

AN ACT

D.C. ACT 15-382

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 27, 2004

*Codification
District of
Columbia
Official Code*

2001 Edition

2004 Summer
Supp.West Group
Publisher

To authorize the issuance of District of Columbia general obligation tax revenue anticipation notes to finance general governmental expenses for the fiscal year ending September 30, 2004.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2004 Tax Revenue Anticipation Notes Act of 2004".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Additional Notes" means District general obligation revenue anticipation notes described in section 9 that may be issued pursuant to section 472 of the Home Rule Act and that will mature on or before September 30, 2004, on a parity with the notes.

(2) "Authorized delegate" means the City Administrator, the Chief Financial Officer, the Treasurer, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(3) "Available funds" means District funds required to be deposited with the Escrow Agent, receipts, and other District funds that are not otherwise legality committed.

(4) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel or co-bond counsel from time to time by the Mayor.

(5) "Chief Financial Officer" means the Chief Financial Officer established pursuant to section 424(a)(1) of the Home Rule Act.

(6) "City Administrator" means the City Administrator established pursuant to section 422(7) of the Home Rule Act.

(7) "Council" means the Council of the District of Columbia.

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

(9) "Escrow Agent" means any bank, trust company, or national banking association with requisite trust powers and with an office in the District designated to serve in this capacity by the Mayor.

(10) "Escrow Agreement" means the escrow agreement between the District and the Escrow Agent authorized in section 7.

(11) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*)

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Notes" means District general obligation revenue anticipation notes authorized to be issued pursuant to this act.

(14) "Receipts" means all funds received by the District from any source, including, but not limited to, taxes, fees, charges, miscellaneous receipts, and any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, less funds that are pledged to debt or other obligations according to section 9 or that are restricted by law to uses other than payment of principal of, and interest on, the notes.

(15) "Secretary" means the Secretary of the District of Columbia.

(16) "Treasurer" means the Treasurer of the District of Columbia established pursuant to section 424(a)(2) of the Home Rule Act.

Sec. 3. Findings.

The Council finds that:

(1) Under section 472 of the Home Rule Act, the Council may authorize, by act, the issuance of general obligation revenue anticipation notes for a fiscal year in anticipation of the collection or receipt of revenues for that fiscal year. Section 472 of the Home Rule Act provides further that the total amount of general obligation revenue anticipation notes issued and outstanding at any time during a fiscal year shall not exceed 20% of the total anticipated revenue of the District for that fiscal year, as certified by the Mayor as of a date not more than 15 days before each original issuance of the notes.

(2) Under section 482 of the Home Rule Act, the full faith and credit of the District is pledged for the payment of the principal of, and interest on, any general obligation revenue anticipation note.

(3) Under section 483 of the Home Rule Act, the Council is required to provide in the annual budget sufficient funds to pay the principal of and interest on all general obligation revenue anticipation notes becoming due and payable during that fiscal year, and the Mayor is required to ensure that the principal of, and interest on, all general obligation revenue anticipation notes is paid when due, including by paying the principal and interest from funds not otherwise legally committed.

(4) The Mayor has advised the Council that, based upon the Mayor's projections of anticipated receipts and disbursements during the fiscal year ending September 30, 2004, it may be necessary for the District to borrow a sum not to exceed \$250 million, an amount that does not exceed 20% of the total anticipated revenue for such fiscal year, and to evidence the debt by issuing general obligation revenue anticipation notes in one or more series.

(5) The issuance of general obligation revenue anticipation notes in a sum not to exceed \$250 million is in the public interest.

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Sec. 4. Note authorization.

(a) The District is authorized to incur indebtedness by issuing the notes pursuant to sections 472 and 482 of the Home Rule Act, in one or more series, in a sum not to exceed \$250 million, to finance its general governmental expenses, in anticipation of the collection or receipt of revenues for the fiscal year ending September 30, 2004.

(b) The Mayor is authorized to pay from the proceeds of the notes the costs and expenses of issuing and delivering the notes, including, but not limited to, underwriting, legal, accounting, financial advisory, note insurance or other credit enhancement, marketing and selling the notes, and printing costs and expenses.

Sec. 5. Note details.

(a) The notes shall be known as "District of Columbia Fiscal Year 2004 General Obligation Tax Revenue Anticipation Notes" and shall be due and payable, as to both principal and interest, on or before September 30, 2004.

(b) The Mayor is authorized to take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the notes, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the notes, including any redemptions applicable thereto and a determination that the notes may be issued in book entry form;

(2) Provisions for the transfer and exchange of the notes;

(3) The principal amount of the notes to be issued;

(4) The rate or rates of interest or the method of determining the rate or rates of interest on the notes; provided, that the interest rate or rates borne by the notes of any series shall not exceed in the aggregate 10% per year calculated on the basis of a 365-day year (actual days elapsed); provided further, that if the notes are not paid at maturity, the notes may provide for an interest rate or rates after maturity not to exceed in the aggregate 15% per year calculated on the basis of a 365-day year (actual days elapsed);

(5) The date or dates of issuance, sale, and delivery of the notes;

(6) The place or places of payment of principal of, and interest on, the notes;

(7) The designation of a registrar, if appropriate, for any series of the notes, and the execution and delivery of any necessary agreements relating to the designation;

(8) The designation of paying agent(s) or Escrow Agent(s) for any series of the notes, and the execution and delivery of any necessary agreements relating to such designations; and

(9) Provisions concerning the replacement of mutilated, lost, stolen or destroyed notes.

(c) The notes shall be executed in the name of the District and on its behalf by the manual signature of the Mayor or an authorized delegate. The official seal of the District or a facsimile of it shall be impressed, printed, or otherwise reproduced on the notes. If a registrar is designated, the

registrar shall authenticate each note by manual signature and maintain the books of registration for the payment of the principal of and interest on the notes and perform other ministerial responsibilities as specifically provided in its designation as registrar.

(d) The notes may be issued at any time or from time to time in one or more issues and in one or more series.

Sec. 6. Sale of the notes.

(a) The notes of any series shall be sold at negotiated sale pursuant to a purchase contract or at competitive sale pursuant to a bid form. The notes shall be sold at a price not less than par plus accrued interest from the date of the notes to the date of delivery thereof. The purchase contract or bid form shall contain the terms that the Mayor considers necessary or appropriate to carry out the purposes of this act. The Mayor's execution and delivery of the purchase contract or bid form shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the notes. The Mayor shall deliver the notes, on behalf of the District, to the purchasers upon receiving the purchase price provided in the purchase contract or bid form.

(b) The Mayor or an authorized delegate may execute, in connection with each sale of the notes, an offering document on behalf of the District, and may authorize the document's distribution in relation to the notes being sold.

(c) The Mayor or an authorized delegate shall take actions and execute and deliver agreements, documents, and instruments (including any amendment of or supplement to any such agreement, document, or instrument) in connection with any series of notes as required by or incidental to:

- (1) The issuance of the notes;
- (2) The establishment or preservation of the exclusion from gross income for federal income tax purposes of interest on the notes, the treatment of interest on the notes as not constituting an item of tax preference for purposes of the federal alternative minimum tax ("non-AMT"), if the notes are originally issued as non-AMT notes, and the exemption from District income taxation of interest on the notes;
- (3) The performance of any covenant contained in this act, in any purchase contract for the notes, or in any escrow or other agreement for the security thereof;
- (4) The provision for securing the repayment of the notes by a letter or line of credit or other form of credit enhancement, and the repayment of advances under any such credit enhancement, including the evidencing of such a repayment obligation with a negotiable instrument with such terms as the Mayor shall determine; or
- (5) The execution, delivery, and performance of the Escrow Agreement, a purchase contract, or a bid form for the notes, a paying agent agreement, an agreement relating to credit enhancement, if any, including any amendments of any of these agreements, documents, or instruments.

(d) The notes shall not be issued until the Mayor receives an approving opinion of Bond

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Counsel as to the validity of the notes and the establishment or preservation of the exclusion from gross income for federal income tax purposes of the interest on the notes and, if the notes are issued as non-AMT notes, the treatment of such interest as not an item of tax preference for purposes of the federal alternative minimum tax, and the exemption from District income taxation of the interest on the notes.

(e) The Mayor shall execute a note issuance certificate evidencing the determinations and other actions taken by the Mayor for each issue or series of the notes issued and shall designate in the note issuance certificate the date of the notes, the series designation, the aggregate principal amount to be issued, the authorized denominations of the notes, the sale price, and the interest rate or rates on the notes. The Mayor shall certify in a separate certificate, not more than 15 days before each original issuance of a series, the total anticipated revenue of the District for the fiscal year ending September 30, 2004, and that the total amount of all general obligation revenue anticipation notes issued and outstanding at any time during the fiscal year will not exceed 20% of the total anticipated revenue of the District for the fiscal year. These certificates shall be delivered at the time of delivery of the notes and shall be conclusive evidence of the actions taken as stated in the certificates. A copy of each of the certificates shall be filed with the Secretary to the Council not more than 3 days after the delivery of the notes covered by the certificates.

Sec. 7. Payment and security.

(a) The full faith and credit of the District is pledged for the payment of the principal of, and interest on, the notes when due.

(b) The funds for the payment of the notes as described in this act shall be irrevocably deposited with the Escrow Agent pursuant to the Escrow Agreement. The funds shall be used for the payment of the principal of, and interest on, the notes when due, and shall not be used for other purposes so long as the notes are outstanding and unpaid.

(c) The notes shall be payable from available funds of the District, including, but not limited to, any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, and shall evidence continuing obligations of the District until paid in accordance with their terms.

