~~Indicates Matter Stricken~~

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COMMITTEE REPORT

January 21, 2016

**H. 4660**

Introduced by Reps. Sandifer and Gambrell

S. Printed 1/21/16--H.

Read the first time January 13, 2016.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4660) to amend Section 38‑43‑10, Code of Laws of South Carolina, 1976, relating to persons excluded from licensure as an insurance producer or an insurance agency, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, Section 38‑43‑10(B), as contained in SECTION 1, by deleting SECTION 1 in its entirety.

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑43‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS EXCLUDED FROM LICENSURE AS AN INSURANCE PRODUCER OR AN INSURANCE AGENCY, SO AS TO EXCEPT FROM THESE EXCLUSIONS A LICENSED PROPERTY AND CASUALTY INSURANCE PRODUCER WHO PLACES SURPLUS LINES INSURANCE THROUGH A LICENSED INSURANCE BROKER; TO AMEND SECTION 38‑43‑50, RELATING TO LIMITED LINE AND SPECIAL PRODUCER LICENSURE, SO AS TO PROVIDE THAT A LICENSED PROPERTY CASUALTY INSURANCE PRODUCER MAY PLACE SURPLUS LINES INSURANCE THROUGH A LICENSED INSURANCE BROKER WITHOUT BEING APPOINTED BY THE SURPLUS LINES INSURER; AND TO AMEND SECTION 38‑1‑20, RELATING TO DEFINITIONS CONCERNING THE INSURANCE LAW OF THIS STATE, AND SECTION 38‑45‑10, RELATING TO DEFINITIONS CONCERNING INSURANCE BROKERS AND SURPLUS PROPERTY LINES INSURANCE, SO AS TO MAKE CONFORMING CHANGES TO RELATED TERMS.

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

SECTION 1. Section 38‑43‑10(B) of the 1976 Code is amended to read:

“(B) This chapter does not apply to excess and surplus lines brokers licensed pursuant to Section 38‑45‑30 except:

(1) as provided in Section 38‑43‑70; and

(2) except for a licensed producer as provided in Section 38‑45‑10(8)(b)(ii).”

SECTION 2. Section 38‑43‑50 of the 1976 Code is amended to read:

“Section 38‑43‑50. (A) All applicants for a limited lines or special producer’s license must be vouched for by an official or a licensed representative of the insurer for which the applicant proposes to act, who shall certify whether the applicant has been appointed a producer to represent it and that it has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. When a contract of a producer is canceled by the insurer represented, that insurer shall notify the department of the cancellation within thirty days stating the cause of the termination. The records furnished by insurers are for the use of the department solely and not for public inspection.

(B) When appointing a producer, the insurer shall certify on a form prescribed by the director whether the applicant has been appointed a producer to represent it and that it has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(C) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the director or his designee, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer’s holding company system or group by the filing of a single appointment request. Each appointment must be accompanied by an appointment fee paid by the insurer as prescribed in Section 38‑43‑80.

(D) Upon receipt of the notice of appointment, the director or his designee shall verify within a reasonable time not to exceed thirty days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the insurance director or his designee shall notify the insurer within five days of its determination.

(E) When placing surplus lines insurance through a licensed insurance broker, a producer licensed for property and casualty insurance is not required to be appointed by the surplus lines insurer.

(F) An insurer shall remit a renewal appointment fee in the amount set forth in Section 38‑43‑80.”

SECTION 3. Section 38‑1‑20(21) and (56) of the 1976 Code is amended to read:

“(21) ‘Eligible surplus lines insurer’ means a nonadmitted insurer with which a licensed broker, or a licensed producer as provided in Section 38‑45‑10(8)(b)(ii), may place surplus lines insurance.

(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, or a licensed broker as provided in Section 38‑45‑10(8)(b)(ii), 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.”

SECTION 4. Section 38‑45‑10(8) and (10) of the 1976 Code is amended to read:

“(8)(a) ‘Insurance broker’ means a property and casualty insurance producer licensed by the director or his designee who:

(i) sells, solicits, or negotiates insurance on behalf of an insured;

(ii) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insured;

(iii) advertises or otherwise gives notice that he receives or transmits a surplus lines application or policies;

(iv) receives or delivers a policy of surplus lines insurance for an insured on behalf of a surplus lines insurer;

(v) receives, collects, or transmits a premium of surplus lines insurance; or

(vi) performs another act in the making of a surplus lines insurance contract for or with an insured.

(b) ~~However,~~ An insurance broker’s license is not required of:

(i) a broker’s office employee acting within the confines of the broker’s office, under the direction and supervision of the licensed broker and within the scope of the broker’s license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties; or

(ii) a producer licensed for property and casualty insurance who places surplus lines insurance through a licensed insurance broker.

(c) An insurance broker, or an insurance producer as provided in subitem (b)(ii), may place that insurance either with an eligible surplus lines insurer or with a licensed insurance producer appointed by an insurance carrier licensed in this State.

(10) ‘Surplus lines insurance’ means any property and casualty insurance permitted to be placed directly or through a surplus lines broker, or an insurance producer as provided in subitem (b)(ii), with a surplus lines insurer eligible to accept the insurance as defined in Section 38‑1‑20(56).”

SECTION 5. This act takes effect upon approval by the Governor.

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