**South Carolina General Assembly**

120th Session, 2013-2014

**S. 462**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hayes

Document Path: l:\council\bills\agm\19924ab13.docx

Companion/Similar bill(s): 3620, 3621

Introduced in the Senate on February 28, 2013

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Captive insurance company

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/28/2013 Senate Introduced and read first time ([Senate Journal‑page 5](file:///h:\SJ%20Archive\2013\02-28-13.docx))

2/28/2013 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 5](file:///h:\SJ%20Archive\2013\02-28-13.docx))

**VERSIONS OF THIS BILL**

[2/28/2013](file:///p:\pprever\2013-14\462_20130228.docx)

**A** **BILL**

TO AMEND SECTION 38‑5‑120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REVOCATION OR SUSPENSION OF A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE BY AN INSURER, SO AS TO REVISE PROVISIONS CONCERNING A REVOCATION OF THE LICENSEE OF A HAZARDOUS INSURER; AND TO AMEND SECTION 38‑90‑160, AS AMENDED, RELATING TO THE EXEMPTION OF CAPTIVE INSURANCE COMPANIES FROM CERTAIN PROVISIONS OF TITLE 38, SO AS TO PROVIDE AN INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY IS SUBJECT TO CERTAIN REQUIREMENTS CONCERNING REPORTS FOR RISK‑BASED CAPITAL, ACQUISITIONS DISCLOSURE, ASSET DISPOSITION, AND CEDED REINSURANCE AGREEMENTS, AND TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY ELECT NOT TO TAKE REGULATORY ACTION CONCERNING RISK‑BASED CAPITAL IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 38‑5‑120 of the 1976 Code, as last amended by Act 27 of 2009, is further amended to read:

“Section 38‑5‑120. (A) The director or his designee shall revoke or suspend certificates of authority granted to an insurer and its officers and agents if he is of the opinion upon examination or other evidence that one or more of the following exist:

(1) The insurer is in an unsound condition.

(2) The insurer has not complied with the law or with the provisions of its charter.

(3) ~~The insurer’s condition renders its proceedings hazardous to the public or its policyholders. For the purpose of the application of this item, one or more of the following standards may be considered by the director or his designee in determining whether the continued operation of an insurer transacting insurance business in this State is hazardous to the public or its policyholders:~~

~~(a) adverse findings reported in financial condition and market conduct examination reports;~~

~~(b) the National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;~~

~~(c) the ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;~~

~~(d) whether the insurer’s asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company’s ability to meet its outstanding obligations as they mature;~~

~~(e) whether the ability of an assuming reinsurer to perform and the insurer’s reinsurance program provides sufficient protection for the company’s remaining surplus after taking into account the insurer’s cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;~~

~~(f) whether the insurer’s operating loss in the last twelve months or a shorter time including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of the insurer’s remaining surplus as regards policyholders in excess of the minimum required;~~

~~(g) whether an affiliate, a subsidiary, or a reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;~~

~~(h) contingent liabilities, pledges, or guaranties which individually or collectively involve a total amount which in the opinion of the director or his designee may affect the solvency of the insurer;~~

~~(i) whether a ‘controlling person’ of an insurer is delinquent in the transmitting to or payment of net premiums to the insurer;~~

~~(j) the age and collectibility of receivables;~~

~~(k) whether the management of an insurer, including officers, directors, or other persons who directly or indirectly control the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in that position;~~

~~(l) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;~~

~~(m) whether management of an insurer has filed a false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, made a false or misleading entry, or omitted an entry of a material amount in the books of the insurer;~~

~~(n) whether the insurer has grown so rapidly and to an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;~~

~~(o) whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems~~ The officers or agents of an insurer refuse to submit to examination or to perform a legal obligation relative to an examination.

(4) The ~~true value of the insurer’s assets, if it is a life insurer, is less than its liabilities, exclusive of its capital~~ insurer has not complied with a lawful order of the director or his designee.

