge of the functions of the Association with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in the District of Columbia policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by the respective insurers to such account during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in section 105, this title shall be deemed to have expired.

TITLE II—AMENDMENT OF THE LIFE INSURANCE ACT OF THE DISTRICT OF COLUMBIA TO INCREASE CAPITAL REQUIREMENTS OF LIFE INSURANCE COMPANIES

SEC. 201. Chapter 3 of the Life Insurance Act (D.C. Code, secs. 35-501—35-541) is amended as follows:

(1) Section 8(a) of such chapter (D.C. Code, sec. 35-508(a)) is amended (A) by striking out in the first sentence "\$200,000" and inserting in lieu thereof "\$1,000,000", and (B) by striking out in the last sentence "\$150,000" and inserting in lieu thereof "\$1,500,000".

48 Stat. 1145;
78 Stat. 764.

(2) Section 8(b) of such chapter (D.C. Code, sec. 35-508(b)) is amended (A) by inserting "or subsequent amendment" immediately after "subsection", and (B) by inserting "or the minimum surplus required of a mutual company" immediately after "stock company".

(3) Paragraph 10(b)(ii) of section 35 of such chapter (D.C. Code, sec. 35-535 (10)(b)(ii)) is amended by striking out "\$300,000" and "\$150,000" and inserting in lieu thereof "\$1,500,000" in each such place.

78 Stat. 765.

(4) Paragraph (15)(ii) of section 35 of such chapter (D.C. Code, sec. 35-535 (15)(ii)) is amended by striking out "\$300,000" and "\$150,000" and inserting in lieu thereof "\$1,500,000" in each such place.

74 Stat. 865;
78 Stat. 765.

SEC. 202. The amendment made by this title shall take effect thirty days after the date of enactment of this Act.

Effective date.

TITLE III—AMENDMENT OF THE LIFE INSURANCE ACT OF THE DISTRICT OF COLUMBIA TO INCREASE GROUP TERM LIFE INSURANCE AMOUNT LIMITATIONS

74 Stat. 315;
76 Stat. 1131.

SEC. 301. Sections 10(1)(d), 10(3)(d), 10(4)(d), 10(6)(d), and 10(9)(d) of chapter V of the Life Insurance Act (D.C. Code, secs. 35-710 (1)(d), (3)(d), (4)(d), (6)(d), and (9)(d)), are amended (1) by striking out "\$20,000" each place it appears and inserting in lieu thereof "\$30,000"; (2) by striking out "\$40,000" each place it appears and inserting in lieu thereof "\$100,000"; and (3) by striking out "150" each place it appears and inserting in lieu thereof "300".

64 Stat. 333.

SEC. 302. The first sentence of section 11 of chapter V of the Life Insurance Act (D.C. Code, sec. 35-711), is amended (1) by striking out "and" between clauses (b) and (c), (2) by striking out the colon at the end of clause (c) and inserting in lieu thereof a semicolon and (3) by inserting immediately thereafter a new clause (d) as follows: "and (d) that subject to the terms of the policy any person insured under a group life insurance contract, whether issued before or after the effective date of this clause, may make to any person, other than his employer, an absolute or collateral assignment of any or all the rights and benefits conferred on him by any provision of such policy or by law, including specifically, but not by way of limitation, any right to designate a beneficiary or beneficiaries thereunder and any right to have an individual policy issued upon termination either of employment or of said policy of group life insurance, but nothing herein shall be construed to have prohibited an insured from making an assignment of all or any part of his rights and privileges under the policy before the effective date of this clause and, subject to the terms of the policy, an assignment by an insured before or after the effective date of this clause is valid for the purposes of vesting in the assignee all rights and privileges so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment:."

TITLE IV—AMENDMENT OF THE FIRE AND CASUALTY ACT REGULATING THE BUSINESS OF FIRE, MARINE, AND CASUALTY INSURANCE IN THE DISTRICT OF COLUMBIA

54 Stat. 1070;
80 Stat. 121.

SEC. 401. Sections 13 and 14 of chapter II of the Fire and Casualty Act (D.C. Code, secs. 35-1316 and 35-1317), are amended to read as follows:

"SEC. 13. MINIMUM CAPITAL AND SURPLUS REQUIREMENT.—Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$300,000, and a surplus of not less than \$300,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than \$300,000 and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than \$400,000.

"SEC. 14. CORPORATIONS HERETOFORE FORMED.—No company shall be exempt from the provisions of this subsection by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection, except that, in the case of companies authorized in the District on the date of approval of this subsection and continu-

ously thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization by the laws of the District heretofore applicable shall not be increased by this subsection, and provided also that in the case of such continuously authorized companies the provisions of section 24 relating to the names of companies, and the provisions of section 25 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable."

SEC. 402. Section 25 of chapter II of the Fire and Casualty Act (D.C. Code, sec. 35-1329) is amended by striking out "\$300,000" and inserting in lieu thereof "\$600,000".

54 Stat. 1076.

TITLE V—AMENDMENT OF AMOUNT OF CONTRACT WITH THE GOVERNMENT OF THE DISTRICT OF COLUMBIA FOR WHICH A SURETY BOND IS REQUIRED

SEC. 501. The first section of the Act entitled "An Act in relation to contracts with the District of Columbia" approved June 28, 1906 (D.C. Code, sec. 1-805), and the first section of the Act of August 3, 1968 (D.C. Code, sec. 1-804a) (relating to contracts with the District of Columbia), are each amended by striking out "\$2,000" wherever it appears in each such first section and inserting in lieu thereof "\$10,000".

34 Stat. 546;
82 Stat. 629.
82 Stat. 628.

Approved August 14, 1973.

Public Law 93-90

AN ACT

To amend the Federal Railroad Safety Act of 1970 and other related Acts to authorize additional appropriations, and for other purposes.

August 14, 1973
[S. 2120]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Federal Railroad Safety Authorization Act of 1973".

SEC. 2. Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended to read as follows:

Federal Railroad Safety Authorization Act of 1973.

84 Stat. 977.

"SEC. 212. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated to carry out the provisions of this title not to exceed \$19,440,000 for the fiscal year ending June 30, 1974."

SEC. 3. Section 303 of the Hazardous Materials Transportation Control Act of 1970 (49 U.S.C. 1762) is amended to read as follows:

Hazardous materials control.

"SEC. 303. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated to carry out the provisions of this title not to exceed \$1,200,000 for the fiscal year ending June 30, 1974."

SEC. 4. The Secretary of Transportation shall, within ninety days after the date of enactment of this Act, submit a report to the Congress which contains a complete evaluation of all programs conducted under the Hazardous Materials Transportation Control Act of 1970, and on proposed revised handling procedures and feasibility of alternative routing in order to avoid population centers.

Report to Congress.

Approved August 14, 1973.