**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4189**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Sandifer

Document Path: LC-0237PH23.docx

Introduced in the House on March 28, 2023

Introduced in the Senate on April 2, 2024

Last Amended on May 8, 2024

Currently residing in the House

Summary: Captive Insurance Companies

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/28/2023 House Introduced and read first time (House Journal‑page 30)

 3/28/2023 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 30)

 3/27/2024 House Committee report: Favorable with amendment **Labor, Commerce and Industry** (House Journal‑page 2)

 3/28/2024 House Amended (House Journal‑page 26)

 3/28/2024 House Read second time (House Journal‑page 26)

 3/28/2024 House Roll call Yeas-104 Nays-0 (House Journal‑page 28)

 3/28/2024 House Unanimous consent for third reading on next legislative day (House Journal‑page 29)

 3/29/2024 House Read third time and sent to Senate (House Journal‑page 2)

 4/2/2024 Senate Introduced and read first time (Senate Journal‑page 11)

 4/2/2024 Senate Referred to Committee on **Banking and Insurance** (Senate Journal‑page 11)

 4/2/2024 Scrivener's error corrected

 4/25/2024 Senate Committee report: Favorable with amendment **Banking and Insurance** (Senate Journal‑page 9)

 5/8/2024 Senate Committee Amendment Adopted (Senate Journal‑page 88)

 5/8/2024 Senate Read second time (Senate Journal‑page 88)

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**VERSIONS OF THIS BILL**

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[05/09/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4189_20240509.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Amendment Adopted

May 08, 2024

H. 4189

Introduced by Rep. Sandifer

S. Printed 05/08/24--S.

Read the first time April 2, 2024

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 38‑90‑10, RELATING TO DEFINITIONS, so as to include references to foreign captive insurance companies; BY AMENDING SECTION 38‑90‑20, RELATING TO LICENSING and fees, so as to amend meeting requirements, remove a certification fee and outline how to make proper payments to the department; BY AMENDING SECTION 38‑90‑40, RELATING TO CAPITALIZATION REQUIREMENTS, so as to give discretion to the director; BY AMENDING SECTION 38‑90‑60, RELATING TO INCORPORATION OPTIONS AND REQUIREMENTS, so as to include foreign captive insurance companies; BY AMENDING SECTION 38‑90‑70, RELATING TO REPORTS, so as to change a deadline and include references to foreign captive insurance companies; BY AMENDING SECTION 38‑90‑75, RELATING TO DISCOUNTING OF LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES, so as to allow a sponsored captive insurance company to file one actuarial opinion; BY AMENDING SECTION 38‑90‑80, RELATING TO INSPECTIONS AND EXAMINATIONS, so as to make the examination of some captive insurance companies optional and to include references to foreign captive insurance companies; BY AMENDING SECTION 38‑90‑140, RELATING TO TAX PAYMENTs, so as to amend rEQUIRED tax payments for a sponsored captive insurance company; BY AMENDING SECTION 38‑90‑165, RELATING TO DECLARATION OF INACTIVITY, so as to allow for the submission of a written approval; BY AMENDING SECTION 38‑90‑175, RELATING TO the CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND, so as to change the allowed transfer of collected taxes from twenty percent to forty percent; AND BY AMENDING 38‑90‑215, RELATING TO PROTECTED CELLS, SO AS TO REMOVE LICENSING REQUIREMENTS.

 Amend Title To Conform

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

SECTION 1. Section 38‑90‑10(1), (6), and (21) of the S.C. Code is amended to read:

 (1) “Alien or foreign captive insurance company” means an insurance company or protected cell, or its equivalent, of an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien or foreign jurisdiction which imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction, but may not include a corporation controlled by an alien adversary.

 (6) “Branch captive insurance company” means an alien or foreign 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.

 (21) “Participant” means an entity as defined in Section 38‑90‑24038‑90‑255, 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.