(5) The ~~officers or agents of an insurer refuse to submit to examination or to perform a legal obligation relative to an examination~~ condition of the insurer renders the continuance of its business hazardous to the general public, its creditors, or its policyholders. The director or his designee may consider one or more of the following standards to determine whether the continued operation of an insurer transacting insurance business in this State is hazardous to the general public, its creditors, or its policyholders:

(a) adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;

(b) the National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

(c) whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

(d) whether the ability of an assuming reinsurer to perform and the reinsurance program of the insurer provides sufficient protection for the remaining surplus of the insurer after taking into account the cash flow of the insurer, the classes of business written, and the financial condition of the assuming reinsurer;

(e) whether the operating loss of the insurer in the immediately preceding twelve month period or less is greater than fifty percent of the remaining surplus of the insurer regarding policyholders in excess of the minimum required, provided that for the purposes of this section, the operating loss of an insurer includes, but is not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders;

(f) whether the operating loss, excluding net capital gains, of the insurer in the immediately preceding twelve month period or less is greater than twenty percent of the remaining surplus of the insurer regarding policyholders in excess of the minimum required;

(g) whether a reinsurer, obligor, or any entity within the insurance holding company system of the insurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which in the opinion of the director or his designee may affect the solvency of the insurer;

(h) contingent liabilities, pledges, or guaranties which individually or collectively involve a total amount which in the opinion of the director or his designee may affect the solvency of the insurer;

(i) whether a controlling person of an insurer is delinquent in the transmitting to or payment of net premiums to the insurer;

(j) the age and collectability of receivables;

(k) whether the management of an insurer, including officers, directors, or other people who directly or indirectly control the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in that position;

(l) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(m) whether management of an insurer has filed a false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, made a false or misleading entry, or omitted an entry of a material amount in the books of the insurer;

(n) whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the director or his designee;

(o) whether the insurer has grown so rapidly and to an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(p) whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

(q) whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

(r) whether management persistently engages in material under reserving that results in adverse development;

(s) whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the ability of the insurer to meet its outstanding obligations as they mature; and

(t) any other finding determined by the director or his designee to be hazardous to the insurer’s policyholders, creditors or general public.

~~(6) The insurer has not complied with a lawful order of the director or his designee.~~

(B) ~~Notice of revocation and suspension must be published in a newspaper of general circulation in this State. No new business may be done by the insurer or its agents in this State while the default or disability continues nor until its authority to transact business is restored by the director or his designee~~ For the purposes of making a determination of the financial condition of an insurer under this section, the director or his designee may:

(1) disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates consistent with the NAIC Accounting Policies and Procedures Manual, state laws, and state regulations;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) increase the liability of the insurer in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve month period.

(C) ~~Notwithstanding the provisions of subsection (A), if the director or his designee determines that an insurer is in an unsound condition or in a hazardous condition provided in subsection (A)(1) and (3), he may issue an order requiring the insurer to:~~

~~(1) reduce the total amount of present and potential liability for policy benefits by reinsurance;~~

~~(2) reduce, suspend, or limit the volume of business being accepted or renewed;~~

~~(3) reduce general insurance and commission expenses by specified methods;~~

~~(4) increase the insurer’s capital and surplus;~~

~~(5) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;~~

~~(6) file reports in a form acceptable to the director or his designee concerning the market value of an insurer’s assets;~~

~~(7) limit or withdraw from certain investments or discontinue certain investment practices to the extent the director or his designee considers necessary;~~

~~(8) document the adequacy of premium rates in relation to the risks insured;~~

~~(9) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on a format approved by the director or his designee;~~

~~(10) disregard credit or an amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;~~

~~(11) make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;~~

~~(12) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;~~

~~(13) increase the insurer’s liability in an amount equal to a contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve months; or~~

~~(14) take other action he considers appropriate~~ The department must publish notice of revocation and suspension in a newspaper of general circulation in this State. The insurer and its agents may not conduct any new business in this State while the default or disability continues and the director or his designee restore the authority of the insurer to transact business in this State.

(D) ~~The insurer may request a hearing on an order or a decision made by the director or his designee pursuant to the provisions of this title. The insurer or other parties must be served with notice of the hearing stating the time and place of the hearing and the grounds upon which the director based the order; the hearing must occur not less than ten days nor more than thirty days following the notice and must be conducted at the offices of the South Carolina Department of Insurance unless otherwise designated by the director. The director or his designee shall hold all hearings in private unless the insurer requests a public hearing. After a hearing by the director or his designee, an order or a decision made, issued, or executed by the director or his designee is subject to review in accordance with Section 38‑3‑210 under the appellate procedures of the South Carolina Administrative Law Court, as provided by law~~ (1) Notwithstanding the provisions of subsection (A), if the director or his designee determines that an insurer is in an unsound condition or in a hazardous condition provided in subsection (A)(1) and (5), he may issue an order requiring the insurer to:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce, suspend, or limit the volume of business being accepted or renewed;

