

**Government of the District of Columbia
Department of Insurance, Securities and Banking**



Public Hearing

On

**B22-112, the "Interstate Insurance Product Regulation Compact Act of 2017;"
B22-418, the "Restrictions on the Use of Credit Information Amendment Act of 2017;"
B22-529, the "Rebate Reform Amendment Act of 2017;"
B22-584, the "Service Contract Regulation Act of 2017;"
and
B22-610, the "Service Contract Regulation and Enforcement Act of 2017"**

Before the

Committee on Business and Economic Development

Councilmember Kenyan McDuffie, Chairperson

Council of the District of Columbia

Testimony of

Stephen C. Taylor

Commissioner

Department of Insurance, Securities, and Banking

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John A. Wilson Building
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Good morning, Chairperson McDuffie, Councilmembers, and staff of the Committee on Business and Economic Development. I am Stephen Taylor, the Commissioner of the Department of Insurance, Securities, and Banking (“Department”). The Department regulates insurance, securities, banking, and other financial services in the District of Columbia. Our mission is two-fold: (1) protect consumers and (2) develop and improve market conditions to attract and retain financial services firms to the District. We accomplish this by working to ensure District residents have access to a wide choice of financial services and are treated fairly by service providers. I appreciate the opportunity to appear today to testify on the following insurance-related bills: Bill 22-112, the “Interstate Insurance Product Regulation Compact Act of 2017;” Bill 22-418, the “Restrictions on the Use of Credit Information Amendment Act of 2017;” Bill 22-529, the “Rebate Reform Amendment Act of 2017;” Bill 22-584, the “Service Contract Regulation Act of 2017;” and Bill 22-610, the “Service Contract Regulation and Enforcement Act of 2017.”

I will begin with Bill 22-112, the “Interstate Insurance Product Regulation Compact Act of 2017.” The purpose of this legislation is to authorize the Mayor to join, on behalf of the District of Columbia, an interstate insurance product regulation compact for certain designated life insurance products. Specifically, the legislation would authorize the District to participate in the Interstate Insurance Product Regulation Compact (“Compact”), and sets forth the terms of the District’s participation in the Compact. As of this hearing, 44 states and Puerto Rico have joined the Compact, including Maryland and Virginia. The Members of the Compact account for more than 75 percent of all insurance premium volume written in the United States.

The goal of the Compact is to make the approval process for nationally-marketed life insurance products more efficient through a single point of filing and more uniform in terms of product specifications and consumer protection standards. The Compact established the Interstate

Insurance Product Regulation Commission (“Commission”), which consists of the Compact members. The Commission’s Member jurisdictions work cooperatively to develop, adopt, and implement uniform standards for the product content requirements of asset-based insurance products, including life, annuity, long-term care, and disability income insurance products. These insurance categories generally have products that are uniform throughout the United States.

The products filed with the Commission undergo a thorough and timely prior review to ensure compliance with standards promoting uniformity and speed-to-market, without sacrificing comprehensive regulatory review and consumer protection. An experienced product review team, including credentialed actuaries, performs these reviews in a manner that is transparent to the Compacting jurisdictions. This process also includes input from regulators, legislators, consumers, companies, and industry organizations.

The Compact makes the filing, review, and approval process more streamlined and uniform, saving administrative and overhead costs associated with the product filing process, both for insurance departments and companies. Thus, regulators can share best practices and use resources more effectively, and companies are more competitive, resulting in positive economic impact for Compact jurisdictions and companies. Most importantly, consumers in Compacting jurisdictions benefit from quicker access to a broader choice and higher quality of investment/retirement products that have been reviewed under detailed uniform standards with strong consumer protections.

While providing for a streamlined, uniform review process, Compacting jurisdictions maintain their sovereign authority to regulate the activities – including marketing and claims practices – of companies engaging in the business of insurance in their respective jurisdictions.

From an operational standpoint, each Compact Member continues to regulate the market practices of insurers selling products approved by the Commission, and consumers continue to have the right to pursue all available private rights of action that otherwise existed prior to the execution of the Compact.

There would be no cost for the District to join the Compact. Moreover, participation in the Compact would not affect the Department's ability to bring enforcement matters under the District's Unfair Insurance Trade Practices Act since the Compact's standards are limited to the approval of policy forms and rates.

Importantly, Compact members reserve the right to opt out of any uniform standard that they do not believe will sufficiently address the needs of their residents. Should this measure move forward, one such standard from which the Department should opt out is the long-term care ("LTC") insurance form and rate uniform review standard. The Compact currently has authority to approve LTC rate increases up to 15 percent, with any increase above that threshold needing to be reviewed by individual jurisdictions. The District currently limits LTC rate increases at 10 percent annually. Allowing for Compact review of our LTC rates would likely result in higher rates for District residents, so the Department would recommend joining states such as Arizona, Connecticut, Hawaii, Indiana, and New Jersey in opting out of the Compact's LTC uniform review standard. Accordingly, the Bill should be amended to provide for the District's prospective opt out of the LTC standard.

