

**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: January 27, 2010

SUBJECT: Fiscal Impact Statement – “Insurance Claims Consumer Protection Amendment Act of 2009”

REFERENCE: Bill Number 18-103 – As Introduced

Conclusion

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation does not have a direct impact on the District’s budget and financial plan.

Background

The proposed legislation would amend the Insurance Trade and Economic Development Amendment Act of 2000¹ to establish a cause of action for insured persons to be made whole when insurers fail to pay proper claims, by allowing the recovery of attorney fees and court costs, interest, penalty, and punitive damages. Specifically, the proposed legislation would allow any insurance claimant² to bring an action for damages in the D.C. Superior Court if an insurer³ violates any act specified in Section 117 (Unfair Claim Settlement Practices) of D.C. Law 13-265 or refuses to pay the claimant within 30 days of receipt of sufficient documents. If a jury or the court determines any such violation, the legislation would require the court to award interest

¹ By adding a new Section 117a to D.C. Law 13-265, D.C. Official Code § 31-2231.01 et seq., effective April 3, 2001

² A person insured under any kind of an insurance policy or insurance contract, including policies of insurance covering homes, apartments, buildings, structures, real property, personal property, automobiles, motorcycles, boats, employee dishonesty, liability, life, health, disability, injury, and any others considered to be insurance policies. The only exception to insurance policies would apply to health insurance policies or plans offered by a health insurer to the extent that insurance claims under the policy or plan are preempted by federal law, such as the Employee Retirement Income Securities Act of 1974 (approved September 2, 1974).

³ It would also apply to any adjuster, consultant, engineer, or other person who aids or provides material support and advice to an insurer in furtherance of a violation.

on the unpaid claim⁴, assess the claimant's attorney and expert fees and costs against the insurer⁵, award an additional penalty if the claim amount due is not fairly debatable⁶, and award additional punitive damages⁷ if the insurer was determined to have acted with reckless disregard for the rights of the claimant, or acted maliciously, vexatiously, or with intent to cause financial or personal injury or harm. The damages and penalties described as such would be in addition to any penalties or costs that may be assessed by the Commissioner of the Department of Insurance, Securities and Banking (DISB), and would not limit the authority or jurisdiction of the Commissioner; and the proposed amendments of the legislation would not limit any other existing causes of action available to insured persons. The proposed legislation would also require that 20 days prior to filing an action, a claimant would provide written notice to the insurer and the Commissioner for an opportunity for the insurer to pay the full contractual claim amount requested within 20 days. After receiving such a notice, the Commissioner would be allowed to intervene and attempt to resolve the issue, without limiting the insurance claimant's ability to proceed with a cause of action.

Financial Plan Impact

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. The proposed legislation does not have a direct impact on the District's budget and financial plan. The possible increase in the activities of DISB should be able to be absorbed within the agency's budget, as the legislation authorizes but does not obligate DISB to intervene.

⁴ Interest would be calculated from the date the claim first made until the date of payment, in an amount equal to the prevailing prime rate plus 7 percent, but in no event less than 10 percent compounded monthly.

⁵ Including any fees and costs deferred and not actually billed to or collected from the insurance claimant, but rather, accruing until an award is made by the court, and also including the value of fees for any self-representation.

⁶ The additional penalty would be at least the unpaid claim amount but no more than triple the unpaid claim amount.

⁷ In an amount determined by a jury or by the court.