(d) The Mayor may, without regard to any act or resolution of the Council now existing or adopted after the effective date of this act, designate an Escrow Agent under the Escrow Agreement. The Mayor may execute and deliver the Escrow Agreement, on behalf of the District and in the Mayor's official capacity, containing the terms that the Mayor considers necessary or appropriate to carry out the purposes of this act. A special account entitled "Special Escrow for Payment of District of Columbia Fiscal Year 2004 General Obligation Tax Revenue Anticipation Notes" is created and shall be maintained by the Escrow Agent for the benefit of the owners of the notes as stated in the Escrow Agreement. Funds on deposit, including investment income, under the Escrow Agreement shall not be used for any purposes except for payment of the notes or, to the extent permitted by the Home Rule Act, to service any contract or other arrangement permitted

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under subsections (k) or (l) of this section, and shall be invested only as provided in the Escrow Agreement.

(e) Upon the sale and delivery of the notes, the Mayor shall deposit with the Escrow Agent to be held and maintained as provided in the Escrow Agreement all accrued interest and premium, if any, received upon the sale of the notes.

(f)(1) The Mayor shall set aside and deposit with the Escrow Agent funds in accordance with the Escrow Agreement at the time and in the amount as provided in the Escrow Agreement.

(2) If Additional Notes are issued pursuant to section 9(b), and if on the date set forth in the Escrow Agreement, the aggregate amount of principal and interest payable at maturity on the outstanding notes, including any Additional Notes, less all amounts on deposit, including investment income, under the Escrow Agreement exceeds 90% of the actual receipts of District taxes (other than special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act), for the period August 15, 2004, until September 30, 2004, then beginning on the date set forth in the Escrow Agreement, the Mayor shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District after the date set forth in the Escrow Agreement, until the excess described in this subsection no longer exists.

(3) The District covenants that it shall levy, maintain, or enact taxes due and payable during August 1, 2004, through September 30, 2004, to provide for payment in full of the principal of, and interest on, the notes when due. The taxes referred to in this paragraph shall be separate from special taxes or charges levied pursuant to section 481(a), or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(4) The District covenants that so long as any of the notes are outstanding, it shall not grant, create, or permit the existence of any lien, pledge, or security interest with respect to its taxes due and payable during the period August 1, 2004, through September 30, 2004, or commit or agree to set aside and apply those tax receipts to the payment of any obligation of the District other than the notes. The taxes referred to in this paragraph shall not include special taxes or charges levied pursuant to section 481(a), or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act, or any real property tax liens created or arising in any fiscal year preceding the issuance of the notes.

(g) Before the 16th day of each month, beginning in August 2004, the Mayor shall review the current monthly cash flow projections of the District, and if the Mayor determines that the aggregate amount of principal and interest payable at maturity on the notes then outstanding, less any amounts and investment income on deposit under the Escrow Agreement, equals or exceeds 85% of the receipts estimated by the Mayor to be received after such date by the District but before the maturity of the notes, the Mayor shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District on and after that date until the aggregate amount, including investment income, on deposit with the Escrow Agent equals or exceeds 100% of the aggregate amount of principal and interest on the notes payable at their maturity.

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(h) The Mayor shall, in the full exercise of the authority granted the Mayor under the Home Rule Act and under any other law, take actions as may be necessary or appropriate to ensure that the principal of, and interest on, the notes are paid when due, including, but not limited to, seeking an advance or loan of moneys from the United States Treasury if available under then-current law. This action shall include, without limitation, the deposit of available funds with the Escrow Agent as may be required under section 483 of the Home Rule Act, this act, and the Escrow Agreement. Without limiting any obligations under this act or the Escrow Agreement, the Mayor reserves the right to deposit available funds with the Escrow Agent at his or her discretion.

(i) There are provided and approved for expenditure sums as may be necessary for making payments of the principal of, and interest on, the notes, and the provisions of the District of Columbia Appropriations Act, 2004, if enacted prior to the effective date of this act, relating to short-term borrowings are amended and supplemented accordingly by this section, as contemplated in section 483 of the Home Rule Act.

(j) The notes shall be payable, as to both principal and interest, in lawful money of the United States of America in immediately available or same-day funds at a bank or trust company acting as paying agent, located in the District, and at not more than 2 co-paying agents that may be located outside the District, one of which shall be located in New York, New York. All of the paying agents shall be qualified to act as paying agents under the laws of the United States of America, of the District, or of the state in which they are located, and shall be designated by the Mayor without regard to any other act or resolution of the Council now existing or adopted after the effective date of this act.

(k) In addition to the security available for the holders of the notes, the Mayor is hereby authorized to enter into agreements, including any agreement calling for payments in excess of \$1 million during fiscal year 2004, with a bank or other financial institution to provide a letter of credit, line of credit, or other form of credit enhancement to secure repayment of the notes when due. The obligation of the District to reimburse said bank or financial institution for any advances made under any such credit enhancement shall be a general obligation of the District until repaid and shall accrue interest at the rate of interest established by the Mayor not in excess of 15% per year until paid.

(l) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and the Financial Institutions Deposit and Investment Amendment Act of 1997, effective March 18, 1998 (D.C. Law 12-56; D.C. Official Code § 47-351.01 *et seq.*), shall not apply to any contract which the Mayor may from time to time determine to be necessary or appropriate to place, in whole or in part:

- (1) An investment or obligation of the District as represented by the notes;
- (2) An investment or obligation or program of investment; or
- (3)(A) A contract or contracts based on the interest rate, currency, cash flow, or other basis as the Mayor may desire, including, without limitation, interest rate swap agreements; currency swap agreements; insurance agreements; forward payment conversion agreements; futures; contracts providing for payments based on levels of, or changes in, interest rates, currency

exchange rates, or stock or other indices; contracts to exchange cash flows or a series of payments; and contracts to hedge payment, currency, rate, spread, or similar exposure, including, without limitation, interest rate floors, or caps, options, puts and calls.

(B) The contracts or other arrangements also may be entered into by the District in connection with, or incidental to, entering into or maintaining any agreement that secures the notes. The contracts or other arrangements shall contain whatever payment, security, terms, and conditions as the Mayor may consider appropriate and shall be entered into with whatever party or parties the Mayor may select, after giving due consideration, where applicable, to the creditworthiness of the counterparty or counterparties, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In connection with, or incidental to, the issuance or holding of the notes, or entering into any contract or other arrangement referred to in this section, the District may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and any other terms and conditions as the Mayor determines. Proceeds of the notes and any money set aside for payment of the notes or of any contract or other arrangement entered into pursuant to this section may be used to service any contract or other arrangement entered into pursuant to this section.

Sec. 8. Defeasance.

(a) The notes shall no longer be considered outstanding and unpaid for the purpose of this act and the Escrow Agreement, and the requirements of this act and the Escrow Agreement shall be deemed discharged with respect to the notes, if the Mayor:

(1) Deposits with an Escrow Agent, herein referred to as the "defeasance escrow agent", in a separate defeasance escrow account, established and maintained by the Escrow Agent solely at the expense of the District and held in trust for the note owners, sufficient moneys or direct obligations of the United States, the principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, and interest payable at maturity on, all the notes; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or proceeds of the investments to the payment of the notes at their maturity.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The moneys and direct obligations referred to in subsection (a)(1) of this section may include moneys or direct obligations of the United States of America held under the Escrow Agreement and transferred, at the written direction of the Mayor, to the defeasance escrow account.

(d) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any

act or resolution of the Council now existing or adopted after this act becomes effective, except for this act.

Sec. 9. Additional debt and other obligations.

(a) The District reserves the right at any time to: borrow money or enter into other obligations to the full extent permitted by law; secure the borrowings or obligations by the pledge of its full faith and credit; secure the borrowings or obligations by any other security and pledges of funds as may be authorized by law; and issue bonds, notes, including Additional Notes, or other instruments to evidence the borrowings or obligations. The reserved right with regard to notes and Additional Notes issued pursuant to sections 471, 472, and 490 of the Home Rule Act shall be subject to this act. No borrowings or other obligations, including Additional Notes, shall be entered into that would require an immediate set-aside and deposit under section 7(g) applied as of the date of the issuance.

(b)(1) The District may issue Additional Notes pursuant to section 472 of the Home Rule Act that shall mature on or before September 30, 2004, and the District shall covenant to set aside and deposit under the Escrow Agreement, receipts and other available funds for payment of the principal of, and the interest on, the Additional Notes on a parity basis with the notes.

(2) The receipts and available funds referred to in subsection (a) of this section shall be separate from the special taxes or charges levied pursuant to section 481(a), and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(3) Any covenants relating to any Additional Notes shall have equal standing and be on a parity with the covenants made for payment of the principal of, and the interest on, the notes.

(4) If Additional Notes are issued, the provisions of section 7 shall apply to both the notes and the Additional Notes and increase the amounts required to be set aside and deposited with the Escrow Agent.

(5) As a condition precedent to the issuance of any Additional Notes, the Mayor or the authorized delegate shall deliver a signed certificate certifying that the District is in full compliance with all covenants and obligations under this act and the Escrow Agreement, that no set-aside and deposit of receipts pursuant to section 7(g) applied as of the date of issuance is required, and that no set-aside and deposit will be required under section 7(g) applied immediately after the issuance.

(c) Any general obligation notes issued by the District pursuant to section 471 of the Home Rule Act shall not be scheduled to be due and payable until after the earlier of the following:

(1) The stated maturity date of all outstanding notes and Additional Notes; or
(2) The date an amount sufficient to pay all principal and interest payable at maturity on the notes and the Additional Notes is on deposit with the Escrow Agent.

(d) Revenue notes of the District, which are payable from specified District revenue

that is set aside for the payment of the revenue notes and that is included in the amount of receipts estimated by the Mayor, pursuant to section 7(g), to be received after the proposed date of issue of the revenue notes and before the maturity of the notes, shall not be issued if a set-aside and deposit of receipts pursuant to section 7(g) applied as of the proposed date of the issuance of revenue notes would be required. In determining, for purposes of this subsection, whether a set-aside and deposit would be required, there shall be excluded from receipts estimated by the Mayor to be received after the proposed date of issuance of revenue notes and before the maturity of the notes an amount equal to the estimated revenues set aside for the payment of revenue notes.

