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COMMITTEE REPORT

February 26, 2014

**S. 909**

Introduced by Senator Hayes

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Read the first time January 14, 2014.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (S. 909) to amend Section 38‑90‑10, as amended, Code of Laws of South Carolina, 1976, relating to definitions concerning captive insurance companies, so as to define, etc., respectfully

**REPORT:**

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

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 38‑90‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING CAPTIVE INSURANCE COMPANIES, SO AS TO DEFINE ‘RISK RETENTION GROUP’; TO AMEND SECTION 38‑90‑40, AS AMENDED, RELATING TO CAPITALIZATION REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO INCLUDE CAPTIVE INSURANCE COMPANIES AND SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES FORMED AS A RISK RETENTION GROUP; TO AMEND SECTION 38‑90‑50, AS AMENDED, RELATING TO FREE SURPLUS REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO INCLUDE CAPTIVE INSURANCE COMPANIES AND SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES FORMED AS A RISK RETENTION GROUP; AND TO AMEND SECTION 38‑90‑70, AS AMENDED, SECTION 38‑90‑100, AS AMENDED, SECTION 38‑90‑110, AS AMENDED, AND SECTION 38‑90‑160, AS AMENDED, ALL RELATING TO MISCELLANEOUS REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO MAKE CONFORMING PROVISIONS FOR CAPTIVE INSURANCE COMPANIES FORMED AS RISK RETENTION GROUPS AND SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES FORMED AS RISK RETENTION GROUPS.

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

SECTION 1. Section 38‑90‑10 of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“Section 38‑90‑10. As used in this chapter, unless the context requires otherwise:

(1) ‘Alien captive insurance company’ means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction.

(2) ‘Affiliated company’ means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(3) ‘Association’ means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or associations that has been in continuous existence for at least one year:

(a) the member organizations of which collectively, or which does itself:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company; or

(ii) have complete voting control over an association captive insurance company organized as a mutual insurer; or

(b) the member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(4) ‘Association captive insurance company’ means a company that insures risks of the member organizations of the association and their affiliated companies.

(5) ‘Branch business’ means any insurance business transacted by a branch captive insurance company in this State.

(6) ‘Branch captive insurance company’ means an alien captive insurance company licensed by the director to transact the business of insurance in this State through a business unit with a principal place of business in this State.

(7) ‘Branch operations’ means any business operations of a branch captive insurance company in this State.

(8) ‘Captive insurance company’ means a pure captive insurance company, association captive insurance company, captive reinsurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under this chapter. For purposes of this chapter, a branch captive insurance company must be a pure captive insurance company with respect to operations in this State, unless otherwise permitted by the director.

(9) ‘Captive reinsurance company’ means a reinsurance company that is formed or licensed pursuant to this chapter and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation.

(10) ‘Consolidated debt to total capital ratio’ means the ratio of the sum of (a) all debts and hybrid capital instruments including, but not limited to, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding to (b) total capital, consisting of all debts and hybrid capital instruments as described in subitem (a) plus owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(11) ‘Consolidated GAAP net worth’ means the consolidated owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(12) ‘Controlled unaffiliated business’ means a company:

(a) that is not in the corporate system of a parent and affiliated companies;

(b) that has an existing contractual relationship with a parent or affiliated company; and

(c) whose risks are managed by a captive insurance company in accordance with Section 38‑90‑190.

(13) ‘Director’ means the Director of the South Carolina Department of Insurance or the director’s designee.

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

(15) ‘GAAP’ means generally accepted accounting principles.

(16) ‘Industrial insured’ means an insured as defined in Section 38‑25‑150(8).

(17) ‘Industrial insured captive insurance company’ means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(18) ‘Industrial insured group’ means a group that meets either of the following criteria:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer or limited liability company; or

(ii) have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) a group which is created under the Liability Risk Retention Act of 1986 15 U.S.C. Section 3901, et seq., as amended, and Chapter 87, Title 38, as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under this title.

(19) ‘Member organization’ means any individual, corporation, limited liability company, partnership, or association that belongs to an association.

(20) ‘Parent’ means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting interests of a captive insurance company.

(21) ‘Participant’ means an entity as defined in Section 38‑90‑230, and any affiliates of that entity, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to the assets of a protected cell.

(22) ‘Participant contract’ means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.

(23) ‘Protected cell’ means a separate account established and maintained by a sponsored captive insurance company for one participant.

(24) ‘Pure captive insurance company’ means a company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.

(25) ‘Qualifying reinsurer parent company’ means a reinsurer authorized to write reinsurance by this State and that has a consolidated GAAP net worth of not less than five hundred million dollars and consolidated debt to total capital ratio not greater than 0.50.

(26) ‘Risk retention group’ means a captive insurance company formed under the Product Liability Risk Retention Act of 1986, 15 U.S.C. Section 3901, et seq., as amended.

(~~26~~27) ‘Special purpose captive insurance company’ means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

(~~27~~28) ‘Sponsor’ means an entity that meets the requirements of Section 38‑90‑220 and is approved by the director to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(~~28~~29) ‘Sponsored captive insurance company’ means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(b) that is formed or licensed under this chapter;

(c) that insures the risks of separate participants through the contract; and

(d) that segregates each participant’s liability through one or more protected cells.