(c) reduce general insurance and commission expenses by specified methods;

(d) increase the insurer’s capital and surplus;

(e) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;

(f) file reports in a form acceptable to the director or his designee concerning the market value of an insurer’s assets;

(g) limit or withdraw from certain investments or discontinue certain investment practices to the extent the director or his designee considers necessary;

(h) document the adequacy of premium rates in relation to the risks insured;

(i) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on a format approved by the director or his designee;

(j) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the director or his designee;

(k) provide a business plan to the director or his designee in order to continue to transact business in the State; and

(l) adjust rates for any nonlife insurance product written by the insurer that the director or his designee considers necessary to improve the financial condition of the insurer, notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments.

(2) The order of the director or his designee may be limited to the extent provided by law if the insurer is a foreign insurer.”

SECTION 2. Section 38‑90‑160 of the 1976 Code, as last amended by Act 217 of 2010, is further amended to read:

“Section 38‑90‑160. (A) No provisions of this title, other than those contained in this chapter or contained in specific references contained in this chapter and regulations applicable to them, apply to captive insurance companies.

(B) The director may exempt, by rule, regulation, or order, special purpose captive insurance companies, on a case by case basis, from provisions of this chapter that he determines to be inappropriate given the nature of the risks to be insured.

(C) The provisions of Sections 38‑5‑120(A)(3), 38‑5‑120(C), 38‑5‑120(D), 38‑9‑225, 38‑9‑230, ~~38‑9‑320,~~ 38‑21‑10, 38‑21‑30, 38‑21‑60, 38‑21‑70, 38‑21‑90, 38‑21‑95, 38‑21‑120, 38‑21‑130, 38‑21‑140, 38‑21‑150, 38‑21‑160, 38‑21‑170, 38‑21‑250, 38‑21‑270, 38‑21‑280, 38‑21‑310, 38‑21‑320, 38‑21‑330, 38‑21‑360, 38‑55‑75 and Chapters 44 and 46, Title 38 apply in full to a risk retention group licensed as an industrial insured captive insurance company and, if a conflict occurs between those code sections and chapters referenced in this subsection and this chapter (Chapter 90, Title 38), then the code sections and chapters referenced in this subsection control.

(D) Except as provided elsewhere in this chapter, the provisions of Chapter 87, Title 38 apply to a risk retention group licensed as an industrial insured captive insurance company.

(E)(1) Except for Section 38‑9‑330(F) and Section 38‑9‑440, the provisions of Article 3 and Article 5, Chapter 9, Title 38 apply in full to a risk retention group licensed as an industrial insured captive insurance company, and if a conflict occurs between those provisions and this chapter, the provisions of this subsection control.

(2) The director may elect not to take regulatory action as otherwise required by Sections 38‑9‑330, 38‑9‑340, 38‑9‑350, and 38‑9‑360 if any of the following conditions exists:

(a) the director establishes that the risk retention group’s members, sponsoring organizations, or both, are well‑capitalized entities whose financial condition and support for the risk retention group is adequately documented. In making this determination, the director shall, at a minimum, require the filing of at least three years of historical, audited financial statements of the members, sponsor, or both, to assess the financial ability of the members’, sponsor’s, or boths’, support of the risk retention group. In addition, one year of projected financial information must be reviewed if available. The members, sponsor, or both, shall have:

(i) an investment grade rating from a nationally recognized statistical rating organization or A.M. Best rating of A‑ or better; or

(ii) equity equal to or greater than one hundred million dollars or equity equal to or greater than ten times the risk retention group’s largest net retained per occurrence limit;

(b) each policyholder qualifies as an industrial insured in their state or this State, depending on which has the greater requirements, provided that if the policyholder’s home state does not have an industrial insured exemption or equivalent, the policyholder must qualify under the industrial insured requirement of this State; or

(c) the risk retention group’s certificate of authority date of issue was before January 1, 2011, and, based on a minimum five‑year history of successful operations, is specifically exempted, in writing, from the requirements for mandatory risk‑based capital action by the director.”

SECTION 3. This act takes effect upon approval by the Governor, except the provisions of SECTION 2 are effective on January 1, 2014.

‑‑‑‑XX‑‑‑‑