Sec. 10. Tax matters.

The Mayor shall not (1) take any action or omit to take any action, or (2) invest, reinvest, or accumulate any moneys in a manner, that will cause the interest on the notes to be includable in gross income for federal income tax purposes or, if such notes were issued as non-AMT notes, to be treated as an item of tax preference for purposes of the federal alternative minimum tax. The Mayor also shall take all actions necessary to be taken so that the interest on the notes will not be includable in gross income for federal income tax purposes or, if the notes were issued as non-AMT notes, be treated as an item of tax preference for purposes of the federal alternative minimum tax.

Sec. 11. Contract.

This act shall constitute a contract between the District and the owners of the notes authorized by this act. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

Sec. 12. District officials.

(a) The elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the notes or be subject to any personal liability by reason of the issuance of the notes.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the notes shall be valid and sufficient for all purposes, notwithstanding the fact that the official ceases to be that official before delivery of the notes.

Sec. 13. Authorized delegation of authority.

To the extent permitted by the District and federal laws, the Mayor may delegate to any authorized delegate the performance of any act authorized to be performed by the Mayor under this act.

Sec. 14. Maintenance of documents.

Copies of the notes and related documents shall be filed in the Office of the Secretary to

the Council.

Sec. 15. Information reporting.

(a) Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the notes, the Mayor shall transmit a copy of the transcript to the Secretary to the Council

(b) The Mayor shall notify the Council within 30 days of any action taken under section 7(g).

Sec. 16. Fiscal impact statement.

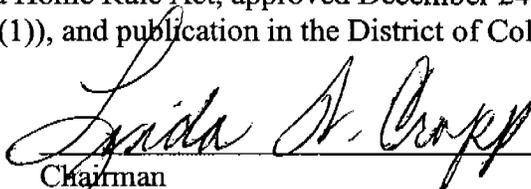
The Office of the Chief Financial Officer estimates that the fiscal impact of issuing these Tax Revenue Anticipation Notes is as follows:

(1) The debt service expense associated with issuing Tax Revenue Anticipation Notes to fund Fiscal Year 2004 seasonal cash needs in the amount of approximately \$175 million is incorporated in the District's proposed Fiscal Year 2004 budget. This act has a not-to-exceed amount of \$250 million, as a contingency in the event that the District's actual Fiscal Year 2004 seasonal cash needs exceed the projected cash needs at the time of budget preparation. In that event, the Office of the Chief Financial Officer plans to manage its total debt service expenditures in a manner that keeps such expenditures from exceeding the total debt service budget. As such, there is no additional fiscal impact associated with the passage of this act or the issuance of the notes.

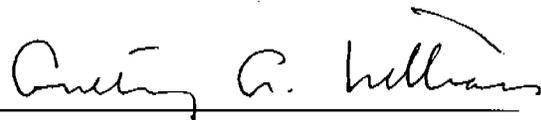
(2) The fiscal impact associated with not passing this act could be an inability of the District to meet numerous operating expenditures during Fiscal Year 2004.

Sec. 17. Effective date.

This act shall take effect upon enactment as provided in section 472(d)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 806; D.C. Official Code § 1-204.72(d)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 27, 2004
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AN ACT

D.C. ACT 15-383

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Health Services Planning Program Re-Establishment Act of 1996 to provide that staffing of the State Health Planning and Development Agency ("SHPDA") can continue beyond March 1, 2003, to authorize the funding of SHPDA through fees, to require SHPDA to establish requirements and standards for the provision of uncompensated care to health care facilities receiving a certificate of need, to exempt public, charter, and private schools from the certificate of need procedures for services offered to students with special needs, to require that certificate of need determinations be made within 90 days, extendable under certain circumstances for an additional 30 days, to authorize SHPDA to charge fees for providing to the public documents relating to the application process, to increase the threshold for nonpatient care projects from \$5 million to \$8 million, to establish the State Health Planning and Development Fund as a nonlapsing, revolving fund, and to implement other streamlined certificate of need procedures.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health Services Planning and Development Amendment Act of 2004".

Sec. 2. The Health Services Planning Program Re-Establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-401 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 44-401) is amended as follows:

(1) A new paragraph (2A) is added to read as follows:

"(2A)(A) "Bad debt" means an account receivable based on physician and hospital medical services furnished to any patient for which payment is:

"(i) Expected, but is regarded as uncollectible following reasonable collection efforts; and

"(ii) Not the obligation of any federal, state, or local governmental unit.

"(B) The term "bad debt" does not include charity care."

(2) Paragraph (3)(A) is amended by striking the number "\$2,000,000" and inserting the number "\$2,500,000" in its place.

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(3) A new paragraph (6B) is added to read as follows:

“(6B)(A) “Diagnostic health care facility” means:

“(i) A diagnostic imaging center accredited by the American College of Radiology whose primary business is the provision of diagnostic imaging services to the public;

“(ii) A cardiac catheterization laboratory;

“(iii) A radiation therapy facility; or

“(iv) An independent diagnostic laboratory whose primary business is the provision of diagnostic imaging services to the public and at which at least 3 of the following exams are performed:

“(I) Magnetic resonance imaging;

“(II) CAT scan;

“(III) Nuclear medicine;

“(IV) Ultrasound;

“(V) X-ray; or

“(VI) Mammography.

“(B) The term “diagnostic health care facility” shall not include the offices of private physicians, whether in individual or group practice.”.

(4) A new paragraph (9A) is added to read as follows:

“(9A) “Expedited administrative review” means a review conducted by the SHPDA staff, using the same criteria and standards that apply to projects reviewed through use of the regular process, the results of which are reported to the SHCC at the next regularly scheduled SHCC meeting.”.

(5) Paragraph (10) is amended by striking the phrase “the private office facilities of a health professional,” and inserting the phrase “the private office facilities of a health professional or group of health professionals, where the health professional or group of health professionals provides conventional office services limited to medical consultation, general non-invasive examination, and minor treatment,” in its place.

(6) Paragraph (14)(A) is amended to read as follows:

“(14)(A)(i) “Major medical equipment” means:

“(I) Equipment used for the provision of medical or other health services which is acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a health care facility, or by or on behalf of any private group practice of diagnostic radiology or radiation therapy, and which has a fair market value in excess of \$1,500,000; or

“(II) A single piece of diagnostic or therapeutic equipment which is acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician or group of physicians (excluding those referenced in sub-subparagraph (I) of this paragraph), or an independent owner or operator of the equipment, and for which the cost or value is in excess of \$250,000.

“(ii) The SHPDA may, by rule, adjust the thresholds specified in sub-subparagraph (I) of this paragraph annually to reflect the change in the Consumer Price index issued by the Bureau of Labor Statistics, United States Department of Labor.

“(iii) The term “major medical equipment” shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or a hospital and meets the requirements of § 1861(s)(10) and (11) of the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)).”.

(7) A new paragraph (20) is added to read as follows:

“(20) “Uncompensated care” means the cost of health care services rendered to patients for which the health care facility does not receive payment. The term “uncompensated care” includes bad debt and charity care, but does not include contractual allowances.”.

(b) Section 3 (D.C. Official Code § 44-402) is amended as follows:

Amend
§ 44-402

(1) Subsection (a)(2) is amended to read as follows:

“(2) Revenues, not to exceed fees collected pursuant to section 21, shall be utilized to fund 4 staff positions to administer SHPDA (Project Review Division - Certificate of Need Division Chief; 2 Public Health Analysts; and Secretary). Additional staff may be funded, as necessary, in accordance with section 21a.”.

(2) Subsection (b)(5) is amended to read as follows:

“(5) Establishing, by rule, requirements and standards regarding the amount of uncompensated care provided to residents of the District of Columbia by all health care facilities that receive a certificate of need, including an annual mechanism for monitoring the provision of that uncompensated care by the health care facilities.”.

(c) Section 5 (D.C. Official Code § 44-404) is amended as follows:

Amend
§ 44-404

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

“(a) The SHPDA, with the advice and recommendation of the SHCC, shall develop a proposed HSP, which shall be adopted in accordance with rules issued pursuant to section 22, to guide health policy in the District of Columbia. The HSP shall present data collected pursuant to section 6 to:

“(1) Articulate issues with respect to maintaining and improving the health of District of Columbia residents;

“(2) Demonstrate health care trends over multi-year periods;

“(3) Identify health needs of District of Columbia residents;

“(4) Identify needs of the health care delivery system; and

“(5) Prioritize health care issues.”.

(2) Subsection (b) is amended to read as follows:

“(b) Where applicable, the SHPDA shall use the federal Healthy People 2010 Plan development guidelines, and subsequent federal Healthy People Plan guidelines, to develop the HSP of subsection (a) of this section and to address the health status and health systems goals

of the Department of Health and data needs required to administer the SHPDA's certificate of need responsibilities under sections 10 and 11."

(3) Subsection (e) is amended by adding a new sentence at the end to read as follows:

"Upon the completion and promulgation of any new HSP, or any annual amendment to the HSP, the SHPDA shall submit copies to the Council and the District of Columbia Public Library, and shall publish a notice of its completion and issuance in the District of Columbia Register."

(d) Section 6 (D.C. Official Code § 44-405) is amended as follows:

Amend
§ 44-405

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

"(a) The SHPDA shall develop and maintain the Health Planning Data System ("HPDS"). In order to implement the HPDS, as necessary for the development of the HSP, the SHPDA shall require each health care facility to submit, in writing or other uniform media, data related to the utilization, management, and financing of health services, including data on utilization of health services, cost of services, charges of services, patient demographic and characteristic information, and assurances of its provision of a reasonable volume of uncompensated care through the "annual compliance level" of 3% of its operating costs (total operating expenses of a facility as set forth in an audited financial statement or its equivalent, minus the amount of reimbursement, if any, under Titles XVIII and XIX of the Social Security Act)."

