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COMMITTEE REPORT

February 28, 2013

**H. 3620**

Introduced by Reps. Sandifer and Gambrell

S. Printed 2/28/13--H.

Read the first time February 26, 2013.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3620) to amend Section 38‑90‑160, as amended, Code of Laws of South Carolina, 1976, relating to the exemption of captive insurance companies from certain provisions, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑90‑160, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, 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, AND 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 SPECIFIC CIRCUMSTANCES.

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

SECTION 1. 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 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

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