

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Captive Insurance Company Act of 2004 to authorize the use of special purpose financial captive insurance companies for the exclusive purpose of facilitating the securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Special Purpose Financial Captive Authorization Amendment Act of 2006".

Sec. 2. The Captive Insurance Company Act of 2004, effective May 17, 2005 (D.C. Law 15-262; D.C. Official Code § 31-3931.01 *et seq.*), is amended as follows:

(a) The existing text is designated as Title I.

(b) A new Title II is added to read as follows:

"TITLE II. SPECIAL PURPOSE FINANCIAL CAPTIVE INSURANCE COMPANIES

"Sec. 201. Purpose.

"This title provides for the creation of special purpose financial captive insurance companies for the exclusive purpose of facilitating the securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. Their creation is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden insurers' access to sources of capital, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development of the District of Columbia through its captive insurance program.

"Sec. 202. Definitions.

"In addition to the terms defined in section 2, for the purposes of this title, the term:

"(1)(A) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

"(B) Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of another person, but this presumption may be rebutted by a showing that control does not exist.

"(C) The fact that an SPFC exclusively provides reinsurance to a ceding

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insurer under an SPFC contract shall not by itself constitute common control between the SPFC and the ceding insurer.

"(2) "Counterparty" means the insurer that cedes risk to an SPFC and which, unless otherwise approved by the Commissioner, is the parent or an affiliated company of the SPFC.

"(3) "Fair value" means:

"(A) As to cash, the amount of it; and

"(B) As to an asset other than cash:

"(i) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties.

"(ii) The quoted mid-market price for the asset in active markets must be used if available.

"(iii) If a quoted mid-market price is not available, a value determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset.

"(4) "Insolvency" or "insolvent" means an inability to pay obligations when they are due, unless those obligations are the subject of a bona fide dispute.

"(5) "Insurance securitization" means a package of related risk-transfer instruments, capital market offerings, and facilitating administrative agreements by which proceeds are obtained by an SPFC directly or indirectly through the issuance of securities, and which proceeds are held in trust pursuant to the provisions of this title to secure the obligations of the SPFC under one or more SPFC contracts with a counterparty, where investment risk to the holders of these securities is contingent upon the obligations of the SPFC to the counterparty under the SPFC contract in accordance with the terms of the transaction.

"(6) "Management" means the board of directors, managing board, or other individuals vested with overall responsibility for the management of the affairs of an SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC.

"(7) "Organizational document" means the articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish an SPFC as a legal entity.

"(8) "Permitted investments" means those investments that meet the qualifications set forth in section 207.

"(9) "Qualified United States financial institution" means a financial institution that is eligible to act as a fiduciary of a trust and is:

"(A) Organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States, any state of the United States, or the District of Columbia; and

"(B) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

"(10) "Securities" has the same meaning as the term "security" in section 101(31) of the Securities Act of 2000, effective October 24, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(31)).

"(11) "SPFC" or "Special Purpose Financial Captive" means a captive insurer that is formed for the purpose of an insurance securitization and that only insures or reinsures

the risks of its counterparty.

"(12) "SPFC contract" means a contract between an SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.

"(13) "SPFC securities" means securities issued by an SPFC.

"(14) "Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3 of the Statement of Statutory Accounting Principles No. 41, as amended, National Association of Insurance Commissioners.

"Sec. 203. Application of Title I.

"(a) Except as otherwise provided, sections 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 29, 21, 22 and 23 shall apply under this title to SPFCs.

"(b) The Commissioner, by rule or order, may exempt an SPFC, on a case-by-case basis, from the provisions of this title that the Commissioner determines to be inappropriate given the nature of the risks to be insured.

"Sec. 204. Application requirements.

"(a) (1) An SPFC shall apply to the Commissioner for a certificate of authority. The application for a certificate of authority shall include the items required by section 10.

"(2) If an SPFC will have one or more protected cells, the SPFC shall include in its application for a certificate of authority:

"(A) A strategic business plan demonstrating the manner in which the SPFC will:

"(i) Account for the loss and expense experience of each segregated account at a level of detail found to be sufficient by the Commissioner; and

"(ii) How it will report the experience to the Commissioner;

"(B) A statement acknowledging that all financial records of the SPFC, including records pertaining to any protected cells, will be made available for inspection or examination by the Commissioner;

"(C) All contracts or sample contracts between the SPFC and any counterparty related to each protected cell; and

"(D) Evidence that expenses are allocated to each segregated account in an equitable manner.

