

**Council of the District of Columbia**

**Committee on Business, Consumer and Regulatory Affairs**

**Councilmember Vincent B. Orange, Chair**

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**July 9, 2014**

**Testimony of**

**Chester A. McPherson, Acting Commissioner  
Department of Insurance, Securities and Banking on**

**B20-537, THE “INSURANCE HOLDING COMPANY AND  
CREDIT FOR REINSURANCE MODERNIZATION ACT OF  
2013”**

**B20-673, THE “DC TRANSACTION MODERNIZATION  
ELECTRONIC DELIVERY AND POSTING ACT of 2014”**

**B20-774, THE “CAPTIVE INSURANCE COMPANY  
AMENDMENT ACT OF 2014”**

**B20-797, THE “FEDERAL HEALTH REFORM  
IMPLEMENTATION AND OMNIBUS AMENDMENT ACT OF  
2014”**

**B20-802, THE “NMLS CONFORMITYACT OF 2014”**



Good morning Councilmember Orange, Committee members and staff. I am Chester McPherson, Acting Commissioner of the Department of Insurance, Securities and Banking. Today, I appear to testify on five pieces of legislation. They include a variety of important updates to ensure the department has the appropriate regulatory authority to enforce current law and to properly supervise D.C.'s insurance and financial services markets. The legislation before you today includes the following:

- B20-537, “The Insurance Holding Company and Credit for Reinsurance Modernization Act of 2013;”
- B20-673, “The DC Transaction Modernization Electronic Delivery and Posting Act of 2014;”
- B20-774, “The Captive Insurance Company Amendment Act of 2014;”
- B20-797, “The Federal Health Reform Implementation and Omnibus Amendment Act of 2014;” and
- B20-802, “The NMLS Conformity Act of 2014.”

Four of the five bills relate to our insurance regulatory functions. The remaining bill pertains to streamlining and enhancing the registration and supervision of the non-depository financial service providers in the District. Generally, all of the bills before you today would implement important updates to reflect federal mandates and/or state model laws to strengthen our regulatory authority.

**B20-537 “The Insurance Holding Company and Credit for Reinsurance Modernization Act of 2013”**

I will start with Bill Number 20-537, “The Insurance Holding Company and Credit for Reinsurance Modernization Act of 2013.” The purpose of this bill is to modernize how the District regulates insurance holding companies and their subsidiaries, and the process by which insurance companies can obtain credit for reinsurance.

The bill enhances the commissioner’s surveillance tools and imposes additional reporting requirements on insurance holding companies, in particular with respect to subsidiaries and any merger or acquisition transactions related thereto.

The proposed legislation also modernizes the District’s reinsurance regulation to comply with the Dodd–Frank Wall Street Reform and Consumer Protection Act. It would establish various regulatory requirements to better monitor the reinsurance market in the District. Reinsurance is the process by which insurers transfer all or portions of their risks to other insurers, known as “reinsurers,” to limit the insurers’ exposure to one significant loss or an unanticipated large number of routine losses. Reinsurers are a critical part of the insurance market due to their ability to help spread risk and increase insurance writing capacity. This also makes properly supervising reinsurers an important function of insurance regulators.

Additionally, the bill, which has two titles, is based on National Association of Insurance Commissioner’s or NAIC Model laws and incorporate accreditation elements. As you are aware, the NAIC accreditation process seeks to have states adopt insurance regulatory laws that are as uniform and consistent as possible. In exchange, states that are NAIC-accredited relieve their domestic companies from having

to separately comply with a foreign state's law where they conduct business by virtue of having substantially similar laws.

At this time, I would also like to offer to the Committee what I view are a few friendly amendments. The amendments include the recently adopted NAIC accreditation elements of another model law: "NAIC Standards to Identify Insurance Companies Deemed to Be in Hazardous Financial Condition." The amendments will establish additional standards by which insurers will be evaluated to determine if a company is in hazardous financial condition, and to expand the Commissioner's authority to impose additional corrective or remedial actions.

Under the new standards, the commissioner would, for example, review if the insurer has made adequate provisions for anticipated cash flows required by contractual obligations in light of the assets held or whether an insurer's operating loss in the last 12 months is greater than 20 percent of the insurers remaining surplus. We would also look at whether the insurer has failed to meet financial or holding company

filing requirements and whether established reserves comply with minimum standards established by law or practice. The standards would also include a catch-all for any finding warranting action on the part of the commissioner.

As it relates to the bill generally, and the additional amendments proposed today, the department will gladly work with the committee to answer any questions. We would appreciate your support in light of the importance of maintaining the District's NAIC accreditation.

**B20-673, “The DC Transaction Modernization Electronic  
Delivery and Posting Act of 2014”**

Next, I will discuss B20-673, “The DC Transaction Modernization Electronic Delivery and Posting Act of 2014.” The bill would authorize insurers to transmit documents related to insurance policies and transactions electronically to consumers. It also allows insurers to post such information on the insurer's website.

The department currently allows insurers to transmit documents to the department electronically by request. Delivery by electronic means

will satisfy any delivery method required by law, such as delivery via first class mail. Policyholders will continue to have the right to decline electronic delivery and receive notices by regular mail and also withdraw their consent to receive documents and notices electronically if their preferences change.

We recommend one amendment to this bill before enactment. DISB suggests the preamble state that “insurers” are authorized to transmit insurance information/documents electronically, not “DISB.”