SECTION 2. Section 38-90-10 of the S.C. Code is amended by adding:

 (34) “Alien adversary” means any alien government or nongovernment person determined by the United States Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of United States citizens.

 (35) “Corporation controlled by an alien adversary” means a legal entity engaged in commerce that:

 (a) is wholly owned by an alien adversary;

 (b) has an alien adversary as a dominant shareholder, directly or indirectly;

 (c) is wholly owned by a citizen of an alien adversary; or

 (d) has one or a number of citizens of an alien adversary whose cumulative ownership is as a dominant shareholder.

 (36) “Dominant shareholder” means the single owner of ten percent or more of a legal entity engaged in commerce’s stock, securities, or other indicia of ownership; or multiple owners of twenty percent or more of a legal entity engaged in commerce’s stock, securities, or other indicia of ownership.

SECTION 3. Section 38‑90‑20 of the S.C. Code is amended to read:

 Section 38‑90‑20. (A) A captive insurance company, when permitted by its articles of incorporation, articles of organization, operating agreement, or charter, may apply to the director for a license to provide any and all insurance, except workers' compensation insurance written on a direct basis, authorized by this title; however:

 (1) a pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated business, risks assumed from a risk pool for the purpose of risk sharing, or a combination of them;

 (2) an association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;

 (3) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

 (4) a special purpose captive insurance company may provide insurance or reinsurance, or both, for risks as approved by the director;

 (5) a captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage written on a direct basis;

 (6) a captive insurance company may not accept or cede reinsurance except as provided in Section 38‑90‑110.

 (B) To conduct insurance business in this State a captive insurance company shall:

 (1) obtain from the director a license authorizing it to conduct insurance business in this State;

 (2) beginning the year immediately following the issuance of its license, annually hold at least one board of director's meeting, or in the case of a reciprocal insurer, a subscriber's advisory committee meeting, or in the case of a limited liability company a meeting of the managing board, at which a majority of the directors arequorum is physically present in this State, provided that at least two board members or subscriber advisory committee members, as applicable, must be physically present in this State;

 (3) maintain its principal place of business in this State, or in the case of a branch captive insurance company, maintain the principal place of business for its branch operations in this State; and

 (4) appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this State. In the case of a captive insurance company:

 (a) formed as a corporation, a nonprofit corporation, or a limited liability company, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director must be an agent of the captive insurance company upon whom any process, notice, or demand may be served;

 (b) formed as a reciprocal insurer, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

 (C)(1) Before receiving a license, a captive insurance company:

 (a) formed as a corporation or a nonprofit corporation, shall file with the director a certified copy of its articles of incorporation and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the director;

 (b) formed as a limited liability company, shall file with the director a certified copy of its articles of organization and operating agreement, a statement under oath by its managers showing its financial condition, and any other statements or documents required by the director;

 (c) formed as a reciprocal shall:

 (i) file with the director a certified copy of the power of attorney of its attorney‑in‑fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney‑in‑fact showing its financial condition, and any other statements or documents required by the director; and

 (ii) submit to the director for approval a description of the coverages, deductibles, coverage limits, and rates and any other information the director may reasonably require. If there is a subsequent material change in an item in the description, the reciprocal captive insurance company shall submit to the director for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the director. The reciprocal captive insurance company shall inform the director of any material change in rates within thirty days of the adoption of the change.

 (2) In addition to the information required by item (1), an applicant captive insurance company shall file with the director evidence of:

 (a) the amount and liquidity of its assets relative to the risks to be assumed;

 (b) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

 (c) the overall soundness of its plan of operation;

 (d) the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

 (e) such other factors considered relevant by the director in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

 (3) In addition to the information required by items (1) and (2) an applicant sponsored captive insurance company shall file with the director:

 (a) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the director, and how it will report the experience to the director;

 (b) all contracts or sample contracts between the sponsored captive insurance company and any participants; and

 (c) a statement that expenses will be allocated to each protected cell in an equitable manner.