"(b) An SPFC's strategic business plan shall include:

"(1) A description of the contemplated insurance securitization, the SPFC contract, and related transactions;

"(2) Draft documentation or, at the discretion of the Commissioner, a written summary of all material agreements that are entered into to effectuate the SPFC contract and the insurance securitization, which shall include the name of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;

"(3) The investment policy of the SPFC and a description of its investment strategy;

"(4) A description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled; and

"(5) Pro forma balance sheets and income statements illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.

"(c) Section 8 of the Law on Examinations Act of 1993, effective October 21, 1993

(D.C. Law 10-49; D.C. Official Code §31-1407), shall apply to examinations, investigations, and processing conducted pursuant to this title.

“(d) In determining whether to issue a certificate of authority, the Commissioner shall consider, in addition to the matters specified in section 2(b), whether:

“(1) The proposed strategic business plan provides a reasonable and expected successful operation;

“(2) The terms of the SPFC contract and related transactions comply with this title; and

“(3) The proposed strategic business plan is not hazardous to any counterparty.

“(e) The Commissioner shall not issue a certificate of authority to an SPFC until the Commissioner has received written notification, or other assurance satisfactory to the Commissioner, from the commissioner of the state of domicile of each counterparty that such commissioner has approved, or not disapproved, the transaction.

“(f) The SPFC shall provide a complete set of the documentation of the insurance securitization to the Commissioner upon closing of the transactions, including an opinion of legal counsel with respect to compliance with this act and any other applicable laws as of the effective date of the transaction.

“(h) Any material change of the SPFC’s strategic business plan shall require prior approval of the Commissioner; provided, that:

“(1) If initially approved in the strategic business plan, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of part or all of the securities issued pursuant to initial insurance securitization transactions may not be considered a material change; and

“(2) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to the provisions of this title shall not be considered a material change if the replacement swap counterparty carries a similar or higher rating to its predecessor with 2 or more nationally recognized rating agencies.

“(i) Upon termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with the SPFC contract, the certificate of authority granted by the Commissioner shall expire or, in the case of retiring and surviving protected cells, shall be modified, and the SPFC shall no longer be authorized to conduct activities unless and until a new or modified certificate of authority is issued pursuant to a new filing pursuant to the provisions of this section or as agreed by the Commissioner.

“Sec. 205. Capital and surplus.

“(a) In addition to any other capital required to be maintained pursuant to subsection (c) of this section, an SPFC authorized to do business in the District shall at all times maintain a minimum unimpaired capital of \$100,000.

“(b) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the capital required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

“(c) The Commissioner may require an SPFC, including each protected cell, to maintain additional unimpaired capital based on the type, volume, and nature of the insurance business that is transacted by the SPFC and may determine the amount of capital, if any, that may be in the form of an irrevocable letter of credit.

“(d) A letter of credit used by an SPFC or segregated account as evidence of capital required pursuant to this section shall:

“(1) Be issued by a bank chartered in the District or by a branch of a bank

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located in the District if such bank is a member of the United States Federal Reserve System, or its deposits are insured by the Federal Deposit Insurance Corporation;

“(2) Be issued on a form approved by the Commissioner; and

“(3) Include a provision pursuant to which the letter of credit is automatically renewed each year.

“(e) An SPFC shall not be issued a certificate of authority, and shall not hold a certificate of authority, unless the SPFC has and maintains, in addition to any other surplus required to be maintained pursuant to subsection (g) of this section, an unencumbered surplus of not less than \$150,000.

“(f) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the surplus required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

“(g) The Commissioner may prescribe additional requirements relating to surplus based on the type, volume, and nature of the insurance business that is transacted by an SPFC or protected cell and requirements regarding which surplus, if any, may be in the form of an irrevocable letter of credit.

“(h) A letter of credit used by an SPFC or segregated account as evidence of surplus required pursuant to this section shall meet the same requirements as a letter of credit issued for paid in capital found subsection (d) of this section.