### **B20-774 “The Captive Insurance Company Amendment Act of 2014”**

The next bill up for discussion is B20-774, “The Captive Insurance Company Amendment Act of 2014.” A captive insurance company is a specialized type of insurance company that provides commercial insurance to its owners, which are typically mid-sized to large businesses, associations and non-profits. Captives are formed to augment a company’s risk management program.

The legislation reflects DISB's experiences in regulating captive insurers, and addresses certain issues that have arisen since DISB licensed its first captive insurer in 2001.

The District has licensed over 190 captive insurance companies in the past 13 years. These companies have paid more than \$10 million in taxes and fees to the District. The District is home to several captive insurers owned by such well-known companies and organizations including General Motors, Subaru, AARP, the New York/New Jersey Port Authority, Warren Buffet's Berkshire Hathaway, Amtrak, MedStar Health and the District of Columbia. In brief, the proposed amendments would:

- Strike references to outmoded segregated accounts that are no longer regulated by DISB;
- Clarify the statutory requirements for protected cell captive insurers and their protected cells; clarify the confidentiality of captive insurers' license application materials;
- Permit DISB to waive certain examination requirements;



- Make the Unfair Trade Practices and Claims Settlements Act applicable to District-domiciled risk retention groups; and
- Require the filing of quarterly statements by risk retention groups licensed as captive insurers.

DISB recommends the committee's support for this legislation to ensure that the District remains an attractive domicile for captive insurers and retains its reputation as being among the leading U.S. jurisdictions for captive insurance.

**B20-797 “The Federal Health Reform Implementation and Omnibus Amendment Act of 2014”**

The last of the insurance related bills I will discuss today is Bill Number 20-797, “The Federal Health Reform Implementation and Omnibus Amendment Act of 2014.” The purpose of the bill is to authorize the commissioner to implement and enforce the health insurance market provisions of the Affordable Care Act.

The provisions include the authority to: establish a benchmark plan that includes the essential health benefits and require that certain rating standards be used by health insurance issuers when setting rates; provide uniform definitions for the terms “large employer” and “small employer;” define “excepted benefits;” and regulate stop-loss insurance.

To date, the District has been fully committed to implementing the Affordable Care Act in the city, and to supporting its health insurance marketplace, DC Health Link. In this regard, the proposed amendments are not intended to establish new policy but rather to implement policy decisions already adopted by DISB and the District’s Health Benefit Exchange Authority Board of Directors. In addition, the amendments will ensure that the department has the authority in place to enforce the health insurance market reform provisions of the Affordable Care Act.

As mentioned earlier, this bill also includes proposals related to regulating stop-loss insurance from the National Association of Insurance Commissioners model law and California’s recently enacted law. Stop-loss insurance is a product that has the potential to undermine

the improvements to the District's small businesses health insurance market that have come as a result of the ACA if it is not properly regulated. The bill limits the availability of stop-loss coverage to small employers unless the employer has a fully-insured health benefit plan, and imposes reporting requirement for all policies issued to small employers.

Finally, having heard from various stakeholders, DISB requests the Committee consider two small changes to the legislation:

1. On page 5, with respect to "excepted benefits," on line 10, we would ask that qualifying language after "Limited scope dental or vision benefits" be replaced with "so long as the benefits are offered in a manner not inconsistent with applicable federal law," and on line 18, that the term "qualified benefit plan," be replaced with "Minimum Essential Coverage." The changes ensure that limited scope dental and vision plans retain the full benefit of their HIPPA exemption, and that "excepted benefit" products are available outside the DC Health Link, but on the same basis.

2. On page 10, the definition of small group sets the cutoff at 50 employees. Under the ACA, the definition of small group increases to up to 100 employees in 2016 and the bill should reflect that change.

Again, the department will work with the Committee staff to answer any questions regarding these amendments.

### **B20-802, “The NMLS Conformity Act of 2014”**

The last piece of legislation I will discuss today is Bill Number 20-802, “The NMLS Conformity Act of 2014.” The District is one of 58 state regulatory agencies that use the Nationwide Mortgage Licensing System, known as the NMLS, for the licensure and regulation of mortgage companies (lenders, brokers and dual authority licensees) and mortgage loan originators.

When NMLS became operational in 2008, it was limited to mortgage lenders and brokers. In April 2012, NMLS was expanded to accommodate the licensing and registration of non-mortgage, non-depository financial services industries, including consumer lending, money services businesses and debt collection. To date, approximately

33 states have transitioned existing non-mortgage financial services licenses and registrations onto the expanded system. The District remains in the minority of jurisdictions that has not transitioned because DISB's current statutory authority limits the agency's use of NMLS to mortgage-related financial service providers.

The bill would provide explicit legislative authority to expand the use of NMLS to all District money transmitters, money lenders, sales finance companies, retail sellers, check cashers and non-bank automated teller machine operators. It would also, among other things:

- Require all non-mortgage financial services licensees and registrants to obtain a unique identifier through NMLS, which allows them to be tracked across state lines;
- Process criminal background checks and credit reports of non-mortgage financial services licensees and registrants and;

- Require all non-mortgage financial services licensees and registrants to submit and maintain annual reports and financial statements in NMLS.

This legislation would create a single, coordinated licensing process for District licensees and registrants consistent with both the public interest and provisions of law regulating the consumer financial services industries.

This concludes my testimony today on the five bills. I'd be happy to take any of your questions.