**South Carolina General Assembly**

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**H. 4554**

**STATUS INFORMATION**

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Currently residing in the House Committee on **Judiciary**

Summary: Closing or settlement insurance

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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1/10/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 72](file:///h:\hj%20archive\2012\01-10-12.docx))

1/24/2012 Scrivener's error corrected

**VERSIONS OF THIS BILL**

[1/10/2012](file:///p:\pprever\2011-12\4554_20120110.docx)

[1/24/2012](file:///p:\pprever\2011-12\4554_20120124.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑75‑1010 SO AS TO PROVIDE A TITLE INSURER MAY ISSUE CLOSING OR SETTLEMENT INSURANCE, TO PROVIDE FOR LOSS AGAINST WHICH THIS INSURANCE MAY INDEMNIFY AN INSURED, AND TO PROVIDE FOR ADMINISTRATIVE FORMS, FEES, AND NOTICE REQUIREMENTS; AND TO AMEND SECTION 38‑1‑20, AS AMENDED, SECTION 38‑5‑30, AS AMENDED, SECTION 38‑7‑10, AND SECTION 38‑57‑170 ALL RELATING TO VARIOUS DEPARTMENT PROVISIONS, SO AS TO CONFORM THEM TO INCLUDE CLOSING OR SETTLEMENT INSURANCE.

Be it enacted by the General Assembly of the State of South Carolina:

Part I

Closing or Settlement Insurance

SECTION 1. Article 11, Chapter 75, Title 38 of the 1976 Code is amended by adding:

“Section 38‑75‑1010. (A) A title insurer may issue closing or settlement insurance to a party to a transaction in which a title insurance policy will be issued, but may not provide any other coverage that purports to indemnify against improper acts or omissions of a person with regard to settlement or closing services.

(B) Closing or settlement insurance may indemnify a person only against loss of closing or settlement funds because of one of the following acts of a settlement agent under the terms and conditions of the closing insurance policy as approved by the department:

(1) theft or misappropriation of settlement funds in connection with a transaction in which a title insurance policy will be issued by or on behalf of the title insurer issuing the closing or settlement protection, but only to the extent that the theft relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land; and

(2) failure to comply with the written closing instructions when agreed to by the settlement agent, title agent, or employee of the title insurer, but only to the extent that the failure to follow the instructions relates to the status of the title to that interest in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

(C) A form used for issuing closing or settlement insurance must be submitted by the insurer to the department. An insurer may not use a form for issuing or closing settlement insurance unless that form is approved by the department.

(D)(1) A fee charged by a title insurer for each party receiving closing protection coverage must be submitted to and approved by the department and must not be subject to any agreement requiring a division of fees or premiums collected on behalf of the title insurer.

(2) A fee provided in item (1) must be not less than:

(a) twenty‑five dollars for each party receiving the benefit of closing protection in the case of a buyer or lender receiving a title insurance policy in connection with the real property transaction giving rise to the issuance of the closing or settlement insurance; and

(b) fifty dollars for a seller conveying title or providing owner financing and not receiving a loan policy of title insurance in connection with the real property transaction giving rise to the issuance of the closing or settlement insurance.

(E)(1) In connection with any transaction involving the purchase or sale of a fee simple or possessory interest in real property in this State in which closing or settlement insurance has not been requested by the lender prior to closing, the title insurer shall at or before the closing of settlement and disbursement of any funds obtain or require its agent to obtain from the parties a written statement acknowledging that the parties have received notice that closing or settlement insurance may be available in accordance with the guidelines of the title insurer and confirming whether the parties wants to purchase this insurance. Written notice of the availability of closing or settlement insurance must contain:

(a) the address or legal description of the property;

(b) a disclosure that closing or settlement insurance is available in accordance with the guidelines of the title insurer and the fee for the insurance;

(c) a space to indicate the desire of the purchaser to either acquire or decline closing protection;

(d) the date the notice is executed by the purchaser; and

(e) the signature of the purchaser or purchasers.

(2) In the event that the statement required in this subsection is not obtained from the purchaser at or before the closing of settlement and disbursement of any funds, the omission may be cured by the title agent or title insurer at any time subsequent to the closing of settlement, but prior to actual or constructive notice of a claim or possible claim which would have been covered by closing or settlement insurance by sending notification required in this section by certified letter, return receipt requested, to the last known address of the purchaser.”

Part II

Conforming and Miscellaneous Amendments

SECTION 2. Section 38‑1‑20 of the 1976 Code, as last amended by Act 69 of 2009, is further amended to read:

“Section 38‑1‑20. As used in this title, unless the context otherwise requires:

(1) ‘Accident and health insurance’ means insurance of human beings against death or personal injury by accident, and each insurance of human beings against sickness, ailment, and any type of physical disability resulting from accident or disease, and prepaid dental service, but not including coverages required by the Workers’ Compensation Law of this State.