“Sec. 206. Securities of SPFCs.

“(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved strategic business plan, and its organizational documents.

“(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of such securities.

“(c) Subject to the approval of the Commissioner, an SPFC may:

“(1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting;

“(2) Submit for prior approval of the Commissioner periodic written requests for payments of interest on and repayments of principal of surplus notes.

“(d) Surplus notes issued by an SPFC constitute surplus or contribution notes of the type described in section 41(7) of the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1340(7)).

“(e) The Commissioner may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with his ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

“(f) The obligation to repay principal or interest, or both, on the securities issued by the SPFC shall reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract.

“Sec. 207. Authorized contracts.

“(a) An SPFC shall insure only the risks of a counterparty and shall not issue a contract for assumption of risk or indemnification of loss other than an SPFC contract; provided, that an SPFC may cede risks assumed through an SPFC contract to third party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the Commissioner.

“(b) An SPFC may enter into agreements with affiliated companies and third parties and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of an SPFC contract and insurance securitization contemplated by the strategic business plan

approved by the Commissioner. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements.

“(c) An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of an SPFC under an SPFC contract.

“(d) An SPFC contract shall:

“(1) Obligate the SPFC to indemnify the counterparty for losses;

“(2) Require that contingent obligations of the SPFC under the SPFC contract that are securitized through an SPFC insurance securitization be funded and secured with assets held in trust for the benefit of the counterparty;

“(3) Require the SPFC to:

“(A) Enter into a trust agreement that meets the criteria set forth in this section and specifies the recoverables or reserves, or both, to covered; and

“(B) Establish a trust account for the benefit of the counterparty;

“(4) Stipulate that assets deposited in the trust account shall be valued according to their current fair value and shall consist only of permitted investments;

“(5) Require the SPFC, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may transfer whenever necessary the assets without consent or signature from the SPFC or another entity;

“(6) Require that all settlements of account between the counterparty and the SPFC be made in cash or its equivalent; and

“(7) Stipulate that the SPFC and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the SPFC contract:

“(A) May be withdrawn by the counterparty at any time, notwithstanding any other provisions in the SPFC contract; and

“(B) Shall be utilized and applied by the counterparty or any successor by operation of law of the counterparty, including, subject to the provisions of section 211, but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the following purposes:

“(i) To transfer all of the assets into one or more trust accounts for the benefit of the counterparty pursuant to and in accordance with the terms of the SPFC contract and in compliance with the provisions of this title; and

“(ii) To pay any other incurred and paid amounts that the counterparty claims are due pursuant to and under the terms of the SPFC contract and in compliance with this title.

“(e)(1) An SPFC contract may allow the SPFC to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, and to transfer the assets to the SPFC; provided, that,

“(A) At the time of the withdrawal, the SPFC shall replace the withdrawn assets, excluding any income withdrawn, with other qualified assets having a fair

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value equal to the fair value of the assets withdrawn and that meet the requirements of this section; and

“(B) After the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPFC under the SPFC contract shall be no less than the amount needed to satisfy the funded requirement of the SPFC contract.

“(2) The counterparty shall be the sole judge as to the application of these provisions, but shall not unreasonably or arbitrarily withhold its approval.

“(f) In fulfilling its function, an SPFC shall comply with, and, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with, the following requirements and guidelines:

“(1) The assets by the SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the insurance securitization and other related agreements.

“(2) Assets held by the SPFC in trust shall be valued at their fair value.

“(3) The proceeds from the sale of securities pursuant to the insurance securitization shall be deposited with the trustee to the extent required to secure its obligations under the SPFC contract as provided by this title and shall be held or invested by the trustee pursuant to the provisions of this section and the asset management agreement, if any, filed with the Department.

“(4)(A) Assets of the SPFC, other than those held in trust for the counterparty, and income on trust assets received by the SPFC may be used to pay interest on, or other consideration with respect to, any securities, outstanding debt, or other obligation of the SPFC.

“(B) This paragraph shall not prevent an SPFC from entering into a swap agreement or other asset management transaction that has the effect of hedging or guaranteeing the fixed or floating interest rate returns paid on the assets in trust or required for the securities issued by the SPFC generated from or other consideration or payment flows in the transaction.