 (4) Information submitted pursuant to this section is confidential as provided in Section 38‑90‑35 except that information is discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a specific finding by the court that:

 (a) the captive is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this chapter;

 (b) the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in litigation; and

 (c) the information sought is not available through another source.

 (D)(1) A captive insurance company shall pay to the department a nonrefundable fee of two hundred dollars for processing its application for license. In addition, the director may retain legal, financial, and examination services from outside the department to examine and investigate the application, the reasonable cost of which may be charged against the applicant in an amount that is determined to be appropriate by the director given the nature, scale, and complexity of the application being investigated.

 (2) Section 38‑13‑60 applies to examinations, investigations, and processing conducted pursuant to the authority of this section.

 (3) In addition, a captive insurance company shall pay a license fee for the year of registration of three hundred dollars and an annual renewal fee of five hundred dollars.

 (4) The department may charge a fifteen‑dollar fee for any document requiring certification of authenticity or the signature of the director.

 (E) If the director is satisfied that the documents and statements filed by the captive insurance company comply with the provisions of this chapter, the director may grant a license authorizing the company to do insurance business in this State until March first at which time the license may be renewed.

 (F) A foreign or alien captive insurance company, upon approval of the director, may become a domestic captive insurance company by complying with all of the requirements of law relative to the organization and licensing of a domestic captive insurance company of the same or equivalent type in this State and by filing with the Secretary of State its articles of association, charter, or other organizational document, together with appropriate amendments to them adopted in accordance with the laws of this State bringing those articles of association, charter, or other organizational document into compliance with the laws of this State. After this is accomplished, the captive insurance company is entitled to the necessary or appropriate certificates and licenses to continue transacting business in this State and is subject to the authority and jurisdiction of this State. In connection with this redomestication, the director may waive any requirements for public hearings. It is not necessary for a company redomesticating into this State to merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

 (G)(1) A captive insurance company and any protected cell, upon approval of the director, may include within its plan of operation that it will:

 (a) receive payments of premium in a specified non‑U.S. currency and pay claims on insured losses in a specified non‑U.S. currency;

 (b) authorize the payment of claims in a specified non‑U.S. currency; and

 (c) hold a specified non‑U.S. currency as capital, surplus, or net assets, or any combination thereof.

 (d) The non-U.S. currency may only be the currency of the country in which the owner or insured of the captive insurance company or protected cell is located and may not be the currency of an alien adversary.

 (2) Notwithstanding the foregoing, all amounts paid to the department pursuant to this chapter shall be paid in United States currency, and all reports and other information required to be submitted to the department pursuant to this chapter must be converted to United States currency, based on such exchange rate as may be approved by the department.

 (3) In determining the exchange rate between United States currency and the non‑U.S. currency, the captive insurance company shall use the applicable exchange rate as published by the United States Department of the Treasury as of the applicable date of conversion.

 (4) For the purpose of calculating the amount of premium tax due under this chapter, a policy issued by a captive insurance company payable in non‑U.S. currency is deemed to be of an equivalent value in United States currency based on the conversion date as may be approved by the department and is payable in United States currency when due.

SECTION 4. Section 38‑90‑40(A)(1)(d) of the S.C. Code is amended to read:

 (d) in the case of a sponsored captive insurance company, not less than two hundred fifty thousand dollarsan amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro formas, including the nature, scale, and complexity of the risks to be insured;

SECTION 5. Section 38‑90‑60(C) of the S.C. Code is amended to read:

 (C) In the case of a captive insurance company licensed as a branch captive insurance company, the alien or foreign captive insurance company must register to do business in this State after the certificate of authority has been issued.

SECTION 6. Section 38‑90‑70 of the S.C. Code is amended to read:

 Section 38‑90‑70. (A) A captive insurance company may not be required to make an annual report except as provided in this chapter. The director has the authority to waive or grant an extension to the requirements of this section.

