

Session 115 - (2003-2004)

H*5002 (Rat #0434, Act #0291 of 2004) General Bill, By Cato and Tripp

Summary: Captive insurance companies

AN ACT TO AMEND SECTION 38-43-100, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF A PRODUCER'S LICENSE, SO AS TO AUTHORIZE THE DIRECTOR OF INSURANCE TO WAIVE THE EXAM BY EXPANDING THE EXEMPTION TO INCLUDE THOSE WHO HAVE A BACHELOR'S DEGREE IN INSURANCE IF APPLYING FIVE YEARS WITHIN AN APPLICATION FOR LICENSURE AND EXPANDS THE EXEMPTION IF THE APPLICANT HAS CERTAIN DESIGNATIONS FOR BOTH PROPERTY AND CASUALTY AND LIFE INSURANCE, TO OFFER LICENSE EXAMS ELECTRONICALLY AS WELL AS WRITTEN, AND TO AUTHORIZE THE DEPARTMENT TO PURSUE ACTION AGAINST AN APPLICANT OR INSURER'S REPRESENTATIVE FOR FALSE INFORMATION PROVIDED ON AN APPLICATION; TO AMEND SECTION 38-43-101, RELATING TO LICENSING AN INSURANCE PRODUCER WHO WAS PREVIOUSLY LICENSED FOR THE SAME LINES OF INSURANCE IN ANOTHER STATE, SO AS TO AUTHORIZE THE DEPARTMENT TO PURSUE ACTION AGAINST AN APPLICANT OR INSURER'S REPRESENTATIVE FOR PROVIDING FALSE INFORMATION ON AN APPLICATION; TO AMEND SECTION 38-43-105, AS AMENDED, RELATING TO EDUCATIONAL REQUIREMENTS FOR LOCAL AND GENERAL PRODUCERS, SO AS TO STRENGTHEN THE EDUCATIONAL REQUIREMENTS AND DELETE THE REQUIREMENT THAT A COURSE EXAMINATION BE MONITORED BY A PROCTOR; TO AMEND SECTION 38-43-106, AS AMENDED, RELATING TO CONTINUING EDUCATION REQUIREMENTS OF AN APPLICANT OR PRODUCER LICENSED TO SELL PROPERTY AND CASUALTY INSURANCE OR LIFE, ACCIDENT, AND HEALTH INSURANCE, SO AS TO ALLOW THE DEPARTMENT TO BE RECIPROCAL WITH OTHER STATES WITH REGARD TO CONTINUING EDUCATIONAL REQUIREMENTS AND AUTHORIZE THE DIRECTOR TO APPOINT AS MANY REPRESENTATIVES AS NECESSARY TO PERFORM THE RESPONSIBILITIES OF THE ADVISORY BOARD; TO AMEND SECTION 38-43-107, AS AMENDED, RELATING TO THE ADDRESS SUPPLIED BY AN INSURANCE PRODUCER WHEN APPLYING FOR A LICENSE, SO AS TO REQUIRE THE BUSINESS, MAILING, AND RESIDENCE ADDRESSES; TO AMEND SECTION 38-43-200, AS AMENDED, RELATING TO THE PROHIBITION ON SPLITTING COMMISSIONS WITH AN UNLICENSED PERSON BY A LICENSED PRODUCER, SO AS TO DELETE A PROVISION WHICH ALLOWS FEE SPLITTING; TO AMEND SECTION 38-44-20, RELATING TO DEFINITIONS USED IN THE MANAGING GENERAL AGENTS ACT, SO AS TO CLARIFY THE DEFINITION OF A "MANAGING GENERAL AGENT"; TO AMEND SECTION 38-45-20, AS AMENDED, RELATING TO THE REQUIREMENTS FOR A RESIDENT TO BE LICENSED AS AN INSURANCE AGENT, SO AS TO CLARIFY WHAT CONSTITUTES THE LIFE SPAN OF A CERTIFICATE OF COURSE COMPLETION WITH RESPECT TO A BROKER LICENSE; TO AMEND SECTION 38-77-155, RELATING TO THE DISTRIBUTION OF MONIES FROM THE UNINSURED MOTORIST'S FUND BY THE DIRECTOR OF INSURANCE, SO AS TO ALLOW THE DIRECTOR TO