The Department would support passage of Bill 22-112 with the LTC opt-out amendment. The Department believes that consumers, regulators, and insurers would all benefit if the District

of Columbia were to join the Insurance Compact. If the legislation is enacted, the Department will serve as an active and engaged Member of the Commission.

Now I will turn to Bill 22-418, the “Restrictions on the Use of Credit Information Amendment Act of 2017.” Bill 22-418 is another step that Mayor Bowser is taking as part of her effort to strengthen consumer protections for District residents. The Bill establishes parameters for the types of credit information that insurers may utilize, as well as how and when that information may be used. Credit-based insurance scores use certain elements of a person's credit history as a proxy for how likely they are to have an insurance loss. As the Department maintains oversight of a burgeoning environment of rating models, it is more important than ever to ensure that consumers are treated in a non-discriminatory manner and that the marketplace remains competitive and solvent. The Department, in line with other jurisdictions, believes that we must move forward to set parameters on how and when credit information can be used when insurers make decisions about certain insurance transactions.

For almost three decades, insurers have been using consumer credit histories to determine insurance “credit scores” for insureds who apply for or renew insurance policies. Credit-based insurance scores were introduced by the Fair Isaac Corporation (FICO) in the early 1990s. They have been used as a factor in determining premiums, underwriting procedures, policy cancellation, or non-renewal, and placing insureds or prospects within a pricing tier or pricing group. FICO estimates approximately 95 percent of auto insurers and 85 percent of homeowners' insurers use credit-based insurance scores in states where it is an acceptable underwriting or risk classification factor.

But consumer groups contend that the use of credit history has produced a disparate impact that has been unfairly detrimental to minorities and the poor. Most notably, individuals with limited financial resources may have difficulty managing their credit and experience more difficulty paying their bills on time when confronted with certain unforeseen circumstances that cannot be avoided, such as job losses or medical events, which are likely to produce an adverse credit score, and thus, an adverse insurance score. Consumer groups further argue that the information contained in credit reports is often inaccurate and that credit scoring models are inconsistent and vary greatly among insurers. This situation could lead to undue difficulty for individuals trying to get insurance coverage for themselves or their small businesses.

Typically, states will not allow credit-based insurance scores to be used as the sole basis for increasing rates or denying, cancelling, or not renewing policies. Some states prohibit credit-based insurance scores being used as the sole basis in underwriting or rating decisions. Some states require insurers to notify applicants or insureds that adverse credit-related decisions have been taken regarding pending applications or existing coverage based on the consumer's credit score. A few states, (Georgia, Hawaii, Maryland, Oregon, and Utah), have established prohibitions on the use of credit history information in certain circumstances.

After lengthy consideration of the effect of using credit scores from the perspectives of consumers and insurers, the Department proposes to keep intact insurers' ability to use credit report information in determining pricing and individual rating for insurance except when the credit information is based on medical collections codes or the lack of credit information.

The Bill would prohibit the use of credit information by an insurer in deciding whether to underwrite or cancel a policy, refuse to renew a policy, or increase the premium for a renewal

policy. The legislation further prohibits an insurer from determining premiums based on either the absence of credit history or a credit history based on collection accounts with a medical industry code. It is important to note that the legislation as written does not prohibit the use of credit information in determining the tier in which an insured is placed or in determining the cost of a policy, except in the case of credit information based on medical collections codes or the lack of credit information. This Bill simply prevents the use of credit information to bar potential coverage. The Department believes this strikes the appropriate balance between ensuring consumer access to insurance and insurer solvency.

This legislation is necessary to prevent any unfair discrimination against consumers by restricting the use of their credit history in obtaining and maintaining an insurance policy, while establishing rules that create a more level playing field and ensure a thriving and competitive economic environment. The Department is aware of concerns regarding this Bill from the insurance industry, as well as the industry's preference for the adoption of the model legislation prepared by the National Conference of Insurance Legislators ("NCOIL"). However, the NCOIL model does not effectively address key consumer protection issues that exist and are likely to arise in the District of Columbia. The NCOIL model restricts adverse actions by insurers only if "solely" based on credit scores, which is difficult to determine and creates the opportunity to take adverse actions primarily as the result of credit scores. The model also leaves to the discretion of insurers whether to provide relief for consumers whose credit score has been adversely impacted by an extraordinary life circumstance. We believe this model simply does not go far enough to ensure protections for consumers. We are happy to continue discussions with industry representatives, other stakeholders, and the Committee as Bill 22-418 moves forward in the legislative process.

I would now like to discuss Bill 22-529, the “Rebate Reform Amendment Act of 2017.” “Rebating” is the act of returning a portion of a premium or the agent's or broker's commission on a premium to the insured or providing any inducements to drive business to a specific insurer. Rebating is illegal in most states; but many states have a *de minimis* exception. In the District, an insurer, agent, or broker is permitted to provide educational materials, promotional materials, or articles of merchandise costing not more than \$10. Often, this is used for marketing purposes.