(2) ‘Accommodation bondsman’ means as defined in Section 38‑53‑10.

(3) ‘Adjuster’ means an individual who determines the extent of insured losses and assists in settling or attempts to settle claims.

(4) ‘Admitted assets’ means assets of an insurer considered admitted under Section 38‑11‑100.

(5) ‘Admitted insurer’ means an insurer licensed to do business in this State.

(6) ‘Alien insurer’ means an insurer incorporated or organized under the laws of a country other than the United States of America, its states, commonwealths, territories, or insular possessions.

(7) ‘Annuity’ means each contract or agreement to make periodic payments, whether in fixed or variable dollar amounts, or both, at specified intervals.

(8)(a) ‘Appointment’ means an individual designated by an official or authorized representative of an authorized insurer to act on its behalf as a producer.

(b) ‘General appointment’ means an appointment of a person who, as a representative of an insurer or insurers, is vested with authority to supervise producers and to exercise this management authority as is delegated to him by the principal. A producer appointed as a general also may perform the duties of a producer who holds a local or special appointment.

(c) ‘Local appointment’ means an appointment of a producer who has been authorized by an insurer to sell, solicit, or negotiate policies on an insurer’s behalf.

(d) ‘Special appointment’ means an individual designated by an insurer to supervise and assist other producers in the proper discharge of their duties under an insurer’s policy contract. A special appointment grants no authority to sell, solicit, or negotiate policies of insurance on behalf of an insurer.

(9) ‘Bail bondsman’ means as defined in Section 38‑53‑10.

(10) ‘By’ means on or before.

(11) ‘Casualty insurance’ means each insurance against legal liability of the insured for bodily injury to or death of another person, including workers’ compensation insurance, and for damages to or loss or destruction of the property of another person; medical payments insurance when written in conjunction with insurance covering liability for the deaths or bodily injuries of another person; guaranteeing the fidelity of a person holding a position of public or private trust; loss of or damage to property caused by burglary, theft, larceny, robbery, fraud, or unlawful taking or secretion of property owned by or entrusted to the insured; loss of or damage to property of the insured resulting from the explosion of or damage to a fired or unfired boiler or other pressure vessel, engine, turbine, compressor, pump, wheel, or an apparatus generating, transmitting, or using electric power, and machinery or equipment connected with any of them; loss resulting from nonpayment of debts owed to merchants or another person extending credit.

(12) ‘Certificate of insurance’ means a memorandum copy, complete or abbreviated, of an insurance contract.

(13) ‘Coinsurance’ means a stipulation or requirement that the insured undertakes to be his own insurer to the extent that he fails to maintain insurance of a given percentage of the value of the property against loss or damage.

(14) ‘Commission’ means the part of the premium paid to the producer as compensation for his services.

(15) ‘Company’ includes a corporation, fraternal organization, burial association, other association, partnership, society, order, individual, or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

(16) ‘Crop insurance’ includes insurance providing protection against damage to crops from unfavorable weather conditions, fire, lightning, flood, hail, insect infestation, disease, or other yield‑reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi‑Peril Crop Insurance.

(17) ‘Department’ means the Department of Insurance of South Carolina.

(18) ‘Designee or deputy director’ means the person or persons appointed by the director, serving at the will and pleasure of the director as his designee, to supervise and carry out the functions and duties of the department as provided by law. A duty or function of the director to manage and supervise the department may be conferred by the director’s authority upon his designee or deputy director.

(19) ‘Director’ means the person who is appointed by the Governor upon the advice and consent of the Senate and who is responsible for the operation and management of the department. The director has the authority to appoint or designate the person or persons who shall serve at the pleasure of the director to carry out the objectives or duties of the department as provided by law. Furthermore, the director may bestow upon his designee or deputy director a duty or function required of him by law to manage and supervise the department.

(20) ‘Domestic insurer’ means an insurer incorporated or organized under the laws of this State.

(21) ‘Eligible surplus lines insurer’ means a nonadmitted insurer with which a licensed broker may place surplus lines insurance.

(22) ‘Exempt commercial policies’ means policies for commercial insureds as may be provided for in regulation issued by the director. Exempt commercial policies include all property and casualty coverages except for insurance related to credit transactions written through financial institutions.

(23) ‘Foreign insurer’ means an insurer incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(24) ‘Home state’ means the District of Columbia and a state or territory of the United States in which an insurance producer maintains his principal place of residence or principal place of business and is licensed to act as an insurance producer.

(25) ‘Insurance’ means a contract where one undertakes to indemnify another or pay a specified amount upon determinable contingencies. The term “insurance” includes annuities.