DISTRIBUTE MONIES BASED ON DATA FROM THE INSURER'S ANNUAL STATEMENT INFORMATION FILED WITH THE DEPARTMENT; BY ADDING SECTION 38-90-35 SO AS TO PROVIDE FOR CONFIDENTIALITY OF INFORMATION SUBMITTED BY A CAPTIVE INSURANCE COMPANY PURSUANT TO THE PROVISIONS OF CHAPTER 90, TITLE 38 AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 38-87-30, RELATING TO CHARTERING RISK RETENTION GROUPS, SO AS TO REQUIRE A CAPTIVE INSURANCE COMPANY TO COMPLY WITH THESE PROVISIONS; TO AMEND SECTION 38-90-10, AS AMENDED, RELATING TO DEFINITIONS USED IN CONNECTION WITH A CAPTIVE INSURANCE COMPANY, SO AS TO EXPAND THE DEFINITION OF "ASSOCIATION" TO INCLUDE POLITICAL SUBDIVISIONS, TO CHANGE THE DEFINITIONS OF "INDUSTRIAL INSURED GROUP" AND "PARENT"; TO AMEND SECTION 38-90-20, AS AMENDED, RELATING TO LICENSING A CAPTIVE INSURANCE COMPANY BY THE DIRECTOR OF INSURANCE, SO AS TO AUTHORIZE A NONPROFIT CORPORATION TO BE LICENSED AND PROVIDE CONSISTENCY WITH THE PROVISIONS OF SECTION 38-90-35 REGARDING CONFIDENTIAL MATERIALS, AND PROVIDE A PROCEDURE BY WHICH A FOREIGN OR ALIEN CAPTIVE INSURANCE COMPANY MAY BECOME A DOMESTIC CAPTIVE INSURANCE COMPANY; TO AMEND SECTION 38-90-25, RELATING TO THE AUTHORITY OF A CAPTIVE INSURANCE COMPANY TO WRITE REINSURANCE COVERING PROPERTY AND CASUALTY INSURANCE OR REINSURANCE CONTRACTS, SO AS TO PROVIDE CONSISTENCY WITH THE PROVISIONS OF SECTION 38-90-35 REGARDING CONFIDENTIAL MATERIALS; TO AMEND SECTION 38-90-40, AS AMENDED, RELATING TO THE LICENSING OF A CAPTIVE INSURANCE COMPANY BY THE DIRECTOR OF INSURANCE BASED ON THE CAPITALIZATION OF THE COMPANY, SO AS TO PROVIDE CAPITALIZATION REQUIREMENTS FOR LICENSING A NONPROFIT CORPORATION AS A CAPTIVE INSURANCE COMPANY; TO AMEND SECTION 38-90-50, AS AMENDED, RELATING TO LICENSING A CAPTIVE INSURANCE COMPANY BASED ON CERTAIN MINIMUM AMOUNTS OF FREE SURPLUS, SO AS TO CHANGE THE REQUIREMENTS FOR A SPONSORED CAPTIVE INSURANCE COMPANY; TO AMEND SECTION 38-90-60, AS AMENDED, RELATING TO INCORPORATION OPTIONS AND REQUIREMENTS OF

CERTAIN CAPTIVE INSURANCE COMPANIES, SO AS TO ADD AN ADDITIONAL OPTION FOR A NONPROFIT COMPANY; TO AMEND SECTION 38-90-70, AS AMENDED, RELATING TO FILING REPORTS BY A CAPTIVE INSURANCE COMPANY, SO AS TO MAKE CERTAIN INFORMATION SUBMITTED IN A REPORT CONFIDENTIAL; TO AMEND SECTION 38-90-80, RELATING TO THE INSPECTION AND EXAMINATION OF A CAPTIVE INSURANCE COMPANY BY THE DIRECTOR OF INSURANCE, SO AS TO PROVIDE THAT CERTAIN CONFIDENTIALITY PROVISIONS DO NOT APPLY TO THE DIRECTOR IN MAKING FINAL REPORTS; TO AMEND SECTION 38-90-140, AS AMENDED, RELATING TO THE TAXATION OF A CAPTIVE INSURANCE COMPANY, SO AS TO CHANGE THE DEFINITION OF "COMMON OWNERSHIP AND CONTROL" TO INCLUDE NONPROFIT CORPORATIONS; TO AMEND SECTION 