(2) A new subsection (g) is added to read as follows:

"(g) The SHPDA is authorized to establish a fee schedule for certain data, analyses, and reports available through SHPDA."

(e) Section 8(b) (D.C. Official Code § 44-407(b)) is amended as follows:

Amend
§ 44-407

(1) Paragraphs (1), (3), and (4) are amended to read as follows:

"(1) The upgrading, maintenance, or correction of facility deficiencies that may be in violation of federal and District of Columbia fire, building, and safety codes, or that will improve patient safety related to a pending violation of federal or District of Columbia fire, building, or safety codes;

"(3) Nonpatient care projects requiring the obligation of a capital expenditure of less than \$8 million;

"(4) The acquisition of the same or similar medical equipment to replace, upgrade, or expand the capacity of the equipment for which a certificate of need has been granted, if the replaced equipment is removed from service;"

(2) Paragraph (6) is repealed.

(3) Paragraph (8) is amended by striking the word "and" at the end.

(4) Paragraph (9) is amended by striking the phrase "review;" and inserting the phrase "review;" in its place.

(5) New paragraphs (10), (11), and (12) are added to read as follows:

“(10) The acquisition of major medical equipment or establishment of new institutional health services determined by the Department to be necessary for a declared public health purpose or deemed necessary by the Department to provide health care services under contract to or grant from a District of Columbia or federal agency. Participation in programs under Titles XVIII and XIX of the Social Security Act does not qualify as a District of Columbia or federal contract for purposes of this exemption;

“(11) District of Columbia public, chartered, and private schools for any health care service offered or developed for students with special needs in compliance with the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. § 1400 *et seq.*), the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1092; 29 U.S.C. § 701 *et seq.*), or the Early and Periodic Screening, Diagnosis, and Treatment Program under Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 *et seq.*), or any other federal or District of Columbia legal requirements; and

“(12) The acquisition, prior to October 1, 2003, of any single piece of diagnostic or therapeutic equipment which was acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician, a group of physicians, a private group practice of diagnostic radiology or radiation therapy, or a diagnostic health care facility, or the replacement of such equipment, so long as the equipment to be replaced is removed from service.”

(f) Section 10 (D.C. Official Code § 44-409) is amended as follows:

Amend
§ 44-409

(1) Subsection (c) is amended as follows:

(A) Insert the phrase “for expedited administrative review,” after the phrase “renewal applications,”.

(B) Strike the last sentence.

(2) Subsection (d)(2) is amended to read as follows:

“(2) The SHPDA shall issue its determination on an application for a certificate of need within 90 days after the date that the review process begins. If the SHPDA cannot issue its determination within that period, the review period may be extended for one additional period of 30 days.”

(3) Subsection (e) is amended by striking the phrase “which contradicts the recommendation of the SHCC.”.

(4) Subsection (f) is amended by adding a new sentence at the end to read as follows:

“The SHPDA is authorized to charge reasonable fees for the costs of providing to the public documents covered under this subsection.”

(g) Section 11(a) (D.C. Official Code § 44-410 (a)) is amended by inserting the phrase “major medical equipment,” after the phrase “health service,”

Amend
§ 44-410

(h) Section 21 (D.C. Official Code § 44-420) is amended by inserting 3 new sentences at the end to read as follows:

Amend
§ 44-420

“The annual user fee for private hospitals shall be \$4 per inpatient admission, based on the previous calendar year’s admission data, to be paid to the SHPDA on a quarterly basis, in

lieu of a certificate of need application fee. User fees may also be established for other classes of facilities by regulation. SHPDA may adjust a user fee periodically to reflect the change in the Consumer Price Index issued by the Bureau of Labor Statistics, United States Department of Labor.”

(i) A new section 21a is added to read as follows:

“Sec. 21a. Establishment of State Health Planning and Development Fund.

“(a) There is established as a nonlapsing, revolving fund in the Department of Health the State Health Planning and Development Fund (“SHPDA Fund”), to be administered by the Mayor as an agency fund as defined in section 373(2)(I) of Title 47 of the District of Columbia Official Code, to which all fees, civil fines, and interest relating to the State Health Planning and Development Agency shall be deposited and credited.

“(b) Revenues deposited into the SHPDA Fund shall not revert to the General Fund at the end of any fiscal year or at any other time but shall be continually available to the Department of Health for the uses and purposes set forth in subsection (c) of this section, subject to authorization by Congress in an appropriations act.

“(c) Subject to the applicable laws relating to the appropriation of District funds, monies received by and deposited in the State Health Planning and Development Fund shall be for the sole use of the State Health Planning and Development Agency and from it shall be paid all salaries and all other expenses necessary in carrying out the duties of the SHPDA, except that annual user fees collected from hospitals pursuant to section 21 shall be used only for salaries and expenses necessary for carrying out the certificate of need responsibilities of the SHPDA. The Mayor shall be responsible for the deposit and expenditure of these monies.

“(d) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the State Health Planning and Development Fund. The Mayor's budget request shall be based on an estimated projection of the expenditures necessary to perform the administrative and regulatory functions of the State Health Planning and Development Agency.”

Sec. 3. Fiscal impact statement.

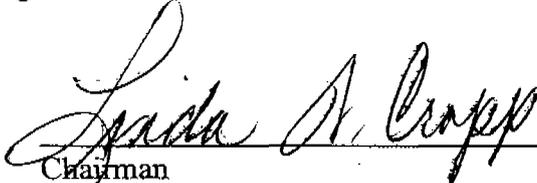
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

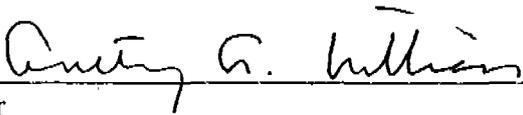
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

Amend
§ 44-420.01

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 27, 2004

AN ACT
D.C. ACT 15-384

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 27, 2004

*Codification
 District of
 Columbia
 Official Code*

2001 Edition

2004 Summer
 Supp.

West Group
 Publisher

To establish procedural enhancements to aid in the enforcement of the Tobacco Settlement Model Act of 2000.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
 That this act may be cited as the "Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004".

Sec. 2. Findings and Purpose.

The Council finds that violations of the Tobacco Settlement Model Act of 2000, effective July 18, 2000 (D.C. Law 13-139; D.C. Official Code § 7-1801.01 *et seq.*) ("Model Act") threaten the integrity of the tobacco Master Settlement Agreement, as defined in section 2 of the Model Act, the fiscal soundness of the District, and the public health and that enacting the procedural enhancements set forth in this act will aid in the enforcement of the Model Act and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the District, and the public health.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Brand Family" means all styles of cigarettes sold under the same trademark and differentiated from one another by additional modifiers or descriptors, including "menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Cigarette" has the same meaning as in section 2(4) of the Model Act.

(3) "Master Settlement Agreement" has the same meaning as in section 2(5) of the Model Act.

(4) "Non-participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(5) "Participating Manufacturer" has the meaning given that term in Section

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II(jj) of the Master Settlement Agreement and all amendments to it.

(6) "Qualified Escrow Fund" has the same meaning as that term is defined in section 2(6) of the Model Act.

(7) "Tobacco Product Manufacturer" has the same meaning as that term is defined in section 2(9) of the Model Act.

(8) "Units Sold" has the same meaning as that term is defined in section 2(10) of the Model Act.

(9) "Wholesaler" means a wholesaler licensed under section 47-2404(b)(1) of the District of Columbia Official Code.

Sec. 4. Certifications; directory; tax stamps.

(a) Every Tobacco Product Manufacturer whose cigarettes are sold in the District whether directly or through a wholesaler, retailer, or similar intermediary shall execute and deliver on a form prescribed by the Mayor, a certification to the Mayor, no later than the April 13th of each year, certifying under penalty of perjury that, as of the date of such certification, the Tobacco Product Manufacturer is a Participating Manufacturer or is in full compliance with section 3(2) of the Model Act, including all quarterly installment payments required by regulations promulgated pursuant to section 6(e); and:

(1) A Participating Manufacturer shall include in its certification a list of its Brand Families, which shall be updated 30 days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Mayor.

(2)(A) A Non-Participating Manufacturer shall include in its certification the following information:

(i) A list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the District during the preceding calendar year;

(ii) A list of all of its Brand Families that have been sold in the District at any time during the current calendar year;

(iii) Indicating, by an asterisk, any Brand Family sold in the District of Columbia during the preceding calendar year that is no longer being sold in the District of Columbia as of the date of such certification;

(iv) Identifying by name and address, any other manufacturer of such Brand Families in the preceding or current calendar year;

(v) That it is registered to do business in the District or has appointed a resident agent for service of process and provided notice thereof as required by section 5;

(vi) That it has established and continues to maintain a Qualified Escrow Fund, and that it has executed a qualified escrow agreement, which shall govern the Qualified Escrow Fund, that has been reviewed and approved by the Mayor;

(vii) That it is in full compliance with section 3(2) of the Model Act, this act, and any regulations promulgated pursuant to the Model Act and this act;

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(viii) The name, address, and telephone number of the financial institution where the Non-Participating Manufacturer has established such Qualified Escrow Fund required pursuant to section 3(2) of the Model Act and all regulations promulgated pursuant to the Model Act;

(ix) The account number of the Qualified Escrow Fund and any sub-account number for the District;

(x) The amount the Non-Participating Manufacturer has placed in the fund for cigarettes sold in the District during the preceding calendar year, including the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the Mayor to confirm this information; and

(xi) The amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer has made at any time from the fund or from any other Qualified Escrow Fund into which it ever made escrow payments pursuant to section 3(2) of the Model Act and all regulations promulgated pursuant to the Model Act.

(B) The Non-Participating Manufacturer shall update the lists required by this paragraph 30 calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Mayor.