 (B)(1) A captive insurance company shall submit annually to the director a report of its financial condition, verified by oath of two of its executive officers. The report must be submitted no later than March first for risk retention groups and no later than July first for all other captive insurance companies.

 (2) A captive insurance company, other than a risk retention group, may make a written application to file the annual report on a fiscal year end that is consistent with the parent company's fiscal year end. If an alternative date is granted, the:

 (a) income statement and premium schedule of the annual report must be filed before March first of each year for each calendar year‑end, verified by oath of two of its executive officers; and

 (b) entire annual report must be filed no more than sixtyone hundred eighty days after the fiscal year end, except as otherwise approved by the director.

 (C) In addition to the annual report, a branch captive insurance company shall file with the director a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien or foreign captive insurance company is formed, verified by oath of two of its executive officers. The reports and statements of the alien or foreign captive insurance company must be submitted within sixtyone hundred eighty days after the fiscal year end of the alien or foreign captive insurance company except as otherwise approved by the director. If the director finds that the reports and statements filed by the alien or foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien or foreign captive insurance company to satisfy the laws of this State, the director may waive the requirement for completion of the Captive Annual Report for business written in the alien or foreign jurisdiction.

 (D) Except as provided in Section 38‑90‑40, a captive insurance 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, an industrial insured group, and 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 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 all other 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 risk retention group.

SECTION 7. Section 38‑90‑75 of the S.C. Code is amended to read:

 Section 38‑90‑75. (A) A captive insurance company shall file annually an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive company or its affiliates.

 (B) A captive insurance company may discount its loss and loss adjustment expense reserves with prior written approval by the director.

 (C) The director may disallow the discounting of loss and loss adjustment expense reserves if a captive insurance company violates a provision of this title.

 (D) The director may allow a sponsored captive insurance company to file one actuarial opinion pursuant to this section on a consolidated basis covering the sponsored captive insurance company and its unincorporated protected cells and incorporated protected cells.

SECTION 8. Section 38‑90‑80 of the S.C. Code is amended to read:

 Section 38‑90‑80. (A)(1) At least once every five years, and whenever the director determines it to be prudent, the director personally, or by a competent person appointed by the director, shall thoroughly inspect and examine each risk retention group or industrial insured insurance company to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this chapter. The director, at his discretion, may physically visit the risk retention group or industrial insured insurance company. The expenses and charges of the examination must be paid to the State by the company or companies examined and the department shall issue its warrants for the proper charges incurred in all examinations.

 (2) A captive insurance company that is not a risk retention group or industrial insured captive insurance company mustmay be examined three years following the date of licensure and at the discretion of the director thereafter.

 (B) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies of documents produced by, obtained by, or disclosed to the director or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the director or an employee or agent of the director without the prior written consent of the company, except to the extent provided in this subsection.

 (1) Nothing in this subsection prevents the director from using this information in furtherance of the director's regulatory authority under this title.

 (2) The director may grant access to this information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this State or any other state or country or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

 (3) The confidentiality provisions of this subsection do not extend to final reports produced by the director in inspecting or examining a risk retention group. In addition, nothing contained in this subsection limits the authority of the director to use and, if appropriate, make public a preliminary examination report, examiner or insurer work papers or other documents, or other information discovered or developed during the course of an examination in the furtherance of a legal or regulatory action which the director considers appropriate.

 (C) This section applies to all business written by a captive insurance company; however, the examination for a branch captive insurance company must be of branch business and branch operations only, as long as the alien or foreign captive insurance company provides annually to the director, a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the alien or foreign captive insurance company is formed and demonstrates to the director's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.

 (D) To the extent that the provisions of Chapter 13 do not contradict the provisions of this section, Chapter 13 applies to captive insurance companies licensed under this chapter.