38-90-180, AS AMENDED, RELATING TO THE APPLICABILITY OF THE PROVISIONS OF CHAPTERS 26 AND 27, TITLE 38, TO INSURANCE REORGANIZATIONS, RECEIVERSHIPS, AND INJUNCTIONS TO CAPTIVE INSURANCE COMPANIES, SO AS TO MAKE THE TERMS AND CONDITIONS APPLY TO TITLE 38 INSTEAD OF CHAPTERS 26 AND 27, TITLE 38; BY ADDING CHAPTER 90 TO TITLE 38 SO AS TO PROVIDE FOR THE CREATION OF A SPECIAL PURPOSE FINANCIAL CAPTIVE (SPFC) EXCLUSIVELY TO FACILITATE THE SECURITIZATION OF ONE OR MORE RISKS, AS A MEANS OF ACCESSING SOURCES OF CAPITAL AND ACHIEVING THE BENEFITS OF SECURITIZATION, TO PROVIDE FOR DEFINITIONS, TO PROVIDE THAT NO PROVISION OF THE CODE, OTHER THAN THOSE SPECIFICALLY REFERENCED IN THIS ARTICLE APPLIES TO A SPFC AND AUTHORIZES THE DIRECTOR TO EXEMPT A CERTAIN SPFC THAT HE DETERMINES TO BE INAPPROPRIATE GIVEN THE NATURE OF THE RISKS TO BE INSURED, TO REQUIRE CERTAIN INFORMATION BE FURNISHED THE DIRECTOR WHEN A SPFC APPLIES FOR A LICENSE, TO REQUIRE SPECIFIC LICENSING REQUIREMENTS, TO ESTABLISH CERTAIN INCORPORATION REQUIREMENTS OF A SPFC, TO ESTABLISH CERTAIN MINIMUM CAPITALIZATION REQUIREMENTS, TO PROVIDE THAT A SPFC MAY ISSUE ONLY THE RISKS OF A COUNTERPARTY, AUTHORIZES A SPFC TO CEDE RISKS OF A COUNTERPARTY TO A THIRD PARTY WITH THE APPROVAL OF THE DIRECTOR, TO AUTHORIZE A SPFC TO ENTER INTO CONTRACTS NECESSARY TO FULFILL THE PURPOSES OF A SPFC CONTRACT INSURANCE SECURITIZATION AND THIS ARTICLE, TO AUTHORIZE A SPFC TO DISCOUNT RESERVES AS APPROVED BY THE DIRECTOR AND REQUIRE THE SPFC TO FILE AN ANNUAL ACTUARIAL REPORT, TO AUTHORIZE A SPFC TO ESTABLISH AND MAINTAIN ONE OR MORE PROTECTED CELLS TO INSURE OR REINSURE RISKS OF ONE OR MORE SPFC CONTRACTS WITH A COUNTERPARTY UNDER CERTAIN CONDITIONS, TO AUTHORIZE A SPFC TO ISSUE SECURITIES, INCLUDING CERTAIN NOTES, AND TO MAKE PAYMENTS ON THE SECURITIES SUBJECT TO THE PRIOR APPROVAL OF THE DIRECTOR, TO AUTHORIZE A SPFC TO ENTER INTO SWAP AND ASSET MANAGEMENT AGREEMENTS, TO AUTHORIZE SPFC, SUBJECT TO CERTAIN RESTRICTIONS, TO ENTER INTO BOTH SPFC CONTRACTS AND ANCILLARY AGREEMENTS, ESTABLISHES REQUIREMENTS THAT MUST BE MET BY A SPFC IN FULFILLING ITS OBLIGATIONS UNDER THE SPFC CONTRACT, TO ESTABLISH CERTAIN SPECIFIC REQUIREMENTS OF TRUSTS AND TRUST ASSETS OF A SPFC, TO RESTRICT THE PAYMENT OF DIVIDENDS BY A SPFC TO ONLY THOSE WITHIN THE TERMS OF THE SECURITIZATION TRANSACTION AGREEMENTS, TO ESTABLISH REPORTING REQUIREMENTS OF SPFC, INCLUDING A MATERIAL CHANGE IN THE BUSINESS PLAN TO THE DIRECTOR, TO REQUIRE THAT A SPFC FILE A CPA AUDITED FINANCIAL STATEMENT, TO REQUIRE THE DIRECTOR TO EXAMINE THE SPFC AT LEAST ONCE EVERY THREE YEARS AND PROVIDE A PROCEDURE FOR THE THREE-YEAR PERIOD TO BE EXPANDED TO FIVE YEARS UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE AUTHORITY OF A SPFC EXPIRES AT THE TERMINATION OR CANCELLATION OF A SPFC CONTRACT, TO PROVIDE THE DIRECTOR MAY SUSPEND OR REVOKE A LICENSE FOR CERTAIN REASONS, TO PROVIDE FOR THE PAYMENT OF CERTAIN PREMIUM TAXES BY A SPFC, TO PROVIDE THAT A SPFC BE GRANTED CREDIT FOR REINSURANCE TO THE EXTENT OF FAIR MARKET VALUE OF ASSETS HELD IN TRUST OR OTHERWISE PROPERLY SECURED, TO PROVIDE FOR THE GROUNDS UNDER WHICH THE DIRECTOR MAY APPLY FOR AN ORDER TO CONSERVE, REHABILITATE, OR LIQUIDATE A DOMESTIC SPFC, INCLUDING EMBEZZLEMENT OR IF THE SPFC IS INSOLVENT, TO PROVIDE THAT, GENERALLY, INFORMATION SUBMITTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE IS CONFIDENTIAL AND TO PROVIDE EXCEPTIONS, TO PROVIDE FOR THE GOVERNANCE OF APPLICABLE CIVIL LAW WHEN A CONTESTED CASE BASED ON A DECISION OF THE DIRECTOR BROUGHT BY A THIRD PARTY, TO PROVIDE THAT THE DIRECTOR MAY PROMULGATE REGULATIONS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE, AND TO PROVIDE THAT NOTHING IN ARTICLE 3, CHAPTER 90, TITLE 38 WITH RESPECT TO A SPFC SHALL ABROGATE, LIMIT, OR RESCIND THE AUTHORITY OF THE ATTORNEY GENERAL PURSUANT TO THE PROVISIONS OF TITLE 35; AND TO REPEAL SECTION 38-90-170 RELATING TO APPLICABILITY OF THE TERMS AND CONDITIONS OF TITLE 38 TO INSURANCE REORGANIZATIONS, RECEIVERSHIPS, AND INJUNCTIONS TO CAPTIVE INSURANCE COMPANIES FORMED UNDER CHAPTER 90, TITLE 38. - ratified title

03/18/04	House	Introduced and read first time HJ-33
03/18/04	House	Referred to Committee on Labor, Commerce and Industry HJ-34
04/14/04	House	Committee report: Favorable with amendment Labor, Commerce and Industry HJ-4
04/15/04	House	Member(s) request name added as sponsor: Tripp
04/15/04	House	Objection by Rep. Young, Rice, Hinson, GM Smith, and Altman HJ-47
04/22/04	House	Amended HJ-67
04/22/04	House	Read second time HJ-104
04/22/04	House	Roll call Yeas-96 Nays-0 HJ-104
04/22/04	House	Unanimous consent for third reading on next legislative day HJ-104
04/23/04	House	Read third time and sent to Senate
04/26/04		Scrivener's error corrected
04/27/04	Senate	Introduced and read first time SJ-10
04/27/04	Senate	Referred to Committee on Banking and Insurance SJ-10
05/26/04	Senate	Committee report: Favorable with amendment Banking and Insurance SJ-16
05/26/04	Senate	Read second time SJ-16
05/26/04	Senate	Ordered to third reading with notice of amendments SJ-16
05/27/04	Senate	Amended SJ-288
06/02/04	Senate	Read third time and returned to House with amendments
06/03/04	House	Debate adjourned HJ-49
06/03/04	House	Concurred in Senate amendment and enrolled HJ-79
06/03/04		Ratified R 434
07/29/04		Signed By Governor
08/04/04		Copies available
08/04/04		Effective date See Act for Effective Date
08/16/04		Act No. 291