Bill 22-529 would increase the *de minimis* exception for a policy or contract of life, annuity, accident, health, property, casualty, or surety insurance from \$10 to \$75. Several states have enacted similar legislation recently to increase the allowable amount. However, the most recent National Association of Insurance Commissioners (“NAIC”) reporting from April 2017 showed that there were 18 states (and Puerto Rico) that do not allow any rebate or inducement, and 28 states (including the District) with excepted amounts at \$75 or less. Given this information, the proposed increase to \$75 would align the District with the *de minimis* exception amount in the majority of states.

The Department supports modernization of the District’s insurance laws. The insurance industry has represented that the \$10 amount is outdated and prevents insurers from providing small benefits to consumers. In some cases, those benefits can be valuable to consumers and insurers. For example, agents, brokers, and insurers could use the incentives to provide policyholders with fire extinguishers, smoke detectors, and CO2 detectors. The Department obviously wants to encourage insurers, agents, and brokers to mitigate or eliminate losses.

On the other hand, we know that incentives can be abused, especially when they are used as an inducement for a consumer to enter into long duration, high-priced products such as annuities

and life insurance policies. Unlike short duration property and casualty products like private passenger auto and homeowners' insurance, life and annuity products are often sold to consumers as part of retirement or estate planning, and these products often have substantial surrender charges. The Department wants to make certain that agents, brokers, and insurers are not allowed to use incentives to induce consumers into purchasing products that are inappropriate for their needs or costly to cancel.

The Department has considered the pros and cons of increasing the amount of the permitted incentive. We agree that the *de minimis* exception should be increased and believe that the proposed \$75 amount strikes the right balance between protecting consumers, maintaining market stability, and allowing for innovation in our marketplace. To further ensure consumer protections under this proposed change, the bill should be amended to give the Department authority to issue regulations that would (1) require enhanced disclosure requirements, (2) expand rescission rights, (3) limit or prohibit the incentive amount that can be offered on certain products, and (4) enhance penalties for abusive conduct.

One of my commitments as Commissioner is to ensure that the Department adapts constructively to a changing and demanding financial environment. Beyond that, the Department works daily to foster a competitive insurance marketplace. I believe the enactment of the proposed "Rebate Reform Amendment Act of 2017," with the inclusion of the regulatory authority previously mentioned, would allow the District to keep pace with reasonable and modest developments in the insurance industry, without compromising consumer protection.

Bill 22-610, the "Service Contract Regulation and Enforcement Act of 2017," was introduced by the Mayor as another element of her ongoing effort to protect District consumers.

The Department believes that the bill provides the right regulatory framework for service contracts to accomplish that goal.

By way of background, the Department began to look at regulation of service contracts, also known as “extended warranties,” last year due to various consumer complaints. In response, the Department formed an internal working group to consider options for regulating service contracts in the District. The working group examined legislation from jurisdictions around the country, as well as the NAIC Model Act on Service Contracts, during the development of Bill 22-610. Like the law in most jurisdictions around the country, the legislation would provide for registration of service contract providers, introduce new disclosure and recordkeeping requirements, and create civil penalties for noncompliance. But it would not subject providers to the rigors of full insurance regulation.

The Mayor’s bill provides for effective and efficient consumer protection around the marketing and sale of service contracts while encouraging innovation in the marketing and development of service contracts. The bill includes important additional consumer protections for residents who have purchased service contracts in the District, including readability requirements, mandating a specific font size for service contracts to promote legibility, and prohibiting automatic renewal provisions without separate, written notice acknowledged by the buyer. The legislation also incorporates protections already codified in District law related to unfair trade practices, and gives the Department the authority to review and approve the forms and rates of prospective service contract sellers. These rate review provisions are critical to the Department’s ability to protect consumers from exorbitant or discriminatory pricing in the service contract space. The Department must be able to make a reasoned determination as to the validity of a prospective

service contract provider's rate, rules, and forms when required, and prevent a provider from using a form, rule, or rate that is unfairly discriminatory or overly cumbersome.

The extra protections that would be afforded to consumers through rate reviews are the primary difference between the Mayor's Bill and Bill 22-584, which also deals with service contracts. The Department has met with industry stakeholders regarding both bills. While there are no rate review provisions in Bill 22-584, we believe there are some consumer-friendly provisions in the bill, including a 30-day "free look" or rescission period for the purchaser of a service contract and the ability to cancel the service contract at any time during the contract period with a pro rata refund to the purchaser.

We are happy to continue to work with stakeholders and the Committee to refine this legislation to ensure that District consumers are fully protected in purchasing service contracts, while allowing service contract providers to operate efficiently within established standards.

Thank you again for allowing me to appear before the Committee today to discuss these important pieces of legislation. I am happy to answer any questions you may have.