SECTION 9. Section 38‑90‑140(H) of the S.C. Code is amended to read:

 (H) In the case of a sponsored captive insurance company, with respect to any:

 (1) unincorporated protected cells, the aggregate taxes to be paid as calculated under subsections (A) and (B) must be calculated and paid on a consolidated basis;

 (2) incorporated protected cells that are affiliates of the sponsor, the aggregate taxes to be paid as calculated under subsections (A) and (B) must be calculated and paid on a consolidated basis; and

 (3) incorporated protected cells that are not affiliates of the sponsor, the aggregate taxes to be paid as calculated under subsections (A) and (B) shall apply to each incorporated protected cellthe aggregate taxes to be paid with respect to the sponsored captive insurance company and its unincorporated protected cells and incorporated protected cells, as calculated under subsections (A) and (B), must be calculated and paid on a consolidated basis as one captive insurance company.

SECTION 10. Section 38‑90‑165 of the S.C. Code is amended to read:

 Section 38‑90‑165. (A) The director may declare inactive by order written approval a captive insurance company other than a risk retention group or association captive if such captive insurance company has no outstanding insurance liabilities and agrees to cease providing insurance coverage.

 (B) During the period the captive insurance company is inactive, the director may by written approval:

 (1) reduce the minimum free and unimpaired paid‑in capital or surplus, or combination thereof, to no less than twenty‑five thousand dollars;

 (2) modify the minimum premium tax applicable to the captive insurance company to an amount no less than two thousand dollars and the captive insurance company shall pay no other premium taxes; and

 (3) exempt the captive insurance company from the requirement to file such reports as set forth in the orderwritten approval.

SECTION 11. Section 38‑90‑175(A) of the S.C. Code is amended to read:

 (A) There is created a fund to be known as the “Captive Insurance Regulatory and Supervision Fund” for the purpose of providing the financial means for the director to administer Chapter 87 and Chapter 90 of this title and for reasonable expenses incurred in promoting the captive insurance industry in the State. The transfer of twentyforty percent of the taxes collected by the department pursuant to Chapter 90 of this title, and all fees and assessments received by the department pursuant to the administration of this chapter must be credited to this fund. All fees received by the department from reinsurers who assume risk only from captive insurance companies, must be deposited into the Captive Insurance Regulatory and Supervision Fund. All fines and administrative penalties must be deposited directly into the South Carolina general fund.

SECTION 12. Section 38‑90‑215(B)(2) and (C)(2) of the S.C. Code is amended to read:

 (2) An unincorporated protected cell must meet the have free and unimpaired paid‑in capital and surplus requirements applicablein an amount determined by the director after giving due consideration to a special purpose captive insurance companythe protected cell’s business plan, feasibility study, and pro formas, including the nature, scale, and complexity of the risks to be insured, and either:

 (a) establish loss and loss expense reserves for business written through the unincorporated protected cell; or

 (b) the business written through the unincorporated protected cell must be:

 (i) fronted by an insurance company licensed pursuant to the laws of:

 (A) any state; or

 (B) any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of any state;

 (ii) reinsured by a reinsurer authorized or approved by this State; or

 (iii) secured by a trust fund in the United States for the benefit of policyholders and claimants funded by an irrevocable letter of credit or other asset acceptable to the director. The amount of security provided by the trust fund may not be less than the reserves associated with those liabilities, including reserves for losses, allocated loss adjustment expenses, incurred but unreported losses, and unearned premiums for business written through the participant's protected cell. The director may require the sponsored captive to increase the funding of a trust established pursuant to this item. If the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this State, a member of the federal reserve system, or a bank chartered by another state if that state‑chartered bank is acceptable to the director. A trust and trust instrument maintained pursuant to this item must be in a form and upon terms approved by the director.

 (2) Except as specifically set forth in this chapter, each incorporated protected cell of a sponsored captive insurance company shall be licensed and treated as a special purpose captive insurance companyhave free and unimpaired paid‑in capital and surplus in an amount determined by the director after giving due consideration to the protected cell’s business plan, feasibility study, and pro formas, including the nature, scale, and complexity of the risks to be insured.

SECTION 13. This act takes effect upon approval by the Governor.

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