(3)(A) A Tobacco Product Manufacturer may not include a Brand Family in its certification unless:

(i) In the case of a Participating Manufacturer, the Participating Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(ii) In the case of a Non-Participating Manufacturer, the Non-Participating Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for purposes of the Model Act.

(B) Nothing in this section shall be construed as limiting or otherwise affecting the District of Columbia's right to maintain that a Brand Family constitutes cigarettes of a different Tobacco Product Manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 3(2) of the Model Act.

(4) Tobacco Product Manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for the required certification for a period of 5 years, unless required by law to maintain them for a greater period of time.

(b) Not later than 150 days after the effective date of this act, the Mayor shall develop and make available for public inspection a directory ("Directory") listing all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and of all Brand Families that are listed in the certifications; provided, that:

(1) The Mayor shall not include or retain in the Directory the name or Brand Families of any Non-Participating Manufacturer that has failed to provide the required

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certification or whose certification the Mayor determines is not in compliance with subsection (a)(2) of this section, unless the Mayor has determined that the violation has been cured to the satisfaction of the Mayor.

(2) Neither a Tobacco Product Manufacturer nor Brand Family shall be included or retained in the Directory if the Mayor concludes, in the case of a Non-Participating Manufacturer, that:

(A) Any escrow payment required pursuant to section 3(2) of the Model Act for any period for any Brand Family, whether or not listed by such Non-Participating Manufacturer, has not been fully paid into a Qualified Escrow Fund governed by a qualified escrow agreement that has been approved by the Mayor; or

(B) Any outstanding final judgment, including interest, for a violation of section 3(2) of the Model Act has not been fully satisfied for the Brand Family or the manufacturer.

(3)(A) The Mayor shall update the Directory as necessary in order to correct mistakes and to add or remove a Tobacco Product Manufacturer or Brand Family to keep the Directory in conformity with the requirements of this act and shall post in the Directory notice of any removal from the Directory of a Tobacco Product Manufacturer or Brand Family at least 30 days prior to removal from the Directory of the Tobacco Product Manufacturer or Brand Family; and unless otherwise provided by agreement between:

(i) A Wholesaler and a Tobacco Product Manufacturer, the Wholesaler shall be entitled to a refund from a Tobacco Product Manufacturer for any money paid by the Wholesaler to the Tobacco Product Manufacturer for any cigarettes of the Tobacco Product Manufacturer in the possession of the Wholesaler on the effective date of removal from the Directory, or as subsequently received from a retail dealer as provided herein, of that Tobacco Product Manufacturer or Brand Family of cigarettes.

(ii) A retail dealer and a Wholesaler, a retail dealer shall be entitled to a refund from a Wholesaler or a Tobacco Product Manufacturer for any money paid by the retail dealer to such Wholesaler or Tobacco Product Manufacturer for any cigarettes of the Tobacco Product Manufacturer still in the possession of the retail dealer on the effective date of removal from the Directory of that Tobacco Product Manufacturer or Brand Family of cigarettes.

(B) The Mayor shall not restore to the Directory the Tobacco Product Manufacturer or the Brand Family until the Tobacco Product Manufacturer has paid the Wholesaler or retail dealer any refund due.

(4) Every Wholesaler shall provide and update as necessary an electronic mail address to the Mayor for the purpose of receiving any notifications as may be required by this act.

(c) It shall be unlawful for any person to:

(1) Affix a stamp to a package or other container of cigarettes of a Tobacco Product Manufacturer or Brand Family not included in the Directory, or

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(2) Sell, offer, or possess for sale, in the District, or import for personal consumption in the District, cigarettes of a Tobacco Product Manufacturer or Brand Family not included in the Directory.

Sec. 5. Agent for service of process.

(a)(1) Any non-resident or foreign Non-Participating Manufacturer that has not registered to do business in the District as a foreign corporation or business entity shall, prior to having its Brand Families included or retained in the Directory, appoint and continually engage without interruption the services of an agent in the District to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this act or the Model Act, may be served in any manner authorized by law and which shall constitute legal and valid service of process on the Non-Participating Manufacturer.

(2) The Non-Participating Manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to, and to the satisfaction of, the Mayor.

(b)(1) The Non-Participating Manufacturer shall provide notice to the Mayor 30 calendar days prior to termination of the authority of an agent and shall further provide proof, to the satisfaction of the Mayor, of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment.

(2) If an agent terminates an agency appointment, the Non-Participating Manufacturer shall notify the Mayor of the termination within 5 calendar days and shall include proof, to the satisfaction of the Mayor, of the appointment of a new agent.

Sec. 6. Reporting of information; escrow installments.

(a) Not later than 20 calendar days after the end of each calendar quarter, and more frequently if so directed by the Mayor, each Wholesaler shall submit such information as the Mayor requires to facilitate compliance with this act, including a list, by Brand Family, of the total number of cigarettes, or, in the case of roll your own, the equivalent stick count, for which the Wholesaler affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The Wholesaler shall maintain, and make available to the Mayor, all invoices and documentation of sales of all Non-Participating Manufacturer cigarettes and any other information relied upon in reporting to the Mayor for a period of 5 years.

(b) The Corporation Counsel is authorized to disclose any information to the Mayor received under this act and requested by the Mayor for purposes of determining compliance with and enforcing the provisions of this act. The Corporation Counsel and the Mayor shall share with each other the information received under this act, and may share such information with other federal, state, District, or local agencies only for purposes of enforcement of this act, the Model Act, or corresponding laws of other jurisdictions.

(c) The Mayor may require, at any time, from the Non-Participating Manufacturer,

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proof from the financial institution in which the Manufacturer has established a Qualified Escrow Fund, for the purpose of compliance with section 3(2) of the Model Act, of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(d) In addition to the information required to be submitted pursuant to this act, the Mayor may require a Wholesaler or Tobacco Product Manufacturer to submit any additional information, including samples of the packaging or labeling of each Brand Family, as is necessary to enable the Mayor to determine whether a Tobacco Product Manufacturer is in compliance with this act.

(e) To promote compliance with this act, the Mayor may promulgate regulations requiring a Tobacco Product Manufacturer, subject to the requirements of section 4(a)(2), to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Mayor may require production of information sufficient to enable the Mayor to determine the adequacy of the amount of the installment deposit.

Sec. 7. Penalties and other remedies.

(a)(1) In addition to, or in lieu of, any other civil or criminal remedy provided by law, upon a determination that any person has violated section 4(c) or any regulation adopted pursuant to this act, the Mayor may revoke or suspend the license of the Wholesaler in the manner provided by section 47-2404(f) of the District of Columbia Official Code.

(2) Each stamp affixed and each sale or offer to sell cigarettes in violation of section 4(c) shall constitute a separate violation. Pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*), the Mayor may also impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes or \$5,000 for any violation of section 4(c) or any regulations adopted pursuant to this act.

(b) Any cigarettes that have been sold, offered for sale, or possessed for sale, in the District, or imported for personal consumption in the District, in violation of section 4(c) shall be deemed contraband under section 47-2405(b) of the District of Columbia Official Code and the cigarettes shall be subject to seizure and forfeiture as provided in section 47-2409 of the District of Columbia Official Code; provided, that all such cigarettes so seized and forfeited shall be destroyed and not resold.

(c) The Corporation Counsel, on behalf of the District, may seek an injunction to restrain a threatened or actual violation of section 4(c), section 6(a), or section 6(d) by a Wholesaler and compel the Wholesaler to comply with the subsections.

(d)(1) It shall be unlawful for a person to:

(A) Sell or distribute cigarettes, or

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale

ENROLLED ORIGINAL

in the District in violation of section 4(c).

(2) A violation of this subsection shall, upon conviction, be punishable by a fine of not more than \$5,000 or imprisonment of not more than 1 year, or both. Prosecutions for violations of this subsection shall be brought in Superior Court of the District of Columbia in the name of the District by the Corporation Counsel.

Sec. 8. Miscellaneous Provisions.

(a) A determination of the Mayor to not include or to remove from the Directory a Brand Family or Tobacco Product Manufacturer shall be subject to review in the manner prescribed by the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

(b) No person shall be issued a license or granted a renewal of a license to act as a Wholesaler unless that person has certified in writing, under penalty of perjury, that he or she will comply fully with this act.

(c) The first report of Wholesalers required by section 6(a) shall be due 45 calendar days after the date on which this act becomes effective; the certifications by a Tobacco Product Manufacturer described in section 4(a) shall be due 45 calendar days after the effective date of this act; and the Directory described in section 4(b) shall be published or made available within 150 calendar days after the effective date of this act.

(d) The Mayor may promulgate regulations necessary to effect the purposes of this act.

(e) In any action brought by the District to enforce this act, the District shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(f) If a court determines that a person has violated this act, the court shall order any profits, gain, gross receipts, or other benefit derived from the violation to be disgorged and paid to the District. Unless otherwise expressly provided, the remedies or penalties provided by this act are cumulative to each other and to the remedies or penalties available under all other laws of the District.

(g)(1) If a court of competent jurisdiction finds that the provisions of this act and of the Model Act conflict and cannot be harmonized, then the provisions of the Model Act shall control.

(2)(A) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this act causes of the Model Act to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of this act shall not be valid.

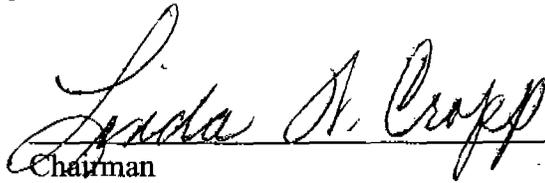
(B) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this act is for any reason held to be invalid, unlawful, or unconstitutional, that holding shall not affect the validity of the remaining portions of this act or any part of this act.

Sec. 9. Fiscal impact statement.

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)).

Sec. 10. Effective date.