“(5) In the SPFC insurance securitization, the contracts or other relating documentation shall identify the SPFC.

“(g) Unless otherwise approved by the Commissioner, an SPFC shall not:

“(1) Issue or otherwise administer primary insurance policies;

“(2) Enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;

“(3) Assume or retain exposure to insurance or reinsurance losses for its own account that is not funded by proceeds from an SPFC securitization that complies with the provisions of this title; provided, that the SPFC may wholly or partially reinsure or retrocede the risks assumed to a third party reinsurer on terms approved by the Commissioner;

“(4) Have any direct obligation to the policyholders or reinsureds of the counterparty; or

“(5) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

“Sec. 208. Trust arrangements.

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“(a) Assets of the SPFC that are pledged to secure obligations of the SPFC to a counterparty under an SPFC contract shall be held in trust that is administered by a qualified United States financial institution. The qualified United States financial institution shall not control, be controlled by, or be under common control with, the SPFC or the counterparty.

“(b) Assets of the SPFC held in trust to secure obligations under the SPFC contract shall at all times be held in:

“(1) Cash and cash equivalents;

“(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets under statutory accounting convention in its state of domicile; or

“(3) Another form of security acceptable to the Commissioner.

“(c) Assets of an SPFC held in trust to secure obligations under an SPFC contract shall be held by the trustee at one of the trustee’s offices or branch offices in the United States and may be held in certificated or electronic form.

“(d) The provisions for withdrawal by the counterparty of assets from the trust shall be clean and unconditional, subject only to the following requirements:

“(1) The counterparty may withdraw assets from the trust account at any time, without notice to the SPFC, subject only to written notice to the trustee from the counterparty that funds in the amount requested are due and payable by the SPFC, pursuant to the terms of the SPFC contract.

“(2) Presentment of a statement or document shall not be required to withdraw assets, except that the counterparty may be required to acknowledge receipt of withdrawn assets.

“(3) The trust agreement shall indicate that it is not subject to any conditions or qualifications outside of the trust agreement.

“(4) The trust agreement shall not contain references to any other agreements or documents.

“(e) The trust agreement shall be established for the sole use and benefit of the counterparty at least to the full extent of the obligations of the SPFC to the counterparty under the SPFC contract. If there is more than one counterparty, a separate trust agreement shall be entered into with each counterparty and, if there more than one SPFC contract with the same counterparty, a separate trust account shall be maintained for each SPFC contract with the counterparty, in each case unless otherwise approved by the Commissioner.

“(f) The trust agreement shall provide for the trustee to:

“(1) Receive assets and hold all assets in a safe place;

“(2) Determine that all assets are in a form that the counterparty or the trustee, upon direction by the counterparty, may transfer, whenever necessary, the assets, without consent or signature from the SPFC or another person or entity;

“(3) Furnish to the SPFC, the Commissioner, and the counterparty a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;

“(4) Notify the SPFC and the counterparty, within 10 days, of any deposits to or withdrawals from the trust account;

“(5) Upon written demand of the counterparty, immediately take the necessary steps to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the counterparty and deliver physical custody of the assets to the counterparty; and

“(6) Allow no substitutions or withdrawals of assets from the trust account,

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except pursuant to the trust agreement or SPFC contract, or as otherwise permitted by the counterparty.

“(g) The trust agreement:

“(1) Shall create one or more trust accounts into which all pledged assets shall be deposited and held until distributed in accordance with the trust agreement;

“(2) Shall provide that at least 30 days, but not more than 45 days, before termination of the trust account, written notification of termination shall be delivered by the trustee to the counterparty with a copy of the notice provided to the Commissioner;

“(3) May be made subject to and governed by the laws of any state; provided, that the state shall be disclosed in the strategic business plan filed with and approved by the Commissioner;

“(4) Shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee; and

“(5) Shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.

