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COMMITTEE REPORT

May 23, 2013

**H. 3960**

Introduced by Rep. Sandifer

S. Printed 5/23/13--S.

Read the first time May 1, 2013.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 3960) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑41‑35 so as to require employers participating in a multiple employer self‑insured health plan, 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.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Insurance estimates this bill will have no fiscal impact on the state general fund or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑41‑35 SO AS TO REQUIRE EMPLOYERS PARTICIPATING IN A MULTIPLE EMPLOYER SELF‑INSURED HEALTH PLAN TO EXECUTE HOLD HARMLESS AGREEMENTS IN WHICH THE EMPLOYER AGREES TO PAY ALL UNPAID PORTIONS OF INSURED CLAIMS, AND TO REQUIRE THE DEPARTMENT OF INSURANCE TO PROVIDE FORMS THAT MUST BE USED FOR THESE AGREEMENTS, AMONG OTHER THINGS.

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

SECTION 1. Chapter 41, Title 38 of the 1976 Code is amended by adding:

“Section 38‑41‑35. Each participating employer, as a condition of participation in a multiple employer self‑insured health plan, shall execute an agreement by which the employer agrees to personally pay all claims for benefits covered under the multiple employer self‑insured health plan which are incurred by his or its covered employees and their covered dependents, but which the plan has failed to pay. Such agreements shall be made on forms prescribed by the director and shall extend to all unpaid claims for benefits incurred by the employer’s employees and their dependents during the time such employees and dependents were covered under the multiple employer self‑insured health plan. Neither failure of a participating employer to execute an agreement, nor failure of the plan to require such execution, shall excuse the employer from liability for unpaid claims incurred by covered employees and dependents. An employer shall be deemed to have notice of the requirements of this section, and upon joining a multiple employer self‑insured health plan, the employer shall be deemed to have agreed to liability for unpaid claims of his covered employees and their dependents in the same manner as if an agreement had been executed.

The multiple employer self‑insured health plan shall provide each participating employer annual notice of the participating employer’s responsibilities. This notice shall be in a form approved by the director or his designee and shall state that the participating employer is responsible for all claims incurred by the participating employer’s covered employees and their covered dependents that the multiple employer self‑insured health plan has failed to pay. The multiple employer self‑insured health plan must obtain written certification from each participating employer annually that the participating employer understands that it is liable for covered claims which the multiple employer self‑insured health plan fails to pay. The multiple employer self‑insured health plan shall file an affidavit signed by the multiple employer self‑insured health plan’s Chief Executive Officer that it has obtained each participating employer’s certification. The multiple employer self‑insured health plan shall maintain copies of each participating employer’s annual certification for the duration of the multiple employer self‑insured health plan. Failure of the multiple employer self‑insured health plan to comply with any of its obligations under this section shall not be a defense to, or in any way diminish, an employer’s obligation to personally pay all claims for benefits covered under the multiple employer self‑insured health plan which are incurred by his or its covered employees and their covered dependents, but which the plan has failed to pay.”

SECTION 2. Section 38‑41‑50 of the 1976 Code, as last amended by Act 137 of 2012, is further amended to read:

“Section 38‑41‑50. A multiple employer self‑insured health plan shall include aggregate excess stop‑loss coverage and individual excess stop‑loss coverage provided by an insurer licensed, approved, or eligible by the State. A MEWA shall maintain excess insurance coverage written by an insurer that the Department of Insurance considers approved or eligible to do business in this State. This coverage must have a net retention level determined in accordance with sound actuarial principles approved by the director or his designee, and based on the number of risks insured by the MEWA. The MEWA must file the policy contract providing this coverage with the director or his designee. The terms of this policy contract must require that before the insurer may cancel or modify the terms of this policy contract, the insurer must give notice of the pending cancellation or modification of terms to the director at least thirty days before the cancellation or modification may occur. Aggregate excess stop‑loss coverage shall include provisions to cover incurred, unpaid claim liability in the event of plan termination. The excess or stop‑loss insurer shall bear the risk of coverage for any member of the pool that becomes insolvent with outstanding contributions due. ~~In addition, the plan~~ The limits required for an excess stop‑loss policy shall ~~have a~~ be determined by the director or his designee in accordance with sound actuarial principles, so that the probability of incurred claims exceeding the participating ~~employer’s~~ employers’ fund ~~in an amount at least equal to the point at which~~ and the aggregate limit of the excess or stop‑loss ~~insurer shall assume one hundred percent of additional liability~~ coverage is de minimus. A plan shall submit its proposed excess or stop‑loss insurance contract to the director or his designee at least thirty days prior to the proposed ~~plan’s~~ contract’s effective date and at least thirty days ~~subsequent~~ prior to any renewal date. The director or his designee shall review the contract to determine whether it meets the standards established by this chapter and respond within a thirty‑day period. In reviewing an excess stop‑loss agreement for approval, the director or his designee will closely scrutinize the agreement to determine whether the levels of individual and aggregate risk retained by the plan will put the plan in an unsound condition or will render its proceedings hazardous to the public or to persons covered under the plan. Any excess or stop‑loss insurance ~~plan~~ contract must be noncancellable for a minimum term of two years. In addition, the plan shall have a participating employer’s fund in an amount at least equal to the point at which the excess or stop‑loss insurer shall assume a one hundred percent share of additional liability. The amount required for the employer’s fund must be determined in accordance with sound actuarial principles and approved by the director or his designee and based upon the number of risk insured by the plan. This employer’s fund must be funded via cash or cash equivalent securities.”

SECTION 3. This act takes effect upon approval by the Governor.

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