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


Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 27, 2004

AN ACT

D.C. ACT 15-385

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
FEBRUARY 27, 2004

*Codification
District of
Columbia
Official Code*

2001 Edition

2004 Summer
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To amend the 21st Century Financial Modernization Act of 2000, and the International Banking Act of 2000, and the Department of Insurance and Securities Regulation Establishment Act of 1996 to transfer the functions of the Department of Banking and Financial Institutions into the Department of Insurance and Securities Regulation and to rename the Department of Insurance and Securities Regulation as the Department of Insurance, Securities, and Banking, and to amend the Home Loan Protection Act of 2002, the District of Columbia Government Comprehensive Merit Personnel Act of 1978, the District of Columbia Theft and White Collar Crimes Act of 1982, the Holding Company System Act of 1993, the Insurance Industry Material Transactions Disclosure Act of 1996, the Producer Licensing Act of 2002, the Insurance Regulatory Trust Fund Act of 1993, the Insurers Rehabilitation and Liquidation Act of 1993, the Risk-Based Capital Act of 1996, the Insurance State of Entry Act of 1996, the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982, the Diabetes Health Insurance Coverage Expansion Act of 2000, the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Act of 1986, the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle, Insurance Act of 1998, the Health Maintenance Organization Act of 1996, the Hospital and Medical Services Corporation Regulatory Act of 1996, the Long-Term Care Insurance Act of 2000, the Captive Insurance Company Act of 2000, the Liability Coverage for Child Development Homes Insurance Act of 1990, the Risk Retention Act of 1993, the Insurance Omnibus Amendment Act of 1994, the Life Insurance Actuarial Opinion of Reserves Act of 1993, the Omnibus Regulatory Reform Amendment Act of 1998, the Life and Health Insurance Guaranty Association Act of 1992, the Securities Act of 2000, the Continuation of Health Coverage Act of 2002, An Act To regulate marine insurance in the District of Columbia, and for other purposes, An Act To provide for regulation of certain insurance rates in the District of Columbia, and for other purposes, the Life Insurance Act of 1934, the Omnibus Regulatory Reform Amendment Act of 1998, and the District of Columbia Workers' Compensation Act of 1979 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Consolidation of Financial Services Amendment Act of 2004".

Sec. 2. The 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.01 *et seq.*), is amended as follows:

(a) Sections 102(7), (9), and (18) (D.C. Official Code § 26-551.02(7), (9), and (18)) are amended by striking the phrase "Department of Banking and Financial Institutions" wherever it appears and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note,
§ 26-551.02

(b) Section 103 (D.C. Official Code § 26-551.03) is amended as follows:

Note,
§ 26-551.03

(1) The section heading is amended to read as follows:

"Administration of the District of Columbia Banking Code."

(2) Subsection (a) is repealed.

(3) Subsection (b) is amended by striking the phrase "of Banking and Financial Institutions is established and".

(4) Subsection (c) is amended to read as follows:

"(c) The Department of Banking and Financial Institutions and the position of the Commissioner of the Department of Banking and Financial Institutions are abolished."

(5) Subsections (d), (e), and (f) are repealed.

(6) Subsection (g) is amended by striking the second sentence.

(7) Subsection (h) is repealed.

(c) Section 104 (D.C. Official Code § 26-551.04) is repealed.

Note,
§ 26-551.04

(d) Section 107(b) (D.C. Official Code § 26-551.07(b)) is amended by striking the phrase "and the Commissioner of the Department of Insurance and Securities Regulation".

Note,
§ 26-551.07

(e) Section 202 (D.C. Official Code § 26-1401.02) is amended as follows:

(1) Paragraph (7) is amended to read as follows:

"(7) "Commissioner" shall have the same meaning as set forth in section 102(7)."

Note,
§ 26-1401.02

(2) Paragraph (9) is amended to read as follows:

"(9) "Department" shall have the same meaning as set forth in section 102(9)."

(f) Section 209(a) (D.C. Official Code § 26-1401.09(a)) is amended by striking the phrase "of the Department of Insurance and Securities Regulation".

Note,
§ 26-1401.09

(g) Section 215(a) (D.C. Official Code § 26-1401.15(a)) is amended as follows:

Note,
§ 26-1401.15

(1) Strike the phrase "of Insurance and Securities Regulation" wherever it appears.

(2) Strike the phrase ", with the approval of the Commissioner of the Department of Insurance and Securities Regulation,".

(h) Section 217(a) (D.C. Official Code § 26-1401.17(a)) is amended by striking the phrase "of the Department of Insurance and Securities Regulation".

Note,
§ 26-1401.17

(i) Section 302 (D.C. Official Code § 26-831.02) is amended as follows:

Note,
§ 26-831.02

(1) Paragraph (4) is amended to read as follows:

"(4) "Commissioner" shall have the same meaning as set forth in section 102(7)."

(2) Paragraph (5) is amended to read as follows:

“(5) “Department” shall have the same meaning as set forth in section 102(9).”.

(j) Section 312(a) (D.C. Official Code § 26-831.12(a)) is amended by striking the phrase “of the Department of Insurance and Securities Regulation”.

Note,
§ 26-831.12

(k) Section 402 (D.C. Official Code § 26-431.02) is amended as follows:

Note,
§ 26-431.02

(1) Paragraph (3) is amended to read as follows:

“(3) “Commissioner” shall have the same meaning as set forth in section 102(7).”.

(2) Paragraph (4) is amended to read as follows:

“(4) “Department” shall have the same meaning as set forth in section 102(9).”.

(l) Section 502 (D.C. Official Code § 26-131.02) is amended as follows:

Note,
§ 26-131.02

(1) Paragraph (3) is amended by striking the word “conduced” and inserting the word “conducted” in its place.

(2) Paragraph (6) is amended to read as follows:

“(6) “Commissioner” shall have the same meaning as set forth in section 102(7).”.

Sec. 3. The Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-101) is amended as follows:

Note,
§ 31-101

(1) A new paragraph (1) is added to read as follows:

“(1) “Banking Bureau” means the Bureau of Banking and Financial Institutions.”.

(2) A new paragraph (1A) is added to read as follows:

“(1A) “Banking Director” means the Director of the Bureau of Banking and Financial Institutions.”.

(3)(A) The existing paragraph (1) is re-designated as paragraph (1B).

(B) Re-designated paragraph (1B) is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

(4) Paragraph (2) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

(b) Section 3 (D.C. Official Code § 31-102) is amended to read as follows:

Note,
§ 31-102

“The Department, under the supervision of the Commissioner, is established as a cabinet level agency of the District government.”.

(c) Section 4(a) (D.C. Official Code § 31-103(a)) is amended as follows:

Note,
§ 31-103

(1) Paragraph (2) is amended by striking the phrase “of Insurance and Securities”.

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(2) A new paragraph (3) is added to read as follows:

“(3) Pursuant to sections 103 and 105 of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code §§ 26-551.03 and 26-551.05), the Commissioner, through the Banking Bureau, shall administer the District of Columbia Banking Code.”

(d) Section 5 (D.C. Official Code § 31-104) is amended by striking the phrase “of Insurance and Securities”.

Note,
§ 31-104

(e) Section 6 (D.C. Official Code § 31-105) is amended as follows:

Note,
§ 31-105

(1) The existing text is designated as subsection (a).

(2) New subsections (b) and (c) are added to read as follows:

“(b) All powers, duties, and functions transferred to the Department of Banking and Financial Institutions under section 103 of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.03), are hereby transferred to the Department.”

“(c) All positions, property, records, and unexpended balances of appropriations, allocations, assessments, and other funds available or to be made available to the Department of Banking and Financial Institutions under section 103 of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.03), are hereby transferred to the Department.”

(f) Section 7 (D.C. Official Code § 31-106) is amended as follows:

Note,
§ 31-106

(1)(A) The existing text is designated as subsection (a).

(B) Re-designated subsection (a) is amended as follows:

(i) Strike the phrase “Commissioner of Insurance and Securities” and insert the word “Commissioner” in its place.

(ii) Strike the phrase “Department of Insurance and Securities Regulation” and insert the word “Department” in its place.

(2) A new subsection (b) is added to read as follows:

“(b)(1) The Bureau of Banking and Financial Institutions is hereby established to administer the District of Columbia Banking Code under supervision of the Commissioner.

“(2) The position of Director of the Bureau of Banking and Financial Institutions is hereby established to administer the Banking Bureau under the supervision of the Commissioner.”

(g) Section 8 (D.C. Official Code § 31-107) is amended as follows:

Note,
§ 31-107

(1) Subsection (a) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the word “Department” in its place.

(2) A new subsection (b-1) is added to read as follows:

“(b-1) There is established within the General Fund of the District of Columbia a trust fund designated as the Banking Regulatory Trust Fund, to which shall be credited all funds obtained pursuant to banking regulation. Any monies received but not expended in a given fiscal year shall be returned to the General Fund of the District of Columbia. Subject to the

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applicable laws relating to the appropriation of District funds, monies received and deposited in the Banking Regulatory Trust Fund shall be used to fund the expenses of the Banking Bureau in the discharge of its administrative and regulatory duties as prescribed by law. All licensing fees and fines, and any other fees determined by the Mayor to be necessary to banking regulation, shall be collected by the Banking Bureau and deposited into the fund. The Mayor shall be responsible for the deposit and expenditure of these monies as provided by law.”

(3) Subsection (d) is amended by striking the phrase “and the Security Regulatory Trust Fund” and inserting the phrase “, the Security Regulatory Trust Fund, and the Banking Regulatory Trust Fund” in its place.

Sec. 4. Conforming amendments.

(a) Section 301(17) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-603.01), is amended as follows:

Note,
§ 1-603.01

(1) Subparagraph (JJ) is repealed.

(2) Subparagraph (PP) is amended to read as follows:

“(PP) Department of Insurance, Securities, and Banking;”.