“(h)(1) Notwithstanding the provisions of subsection (d)(3) and (4) of this section, when a trust agreement is established in conjunction with an SPFC contract, the trust agreement or SPFC contract, or both, may provide that the counterparty shall undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the counterparty or the SPFC, only for one or more of the following purposes:

“(A) To pay or reimburse the counterparty for payment of the SPFC’s share of premiums to be returned to owners of the counterparty’s policies covered under the SPFC contract on account of cancellations of the policies under the counterparty’s policies;

“(B) To pay or reimburse the counterparty for payment of the SPFC’s share of surrenders, benefits, losses, or other benefits covered and payable pursuant to the provisions of the SPFC contract;

“(C) To fund an account with the counterparty in an amount to secure the credit or reduction from liability for reinsurance coverage provided under the SPFC contract; or

“(D) To pay any other amounts the counterparty claims are due under the SPFC contract.

“(2) Any assets deposited into an account of the counterparty pursuant to paragraph (1)(C) of this subsection, or withdrawn by the counterparty pursuant to subparagraph (1)(D) of this subsection, and any interest or other earnings on them, shall be held by the counterparty in trust and separate and apart from any general assets of the counterparty, for the sole purpose of funding the payments and reimbursements of the SPFC contract described in paragraph (1) of this subsection.

“(3) The counterparty shall return to the SPFC:

“(A) Amounts withdrawn under paragraph (1) of this subsection in excess of actual amounts required under paragraph (1)(A) through (C) of this subsection, and in excess of the amounts subsequently determined to be due under paragraph (1)(D) of this subsection;

“(B) Interest at a rate not in excess of the prime rate for the amounts held pursuant to paragraph (1) of this subsection, unless a higher rate of interest has been awarded by a panel of arbitration; and

“(C) Any net costs or expenses, including attorneys’ fees, awarded by a panel of arbitration.

“(4) If the counterparty has received notification of termination of the trust

account, and if the SPFC's entire obligations secured under the specific SPFC contract remain unliquidated and undischarged 10 days before the termination date, the trust agreement shall permit the counterparty to withdraw amounts equal to the obligations and deposit the amounts in a separate account, in the name of the counterparty, in a qualified United States financial institution, separate and apart from the counterparty's general assets, to the extent the obligations or liabilities have not been funded by the SPFC, in trust only for those uses and purposes specified in paragraph (1)(A) of this subsection as may remain executory after the withdrawal and for any period after the termination date until discharged.

"Sec. 209. Dividends and distributions.

"(a) Dividends may be declared by the management of an SPFC if the dividends do not violate the provisions of this title or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction documents and other provisions of this title.

"(b) An SPFC shall not declare or pay dividends in any form other than in accordance with the insurance securitization transaction agreements and shall not declare or pay dividends which decrease the capital and surplus of the SPFC below \$250,000.

"(c) An SPFC or protected cell of an SPFC shall not pay dividends out of, or make any other distribution out of, its capital or surplus, or both, unless the SPFC or protected cell has obtained the prior written approval of the Commissioner to make the payment or distribution. After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the Commissioner that the SPFC can meet its obligations.

(d) The Commissioner may approve an ongoing plan for the payment of dividends or other distributions by an SPFC or protected cell of the SPFC. Approval by the Commissioner of an ongoing plan for the payment of dividends or other distribution shall be conditioned upon the retention, at the time of each payment, of capital and surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC or protected cell by, the Commissioner.

"Sec. 210. Confidentiality of examination reports; disclosure of information.

"(a) Except as provided in this section, all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and copies of documents produced by, obtained by, or disclosed to, the Commissioner or any other person in the course of an examination made pursuant to this section shall be confidential, shall not be subject to subpoena, and shall not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the SPFC. This subsection shall not prevent the Commissioner from using this information in furtherance of the Commissioner's regulatory authority as provided by this title. The Commissioner may grant access to this information to public officers having jurisdiction over the regulation of insurance in another state or country, or to law enforcement officers of the District or another state or agency of the federal government at any time; provided, that the officers receiving the information agree in writing to hold it in a manner consistent with this section.

"(b) Information submitted pursuant to this title shall be confidential and shall not be made public by the Commissioner or an agent or employee of the Commissioner without the prior written consent of the SPFC; provided, that:

"(1) Information submitted pursuant to the provisions of this title shall be discoverable by a party in a civil action or contested case to which the submitting SPFC is a party upon a specific finding by the court that:

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“(A) The SPFC is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this title;

“(B) The party seeking the information demonstrates by a clear and convincing standard that the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in the action; and

“(C) The information sought is unavailable from other nonconfidential sources.