(26) ‘Insurance agency’ means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity in which more than one person has a financial interest.

(27) ‘Insurance broker’ means an individual licensed by the department to represent citizens of this State in placing their insurance. An insurance broker may place that insurance either with an eligible surplus lines insurer or with a licensed insurance producer in an insurance carrier licensed in this State.

(28) ‘Insurance company’ means an ‘insurer’.

(29) ‘Insurance premium service company’ means a person engaged in the business of entering into insurance premium service agreements.

(30) ‘Insurance producer’ or ‘producer’ means a person who represents an insurance company and is required to be licensed pursuant to Section 38‑43‑10.

(31) ‘Insurance rate’ means the price of insurance for each unit of exposure.

(32) ‘Insurance‑support organization’ means a person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurer or agent for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurer or agent for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurers, agents, or other insurance‑support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity. However, the following are not considered insurance‑support organizations for purposes of this chapter: agents, governmental institutions, insurers, modeling organizations, consumer reporting agencies, medical care institutions, and medical professionals.

(33) ‘Insurer’ includes a corporation, fraternal organization, burial association, other association, partnership, society, order, individual, or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

(34) ‘License’ means a document issued by the state’s director or his designee authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(35) ‘Life insurance’ means a contract of insurance upon the lives of human beings. The following contracts are considered to be contracts of life insurance within the meaning of this definition:

(a) a contract providing acceleration of life benefits, beginning on the contract’s original effective date, in advance of the time they otherwise would be payable for long‑term care as defined in Section 38‑72‑40;

(b) a contract providing acceleration of life benefits, beginning on the contract’s original effective date, in advance of the time they otherwise would be payable for a life‑threatening illness or a terminal illness as specified in the contract.

(36) ‘Limited line credit insurance’ includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and another form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the director or his designee determines should be designated a form of limited line credit insurance.

(37) ‘Limited line credit insurance producer’ means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(38) ‘Limited line insurance’ includes crop, travel surety, Federal Crop Insurance Program, and any other form of insurance that the director considers necessary in order to ensure compliance with the reciprocal provisions of this chapter.

(39) ‘Limited line insurance producer’ means a person authorized by the director or his designee to sell, solicit, or negotiate limited line insurance.

(40) ‘Marine insurance’ means each insurance against loss or destruction of or damage to aircraft, vessels, or watercraft and their cargoes; insurance covering the risks or perils of navigation, transit, or transportation of all forms of property, including the liability of a carrier for hire for the loss of property of shippers delivered for transporting; marine builder’s risks; bridges, tunnels, piers, wharves, docks and slips, dry docks, marine railways, and other aids to navigation and transportation, precious stones, precious metals, and jewelry, whether in the course of transportation or otherwise; coverage of personal property by all risk forms known as the “Personal Property Floater”; and coverage of mobile machinery and equipment.

(41) ‘Modeling organization’ means a corporation, unincorporated association, partnership, or individual, whether located within or outside this State, that prepares a catastrophe model that is used by an insurer in a rate filing. A catastrophe model is a computer program that estimates losses from a potential upcoming disaster. Catastrophe modeling combines data on property exposures with information on hazards, such as storms or earthquakes, to generate estimates of potential losses.

(42) ‘Negotiate’ means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(43) ‘Nonadmitted insurer’ means an insurer not licensed to do an insurance business in this State.

(44) ‘Person’ means a corporation, agency, partnership, association, voluntary organization, individual, or another entity, organization, or aggregation of individuals.

(45) ‘Policy’ means a contract of insurance.

(46) ‘Premium’ means payment given in consideration of a contract of insurance.

(47) ‘Premium service agreement’ means an agreement by which an insured or prospective insured promises to pay to an insurance premium service company the amount advanced or to be advanced under the agreement to an insurer or to an insurance producer or insurance broker in payment of premiums on an insurance contract together with a service charge as authorized by Chapter 39 of this title.

(48) ‘Probation’ means allowing a licensed person the director has found to have violated South Carolina, any United States territory, or another state’s laws to continue selling, soliciting, or negotiating insurance on behalf of an insurer. A person convicted of a felony or those crimes listed in 18 U.S.C. 1033 or 1034 does not qualify for probation.

(49) ‘Professional bondsman’ means as defined in Section 38‑53‑10.

(50) ‘Property insurance’ means each insurance against direct or indirect loss of or damage to a property resulting from fire, smoke, weather disturbances, climatic conditions, earthquake, volcanic eruption, rising waters, insects, blight, animals, war damage, riot, civil commotion, destruction by order of civil authority to prevent spread of conflagration or for other reason, water damage, vandalism, glass breakage, explosion of a water system, collision, theft of automobiles, and personal effects in them (but no other forms of theft insurance), loss of or damage to domestic or wild animals, and any other perils to property which in the discretion of the director or his designee form proper subjects of property insurance, if not specified in items (1), (7), (11), (35), (40), (54), or (59) of this section.