(b) The District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3201 *et seq.*), is amended as follows:

(1) Section 125a(2) (D.C. Official Code § 22-3225.01) is amended to read as follows:

Note,
§ 22-3225.01

“(2) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking, the Commissioner’s designee, or the Department of Insurance, Securities, and Banking.”.

(2) Section 125h(d) (D.C. Official Code § 22-3225.08) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 22-3225.08

(3) Section 125m (D.C. Official Code § 22-3225.13) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 22-3225.13

(c) Section 2 of the International Banking Act of 2000, effective April 3, 2001 (D.C. Law 13-268; D.C. Official Code § 26-631), is amended as follows:

Note,
§ 26-631

(1) Paragraph (2) is amended to read as follows:

“(2) “Commissioner” shall have the same meaning as set forth in section 102(7) of the 21st Century Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.02(7)).”.

(2) Paragraph (3) is amended to read as follows:

“(3) “Department” shall have the same meaning as set forth in section 102(9) of the 21st Century Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C.

Official Code § 26-551.02(9)).”.

(d) Section 101 of the Home Loan Protection Act of 2002, effective May 7, 2002 (D.C. Law 14-132; D.C. Official Code § 26-1151.01), is amended as follows:

Note,
§ 26-1151.01

(1) Paragraph (6) is amended to read as follows:

“(6) “Commissioner” shall have the same meaning as set forth in section 102(7) of the 21st Century Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.02(7)).”.

(2) Paragraph (8) is amended to read as follows:

“(8) “Department” shall have the same meaning as set forth in section 102(9) of the 21st Century Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.02(9)).”.

(e) Section 9 of the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-708), is amended by striking the phrase “Department of Insurance and Securities Regulation” wherever it appears and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-708

(f) Section 4a of the Insurance Industry Material Transactions Disclosure Act of 1996, effective October 21, 2000 (D.C. Law 13-191; D.C. Official Code § 31-1004), is amended by striking the phrase “Department of Insurance and Securities Regulation” wherever it appears and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-1004

(g) The Producer Licensing Act of 2002, effective March 27, 2003 (D.C. Law 14-264; D.C. Official Code § 31-1131 *et seq.*), is amended as follows:

(1) Section 2 (D.C. Official Code § 31-1131.02) is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-1131.02

(2) Section 15 (D.C. Official Code § 31-1131.15) is amended by striking the phrase “Department of Insurance and Securities Regulation” wherever it appears and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-1131.15

(h) The Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1201 *et seq.*), is amended as follows:

(1) Section 2 (D.C. Official Code § 31-1201) is amended as follows:

(A) Strike the phrase “Commissioner of Insurance and Securities” and insert the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-1201

(B) Strike the phrase “Department of Insurance and Securities Regulation” and insert the phrase “Department of Insurance, Securities, and Banking” in its place.

(2) Section 3 (D.C. Official Code § 31-1202) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-1202

(3) Section 9 (D.C. Official Code § 31-1208) is amended by striking the phrase

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- “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1208
- (4) Section 10 (D.C. Official Code § 31-1209) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1209
- (i) The Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*), is amended as follows:
- (1) Section 2 (D.C. Official Code § 31-1301) is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1301
- (2) Section 4 (D.C. Official Code § 31-1303) is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1303
- (3) Section 10 (D.C. Official Code § 31-1309) is amended as follows: Note,
§ 31-1309
- (A) Strike the phrase “Department of Insurance Securities” and insert the phrase “Department of Insurance, Securities, and Banking” in its place.
- (B) Strike the phrase “Department of Insurance and Securities Regulation” and insert the phrase “Department of Insurance, Securities, and Banking” in its place.
- (4) Section 13(b) (D.C. Official Code § 31-1312(b)) is amended by striking the phrase “Department of Insurance and Securities” wherever it appears and inserting the phrase “Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1312
- (5) Section 20(a) (D.C. Official Code § 31-1319(a)) is amended by striking the phrase “Department of Insurance and Securities” wherever it appears and inserting the phrase “Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1319
- (j) Section 2 of the Law on Examinations Act of 1993, effective October 21, 1993 (D.C. Law 10-49; D.C. Official Code § 31-1401), is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1401
- (k) Section 4 of the Required Annual Financial Statements and Participation in the NAIC Insurance Regulatory Information System Act of 1993, effective October 21, 1993 (D.C. Law 10-42; D.C. Official Code § 31-1903), is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-1903
- (l) The Risk-Based Capital Act of 1996, effective April 9, 1997 (D.C. Law 11-233; D.C. Official Code § 31-2001 *et seq.*), is amended as follows:
- (1) Section 2 (D.C. Official Code § 31-2001) is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place. Note,
§ 31-2001
- (2) Section 9 (D.C. Official Code § 31-2008) is amended by striking the phrase Note,
§ 31-2008

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“Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

(3) Section 12 (D.C. Official Code § 31-2011) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-2011

(m) Section 2 of the Insurance State of Entry Act of 1996, effective May 24, 1996 (D.C. Law 11-128; D.C. Official Code § 31-2201), is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-2201

(n) Section 3 of the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982, effective July 22, 1982 (D.C. Law 4-155; D.C. Official Code § 31-2402), is amended by striking the phrase “Commissioner of Insurance and Securities, established by Reorganization Order No. 43, dated June 23, 1953,” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-2402

(o) Section 1 of An Act To regulate marine insurance in the District of Columbia, and for other purposes, approved March 4, 1922 (42 Stat. 401; D.C. Official Code § 31-2602.01), is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-2602.01

(p) Section 1 of An Act To provide for regulation of certain insurance rates in the District of Columbia, and for other purposes, approved May 20, 1968 (62 Stat. 242; D.C. Official Code § 31-2701), is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-2701

(q) Section 2 of the Diabetes Health Insurance Coverage Expansion Act of 2000, effective October 21, 2000 (D.C. Law 13-175; D.C. Official Code § 31-3001), is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-3001

(r) Section 2 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 § 31-3101), is amended by striking the phrase “Commissioner of Insurance and Securities” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-3101

(s) The Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-3301.01 *et seq.*), is amended as follows:

(1) Section 101 (D.C. Official Code § 31-3301.01) is amended by striking the phrase “Commissioner of the Department of Insurance and Securities Regulation” and inserting the phrase “Commissioner of the Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-3301.01

(2) Section 302 (D.C. Official Code § 31-3303.02) is amended by striking the phrase “Department of Insurance and Securities Regulation” and inserting the phrase “Department of Insurance, Securities, and Banking” in its place.

Note,
§ 31-3303.02

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(t) Section 2 of the Health Maintenance Organization Act of 1996, effective April 9, 1997 (D.C. Law 11-235; D.C. Official Code § 31-3401), is amended by striking the phrase "Commissioner of Insurance and Securities" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3401

(u) The Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3501 *et seq.*), is amended as follows:

(1) Section 3(b)(2) (D.C. Official Code § 31-3502(b)(2)) is amended by striking the phrase "Commissioner of Insurance and Securities" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3502

(2) Section 5(b) (D.C. Official Code § 31-3504(b)) is amended by striking the phrase "Commissioner of Insurance and Securities" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3504

(3) Section 15(j)(3) (D.C. Official Code § 31-3514(j)(3)) is amended by striking the phrase "Department of Insurance and Securities Regulation" and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3514

(4) Section 22(b)(3) (D.C. Official Code § 31-3521(b)(3)) is amended by striking the phrase "Department of Insurance and Securities Regulation" and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3521

(5) Section 23 (D.C. Official Code § 31-3522) is amended by striking the phrase "Department of Insurance and Securities Regulation" wherever it appears and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3522

(v) Section 2 of the Long-Term Care Insurance Act of 2000, effective May 23, 2000 (D.C. Law 13-121; D.C. Official Code § 31-3601), is amended by striking the phrase "Commissioner of the District of Columbia Department of Insurance and Securities Regulation" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3601

(x) Section 2 of the Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901), is amended by striking the phrase "Department of Insurance and Securities Regulation" wherever it appears and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-3901

(y) Section 2 of the Liability Coverage for Child Development Homes Insurance Act of 1990, effective June 13, 1990 (D.C. Law 8-140; D.C. Official Code § 31-4001), is amended by striking the phrase "Commissioner of Insurance and Securities" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-4001

(z) Section 2 of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4101), is amended by striking the phrase "Commissioner of Insurance and Securities" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-4101

(aa) Section 2 of the Insurance Omnibus Amendment Act of 1994, effective April 26, 1994 (D.C. Law 10-103; D.C. Official Code § 31-4202), is amended as follows:

Note,
§ 31-4202

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(1) Strike the phrase "Commissioner of Insurance and Securities" and insert the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

(2) Strike the phrase "Department of Insurance and Securities Regulation" and insert the phrase "Department of Insurance, Securities, and Banking" in its place.

(bb) Section 1(a) of Chapter II of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1129; D.C. Official Code § 31-4301(a)), is amended as follows:

Note,
§ 31-4301

(1) Strike the phrase "Department of Insurance and Securities Regulation" and insert the phrase "Department of Insurance, Securities, and Banking" in its place.