“(2) The Commissioner may disclose the information to the public official having jurisdiction over the regulation of insurance in another state if:

“(A) The public official agrees in writing to maintain the confidentiality of the information; and

“(B) The laws of the state in which the public official serves require the information to be confidential.

“Sec. 211. Reinsurance.

“An SPFC contract which complies with this title shall be granted credit for reinsurance treatment or otherwise qualifies as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to an SPFC as an assuming insurer pursuant to of section 3 of the Law on Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C Official Code § 31-502), for the benefit of the counterparty; provided, that:

“(1) Credit shall be granted only to the extent of the fair value of the assets held in trust for, or irrevocable letters of credit issued by a bank chartered by the District or a member bank of the Federal Reserve System or as approved by the Commissioner, for the benefit of the counterparty under the SPFC contract;

“(2) The assets are held in trust pursuant to this title;

“(3) The assets are administered in the manner and pursuant to arrangements as provided in this title; and

“(4) The assets are held or invested in one or more of the forms allowed by section 207.

“Sec. 212. Liquidation and rehabilitation.

“(a)(1) Notwithstanding the provisions of Title I of the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C Official Lab §31-1301 *et seq.*), the Commissioner may apply to the Superior Court of the District of Columbia for an order authorizing the Commissioner to conserve, rehabilitate, or liquidate an SPFC domiciled in the District on *one or more of the following grounds:*

“(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities; or

“(B) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to conservation, rehabilitation, or liquidation pursuant to this title.

“(2) The court shall not grant relief provided by paragraph (1)(A) of this subsection unless, after notice and a hearing, the Commissioner, who shall have the burden of proof, establishes by clear and convincing evidence that relief should be granted.

“(b) Notwithstanding another provision in this title, rules promulgated under this title, or another applicable law or rule, upon any order of conservation, rehabilitation, or liquidation of an SPFC, the receiver shall manage the assets and liabilities of the SPFC pursuant to this title.

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“(c)(1) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

“(2) Notwithstanding the provisions of Title I of 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.*), an application or petition, or a temporary restraining order or injunction issued pursuant to Title I of 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.*), with respect to a counterparty shall not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.

“(3) Notwithstanding the provisions of Title I of 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.*), the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to an SPFC, and any order issued by the court, shall not prohibit:

“(A) The payment by an SPFC made pursuant to an SPFC security or SPFC contract; or

“(B) The SPFC from taking any action required to make the payment.

“(d) Notwithstanding Title I of 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.*), or other laws of the District:

“(1) A receiver of a counterparty shall not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract; and

“(2) A receiver of an SPFC shall not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.

“(e) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this title or other laws of the District, the assets of an SPFC, including assets held in trust, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this title for any purpose, including, distribution to creditors of the counterparty.

“Sec. 213. Discount on reserves; report on reserves.

“(a) An SPFC may discount its reserves at discount rates as approved by the Commissioner.

“(b) An SPFC shall file annually an actuarial opinion on reserves provided by an approved independent actuary.

“Sec. 214. Standards and criteria applicable in a contested case brought by a third party and certain actions by the Commissioner.

“(a) A contested case brought by a third party based on a decision of the Commissioner pursuant to this title shall be governed by applicable civil law; provided, that, the aggrieved party shall:

“(1) Prove the appeal through clear and convincing evidence;

“(2) Demonstrate irreparable harm;

“(3) Not have another adequate remedy at law; and

“(4) Post a bond of sufficient surety to protect the interests of the holders of the

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SPFC securities and policyholders in an amount not less than 15% of the total amount of the securitized transaction.

“(b) If the Commissioner decides to reverse, amend, or modify a certificate of authority issued to an SPFC or the order issued in connection with them for a reason other than that specified in section 16, the Commissioner shall meet the standards and criteria provided in subsection (a) of this section.

“Sec. 215. Rulemaking.

“The Commissioner may promulgate rules necessary to effectuate the purposes of this title. Rules promulgated pursuant to this section shall not affect an SPFC insurance securitization in effect at the time of the promulgation.”.

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 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