(51) ‘Runner’ means as defined in Section 38‑53‑10.

(52) ‘Sell’ means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(53) ‘Solicit’ means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(54) ‘Surety’ includes insurance or a bond that covers obligations to pay the debts, or answer for the default, of another, including faithlessness in a position of public or private trust.

(55) ‘Surety bondsman’ means as defined in Section 38‑53‑10.

(56) ‘Surplus lines insurance’ means insurance in this State of risks located or to be performed in this State, permitted to be placed through a licensed broker with a nonadmitted insurer eligible to accept the insurance, other than reinsurance, wet marine and transportation insurance, insurance independently procured, and life and health insurance and annuities. Excess and stop‑loss insurance coverage upon group life, accident, and health insurance or upon a self‑insured’s life, accident, and health benefits program may be approved as surplus lines insurance.

(57) ‘Surplus to policyholders’ is the excess of total admitted assets over the liabilities of an insurer which is the sum of all capital and surplus accounts minus any impairment of them.

(58) ‘Terminate’ means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

(59) ‘Title insurance’ means insurance of the owners of real property and other persons lawfully interested in the title insurance against loss by reason of defective titles and undisclosed liens and encumbrances affecting the property.

(60) ‘Travel insurance’ includes insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

(61) ‘Uniform agency application’ means the current version of the National Association of Insurance Commissioners Uniform Business Entity Application for resident and nonresident business entities.

(62) ‘Uniform application’ means the current version of the National Association of Insurance Commissioners Uniform Application for resident and nonresident producer licensing.

(63) ‘Closing or settlement insurance’ means insurance coverage to indemnify a party to a real estate closing against the loss of closing or settlement funds because of certain acts as provided in Section 38‑75‑1010.”

SECTION 3. Section 38‑5‑30 of the 1976 Code, as last amended by Act 228 of 2002, is further amended to read:

“Section 38‑5‑30. The director or his designee may license insurers, subject to other requirements of existing insurance laws, to transact the following kinds of insurance in this State:

(a) life insurance and annuities~~.~~;

(b) accident and health insurance~~.~~;

(c) property insurance~~.~~;

(d) casualty insurance~~.~~;

(e) surety insurance~~.~~;

(f) marine insurance~~.~~;

(g) title insurance~~.~~;

(h) closing or settlement insurance;

(i) multiple lines insurance, meaning any two or more of the kinds of insurance listed in items (b), (c), (d), (e), and (f) of this section.

Each license issued is for an indefinite term unless revoked or suspended.”

SECTION 4. Section 38‑7‑10(B) of the 1976 Code is amended to read:

“(B) In addition to the license fees required in subsection (A), the director or his designee shall collect from each insurer licensed by him to do business in this State a license fee of four hundred dollars for each kind of insurance for which the insurer is licensed as listed in Section 38‑5‑30(a) through ~~(g)~~(h). Each mutual insurer doing a property business only in no more than three counties shall pay a biennial fixed license fee of one hundred dollars and each mutual insurer doing a property business only in a single county shall pay a biennial fixed license fee of forty dollars. The license fees required in this subsection must be paid to the director or his designee before the insurer transacts business in this State and after that initial payment must be paid biennially to the director or his designee by March first every two years.”

SECTION 5. Section 38‑57‑170 of the 1976 Code is amended to read:

“Section 38-57-170. ~~(1)~~(A) ~~No~~ A person in this State may not advertise, offer, or provide free insurance as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with real or personal property.

~~(2)~~(B) For the purposes of this section, ‘free’ insurance ~~is~~ means insurance for which no identifiable and additional charge is made to the purchaser of the real property or personal property or services or insurance for which an identifiable or additional charge is made in an amount less than the cost of the insurance as to the seller or other person, other than the insurer, providing the insurance.

~~(3)~~(C) Subsections ~~(1)~~(A) and ~~(2)~~(B) do not apply to:

~~(a)~~(1) insurance against loss of or damage to the real or personal property involved in any sale or services under a policy covering the interest of the seller or vendor~~.~~;

~~(b)~~(2) credit life or credit accident and health insurance~~.~~;

~~(c)~~(3) title insurance~~.~~;

~~(d)~~(4) closing or settlement insurance; and

(5) obligations issued by insurers licensed in this State which shall indemnify against breaches of warranties made in connection with any sale or services.

~~(4)~~(D) ~~No~~ A person may not use the word ‘free’ to describe life or accident and health insurance in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.”

Part III

Effective Date

SECTION 6. This act takes effect upon approval of the Governor.

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