(2) Strike the phrase "Commissioner of Insurance and Securities" and insert the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

(cc) Section 2 of the Life Insurance Actuarial Opinion of Reserves Act of 1993, effective October 21, 1993 (D.C. Law 10-50; D.C. Official Code § 31-4901) is amended by striking the phrase "Department of Insurance and Securities Regulation" wherever it appears and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-4901

(dd) Section 2 of The Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, approved September 25, 1962 (76 Stat. 580; D.C. Official Code § 31-5102), is amended by striking the phrase "Commissioner of Insurance and Securities" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-5102

(ee) Section 648 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1290; D.C. Official Code § 31-5201), is amended by striking the phrase "Commissioner of Insurance and Securities" wherever it appears and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-5201

(ff) Section 1202 of the Omnibus Regulatory Reform Amendment Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code § 31-5301), is amended by striking the phrase "Commissioner of Insurance of the District of Columbia" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-5301

(gg) Section 2 of the Life and Health Insurance Guaranty Association Act of 1992, effective July 22, 1992 (D.C. Law 9-129; D.C. Official Code § 31-5401), is amended by striking the phrase "Commissioner of Insurance and Securities" and inserting the phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-5401

(hh) Section 101 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01), is amended by striking the phrase "Department of Insurance and Securities Regulation" wherever it appears and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note,
§ 31-5601.01

(ii) Section 2 of the Continuation of Health Coverage Act of 2002, effective June 25, 2002 (D.C. Law 14-149; D.C. Official Code § 32-731), is amended by striking the phrase "Commissioner of the Department of Insurance and Securities Regulation" and inserting the

Note,
§ 32-731

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phrase "Commissioner of the Department of Insurance, Securities, and Banking" in its place.

(jj) The District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980 (D.C. Law 3-77; D.C. Official Code § 32-1501 *et seq.*), is amended as follows:

(1) Section 39 (D.C. Official Code § 32-1538) is amended by striking the phrase "Department of Insurance and Securities Regulation" and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

Note, § 32-1538

(2) Section 44 (D.C. Official Code § 32-1543) is amended by striking the phrase "Department of Insurance and Securities Regulation" and inserting the phrase "Department of Insurance, Securities, and Banking" in its place.

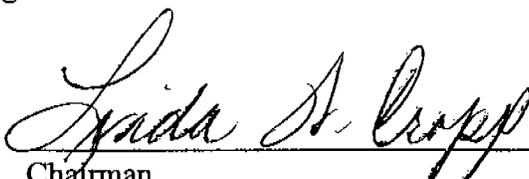
Note, § 32-1543

Sec. 5. Fiscal impact statement.

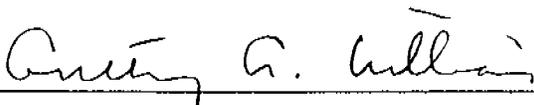
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

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 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 27, 2004

AN ACT

D.C. ACT 15-386

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
FEBRUARY 27, 2004Codification
District of
Columbia
Official Code

2001 Edition

2004 Summer
Supp.West Group
Publisher

To amend, on a temporary basis, the Captive Insurance Company Act of 2000 to authorize the formation of nonprofit captive insurance companies in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Captive Insurance Company Temporary Amendment Act of 2004".

Sec. 2. The Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3901) is amended by adding a new paragraph (16A) to read as follows:

Note,
§ 31-3901

"(16A) "Nonprofit captive insurer" means any captive insurer organized under this act that is exempt from federal income taxation."

(b) Section 7 (D.C. Official Code § 31-3906) is amended as follows:

Note,
§ 31-3906

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

"(a) A pure captive insurer, an association captive insurer, agency captive insurer, sponsored captive insurer, or a rental captive insurer may be organized in any form authorized by the Commissioner."

(2) Subsection (b) is repealed.

(3) Subsection (i) is amended by striking the word "incorporators" and inserting the phrase "incorporators or organizers" in its place.

(4) Subsection (l) is amended by and by striking the phrase "general corporation law set forth in the District of Columbia Business Corporation Act" and inserting the phrase "District law applicable to the form of business organization of the captive insurer" in its place.

(5) Subsection (m) is amended by striking phrase "articles of association," and by inserting the phrase "articles of association, articles of organization (or equivalent organizational document)," in its place.

(6) A new paragraph (n) is added to read as follows:

"(n) Any form of captive insurer permitted by this act may be organized as a nonprofit captive insurer under this act. A nonprofit captive insurer shall not be exempt from the premium tax obligation under section 16."

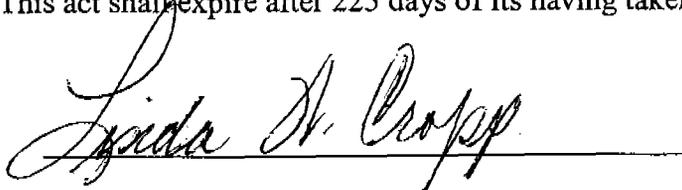
Sec. 3. Fiscal impact statement.

The Council adopts the attached fiscal impact statement 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)).

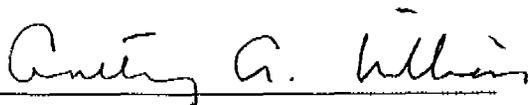
Sec. 4. Effective date.

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

(b) This act shall expire after 225 days of its having taken effect.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
February 27, 2004

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AN ACT
D.C. ACT 15-387

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
FEBRUARY 27, 2004

To provide, on an emergency basis, the details of the purpose for the expenditures of \$66.8 million from the reserve funds.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "February Priority Spending Emergency Act of 2004".

Sec. 2. Pursuant to section 202(j)(3)(B) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 109; D.C. Official Code § 47-392.02(j)(3)), the Council approves the expenditure of \$66.8 million from the reserve funds as follows:

(1) The amount of \$58.2 million, of which \$49 million shall be allocated from the fiscal year 2004 Operating Cash Reserve funds and \$9.2 million shall be reallocated from funds previously allocated that remain available from the fiscal year 2002 Budgeted Reserve funds, shall be allocated to address spending pressures as follows:

(A) An amount not to exceed \$5.6 million shall be for the Department of Mental Health to cover an estimated net revenue reduction due to a higher proportion of patients that are not Medicaid eligible utilizing public community-based core services agencies.

(B) An amount not to exceed \$700,000 shall be for the Department of Health for a new animal-control contract.

(C) An amount not to exceed \$10.4 million shall be for the Department of Human Services, of which \$8 million shall be for costs associated with court ordered mandates and \$2.4 million shall be for costs associated with the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. Law 104-191; 110 Stat. 1936).

(D) An amount not to exceed \$6.5 million shall be for the Public Charter Schools to provide parity, in accordance with the provisions of the Per Pupil Funding Formula, for funds added to the budget of the District of Columbia Public Schools.

(E) An amount not to exceed \$900,000 shall be for the State Education Office to fund the fiscal year 2003 and fiscal year 2004 student census audits.

(F) An amount not to exceed \$10.9 million shall be for the Department of Corrections, of which \$8.4 million shall be to fund the cost of housing additional inmates at Correctional Treatment Facilities and \$2.5 million shall be to fund increased costs for off-site medical care for inmates due to the anticipated increase in inmate population.

(G) An amount not to exceed \$8.8 million shall be for the Office of the Chief Technology Officer, of which \$2.3 million shall be for the Department of Human Services' Data Center Management, \$1.1 million shall be for the Metropolitan Police Department's Data

ENROLLED ORIGINAL

Center Management, \$800,000 shall be for the SHARE Data Center, and \$4.6 million shall be for District-wide unbudgeted Microsoft software licensing costs.

(H) An amount not to exceed \$400,000 shall be for the School Transit Subsidy to cover the cost of a 5% increase in the number of riders.

(I) An amount not to exceed \$2.5 million shall be for the Office of Financial Resource Management, of which \$1.7 million shall be to cover a 7% increase in the cost of natural gas and \$800,000 shall be for legal expenses.

(J) An amount not to exceed \$100,000 shall be for the Office of the Mayor to cover E-Grant compliance with the Federal Financial Assistance Management Improvement Act of 1999, approved November 20, 1999 (Pub. Law 106-107; 113 Stat. 1486).

(K) An amount not to exceed \$2.2 million shall be for the Office of Property Management to cover the fixed costs of facility management services at the D.C. General Hospital Campus.

(L) An amount of \$9.2 million to the Department of Mental Health, of which \$400,000 shall be to cover an estimated net revenue reduction due to a higher proportion of patients that are not Medicaid eligible utilizing public community-based core services agencies, and \$8.8 million shall be to cover the costs associated with Medicaid disallowances.

(2) An amount of \$9.6 million, of which \$500,000 shall be allocated from the fiscal year 2004 Operating Cash Reserve funds, \$2.7 million shall be reallocated from funds previously allocated that remain available from the fiscal year 2003 Budgeted Reserve funds, and \$6.4 million shall be reallocated from funds previously allocated that remain available from the fiscal year 2001 Budgeted Reserve funds, shall be allocated to address additional program requirements as follows:

(A) An amount not to exceed \$200,000 shall be for the Department of Public Works to fund special events and Helping Hands Clean-Up overtime.

(B) An amount not to exceed \$900,000 shall be for the Children Youth Investment Trust for summer programs.

(C) An amount not to exceed one million dollars shall be for the State Education Office for a local funds match for federal funds received for the Family Literacy Program, as required by the District of Columbia Appropriations Act, 2004, approved January 23, 2004 (Pub. Law 108-199; 118 Stat. 3).

(D) An amount not to exceed \$1.1 million shall be for Workforce Investment to be disbursed to various agencies to cover pay differential costs associated with Operation Enduring Freedom.

(E) An amount not to exceed \$400,000 shall be for the Department of Employment Services to restore summer jobs.

(F) An amount not to exceed \$5 million shall be for the District of Columbia Public Schools for the Teacher Buyout Incentive Program.

Sec. 3. Fiscal impact statement.

The use of the Reserve funds is already incorporated into the District's budget and financial plan and, therefore, the enactment of this legislation has no fiscal impact.

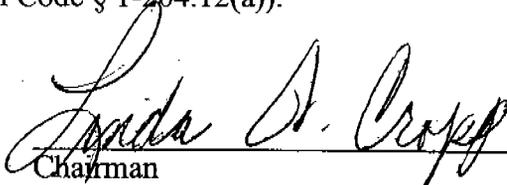
Sec. 4. Effective date.

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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

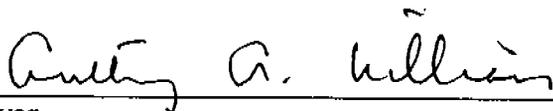
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412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 27, 2004