(~~29~~30) ‘Treasury rates’ means the United States Treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.”

SECTION 2. Section 38‑90‑40(A) and (B) of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“(A)(1) The director may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired paid‑in capital of:

(a) in the case of a pure captive insurance company, not less than one hundred thousand dollars;

(b) in the case of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than four hundred thousand dollars;

(c) in the case of an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, or in the case of a captive insurance company formed as a risk retention group, not less than two hundred thousand dollars;

(d) in the case of a sponsored captive insurance company, not less than five hundred thousand dollars; however, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous and there are no more than ten cells, the director may reduce this amount to an amount not less than one hundred fifty thousand dollars;

(e) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.

(2)(a) Except for a sponsored captive insurance company that does not assume any risk, the capital must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director.

(b) For a sponsored captive insurance company that does not assume any risk, the capital also may be in the form of other high quality securities as approved by the director.

(B)(1) The director may not issue a license to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unrestricted net assets of:

(a) in the case of a pure captive insurance company, not less than two hundred fifty thousand dollars; ~~and~~

(b) in the case of a special purpose captive insurance company formed as a risk retention group, not less than five hundred thousand dollars; and

(~~b~~c) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.

(2) Contributions to a captive insurance company incorporated as a nonprofit corporation must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director.”

SECTION 3. Section 38‑90‑50(A)(1) of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“(1) The director may not issue a license to a captive insurance company unless the company possesses and maintains free surplus of:

(a) in the case of a pure captive insurance company, not less than one hundred fifty thousand dollars;

(b) in the case of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than three hundred fifty thousand dollars;

(c) in the case of an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, or in the case of a captive insurance company formed as a risk retention group, not less than three hundred thousand dollars;

(d) in the case of an association captive insurance company incorporated as a mutual insurer, not less than seven hundred fifty thousand dollars;

(e) in the case of an industrial insured captive insurance company, or a captive insurance company formed as a risk retention group incorporated as a mutual insurer, not less than five hundred thousand dollars;

(f) in the case of a sponsored captive insurance company, not less than five hundred thousand dollars; however, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous and there are no more than ten cells, the director may reduce this amount to an amount not less than one hundred fifty thousand dollars; and

(g) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.”

SECTION 4. Section 38‑90‑70(B) of the 1976 Code, as last amended by Act 217 of 2010, is further amended to read:

“(B) Before March first of each year, a captive insurance company or a captive reinsurance company shall submit to the director a report of its financial condition, verified by oath of two of its executive officers. Except as provided in Sections 38‑90‑40 and 38‑90‑50, a captive insurance company or a captive reinsurance company shall report using generally accepted accounting principles, unless the director approves the use of statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the director for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the director. Except as otherwise provided, an association captive insurance company ~~and~~, an industrial insured group, and a captive insurance company formed as a risk retention group shall file its report in the form and manner required by Section 38‑13‑80, and each industrial insured group and each captive insurance company formed as a risk retention group shall comply with the requirements provided for in Section 38‑13‑85. The director by regulation shall prescribe the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. Information submitted pursuant to this section is confidential as provided in Section 38‑90‑35, except for reports submitted by a ~~captive insurance company~~ risk retention group formed as a risk retention group under the Product Liability Risk Retention Act of 1986, 15 U.S.C. Section 3901, et seq., as amended.”

SECTION 5. Section 38‑90‑100 of the 1976 Code, as last amended by Act 332 of 2006, is further amended to read:

“Section 38‑90‑100. (A) An association captive insurance company ~~and~~, an industrial insured captive insurance company insuring the risks of an industrial insured group, and a captive insurance company formed as a risk retention group shall comply with the investment requirements contained in this title. Notwithstanding any other provision of this title, the director may approve the use of alternative reliable methods of valuation and rating.

(B) A pure captive insurance company, a captive reinsurance company, a special purpose captive insurance company, other than a special purpose captive insurance company formed as a risk retention group, and a sponsored captive insurance company are not subject to any restrictions on allowable investments contained in this title; however, the director may request a written investment plan and may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(C) Only a pure captive insurance company may make loans to its parent company or affiliates and only upon the prior written approval of the director and must be evidenced by a note in a form approved by the director. Loans of minimum capital and surplus funds required by Sections 38‑90‑40(A) and 38‑90‑50(A) are prohibited.”

SECTION 6. Section 38‑90‑110(B)(2) of the 1976 Code, as last amended by Act 86 of 2007, is further amended to read:

“(2) An industrial insured captive insurance company or a captive insurance company formed as a risk retention group may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with Sections 38‑9‑200, 38‑9‑210, and 38‑9‑220.”

SECTION 7. Section 38‑90‑160 of the 1976 Code, as last amended by Act 18 of 2013, 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, other than a special purpose captive insurance company formed as a risk retention group, 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)~~(5), 38‑5‑120~~(C)~~(B), 38‑5‑120(D)(1), 38‑5‑120(D)(2), 38‑9‑225, 38‑9‑230, 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~~ a 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~~ a 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~~ a 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 exist:

(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 both, 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 8. This act takes effect upon approval by the Governor.

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