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COMMITTEE REPORT

February 14, 2019

**S. 358**

Introduced by Senator Cromer

S. Printed 2/14/19--H.

Read the first time February 7, 2019.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 358) to amend Section 38‑31‑30, Code of Laws of South Carolina, 1976, relating to the application of the South Carolina Property and Casualty Insurance Guaranty Association, 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 38‑31‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION, SO AS TO APPLY THE PROVISIONS OF CHAPTER 31, TITLE 38 TO A CLAIM OR LOSS COVERED BY SELF‑INSURANCE THAT OCCURRED PRIOR TO THE ACQUISITION OF A BLOCK OF BUSINESS BY A LICENSED INSURER; AND TO AMEND SECTION 42‑5‑20, RELATING TO INSURANCE REQUIREMENTS FOR WORKERS’ COMPENSATION, SO AS TO PROHIBIT A SELF‑INSURER FROM PARTICIPATING IN OR OBTAINING BENEFITS FROM THE SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION AND TO REQUIRE THE SOUTH CAROLINA WORKERS’ COMPENSATION COMMISSION TO SECURE AN ACTUARIAL OPINION BEFORE APPROVING THE TRANSFER OF A SELF‑INSURER TO A LICENSED INSURER.

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

SECTION 1. Section 38‑31‑30 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) any claim or loss or part of a claim or loss covered by self‑insurance that occurred prior to the assumption, transfer, merger, or other acquisition of a block of business by a licensed insurer.”

SECTION 2. Section 42‑5‑20 of the 1976 Code is amended to read:

“Section 42‑5‑20. (A)(1) Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title. The commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workers’ Compensation Law for the purpose of qualifying as self‑insurers. In the case of self‑insurers the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred. The Workers’ Compensation Commission shall have exclusive jurisdiction of group self‑insurers under this section, and such group self‑insurers shall not be deemed to be insurance companies and shall not be regulated by the Department of Insurance. Provided, further, that if any provision is made for the recognition of reinsurance of the self‑insured fund, such provision shall expressly provide that the reinsurance agreement or treaty must recognize the right of the claimant to recover directly from the reinsurer and that such agreement shall provide for privity between the reinsurer and the workers’ compensation claimant.

(2) In lieu of submitting audited financial statements when an employer makes an application to self‑insure with the commission, the commission shall accept the sworn statement or affidavit of an independent auditor verifying the financial condition of the employer according to the required financial ratios and guidelines established by regulation of the commission. The independent auditor must be a certified public accountant using generally acceptable accounting principles in the preparation of the financial statements of the employer.

(B) A corporation, association, organization, or mutual insurance association formed pursuant to Section 42‑5‑50 may not be considered a licensed insurer pursuant to Chapter 31, Title 38 and may not participate in or receive benefits or protection from the South Carolina Property and Casualty Insurance Guaranty Association.

(C) An assumption, transfer, merger, or other acquisition of a block of business by a licensed insurer from a self‑insurer may not be approved until the commission has obtained an opinion from a qualified actuary as to the adequacy of assets and other funding to adjudicate and pay any known claims as of the effective date of the assumption, transfer, merger, or other acquisition of the self‑insured block.”

SECTION 3. This act takes effect on July 1, 2019.

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