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COMMITTEE REPORT

April 9, 2014

**S. 569**

Introduced by Senators Davis, Turner, Campsen, Young, O’Dell and Cromer

S. Printed 4/9/14--S. [SEC 4/10/14 5:08 PM]

Read the first time March 21, 2013.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 569) to amend the Code of Laws of South Carolina, 1976, to enact the “Competitive Insurance Act” by amending Section 38-3-110, relating to duties, 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, by striking SECTION 2A. and 2B. and inserting:

/ SECTION 2. Section 38‑7‑200(F) of the 1976 Code is amended to read:

“~~(F)~~ ~~This section applies to all new policies issued with an effective date after December 31, 2007.~~” /

Amend the bill further, as and if amended, by adding an appropriately numbered penultimate SECTION to read:

/ SECTION \_\_. The Department of Insurance shall conduct a study to assess the feasibility of the creation of a hurricane model by the State, with particular emphasis on the associated costs and physical/logistical requirements. The study also must assess the benefits to consumers of a South Carolina‑produced model, including an evaluation of whether it would yield more accurate assessments of risk and better rates. The department shall summarize its findings in a written report that it must provide to the Senate Banking and Insurance Committee and the House Labor, Commerce and Industry Committee before January 1, 2015./

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT** 1/

This bill is expected to reduce Insurance Tax revenues deposited to the state’s general fund by a total of $3,335,361 in FY 2014-15 and increase earmarked funds of Department of Insurance (DOI) by a total of $1,678,205 in FY 2014-15.

**Explanation**

This bill creates the "Competitive Insurance Act". It sets provisions for eligible insurers to receive a new tax credit against insurance premium taxes imposed on full coverage policies (homeowners, specifically including wind and hail coverage) written outside of a defined coastal area. The credit reduces the premium tax levied from 1.25% to 1% of the total premiums written on full coverage policies *outside of* such coastal area. This new credit is in addition to a tax credit in an amount equivalent to 25% of tax due for coverage *written in* the coastal area under Section 38-7-200. It enables the South Carolina Hurricane Damage Mitigation Program to utilize proceeds of 1% of the premium taxes due to this State by brokers placing property insurance within the eligible surplus lines market, and further raises the level of annual premium taxes that is to be retained by the Department of Insurance (DOI) from 1% of total premium taxes collected by licensed insurers to a total of 2%.

Based on supporting data from the DOI, we estimate that DOI would retain an additional $1,537,434 of premium taxes, and $140,771 from broker/surplus lines related to property insurance. This would reduce GFR by $1,678,205. In addition, insurance companies operating in the wind zones will get an additional tax credit in effect reducing the annual levy for policy premiums written *outside of* the coastal area from 1.25% to 1%. The additional .25% reduction in the tax rate will result in a net loss of $1,657,156 in Insurance Tax revenue within the state general fund in FY 2014-15.

*Approved By:*

Frank A. Rainwater

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Insurance estimates the cost of this bill is approximately $3,335,361 to the general fund. This increase is based on an additional one percent of premium taxes of $1,537,434, a one percent tax on broker/surplus lines related to property in the amount of $140,771, and a maximum twenty-five percent credit of $1,657,156. The Department of Insurance receives premium taxes from the insurance carriers. Currently, these funds flow through the Department of Insurance to the general fund. Under this bill, an increased 1% of premium taxes (total of 2%) would be held at the Department of Insurance to implement mitigation programs resulting in the Department of Insurance retaining $1,537,434 and $140,771 per year instead of these funds going to the general fund. In addition, insurance companies operating in the wind zones will get an additional tax credit of 25% in addition to the 1% they are already receiving. The additional 25% tax credit will result in the general fund receiving $1,657,156 less going forward.

**SPECIAL NOTES.**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this or any other bill.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “COMPETITIVE INSURANCE ACT” BY AMENDING SECTION 38-3-110, RELATING TO DUTIES OF THE CHIEF INSURANCE COMMISSIONER, TO PROVIDE THAT THE DIRECTOR MUST ENGAGE IN EFFORTS TO PROVIDE MARKET ASSISTANCE AND PROMOTE CONSUMER EDUCATION TO COASTAL RESIDENTIAL PROPERTY INSURANCE CONSUMERS, AND THE DIRECTOR MUST SUBMIT A REPORT TO THE PRESIDENT PRO TEMPORE OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE CHAIRMAN OF THE SENATE BANKING AND INSURANCE COMMITTEE, AND THE CHAIRMAN OF THE HOUSE LABOR, COMMERCE AND INDUSTRY COMMITTEE BY NO LATER THAN JANUARY THIRTY-FIRST OF EACH YEAR REGARDING THE STATUS OF THE COASTAL PROPERTY INSURANCE MARKET; TO AMEND SECTION 38-7-200, RELATING TO CREDITS AGAINST PREMIUM TAX, TO DEFINE ESSENTIAL TERMS, AND TO PROVIDE THAT INSURERS MAY BE ELIGIBLE TO RECEIVE A PREMIUM TAX CREDIT AGAINST THE PREMIUM TAX IMPOSED BY SECTION 38-7-20 ON FULL COVERAGE POLICIES WRITTEN OUTSIDE OF THE COASTAL AREA TO REDUCE THE INSURANCE PREMIUM TAX LEVIED TO ONE PERCENT OF THE TOTAL PREMIUMS WRITTEN ON FULL COVERAGE POLICIES OUTSIDE OF THE COASTAL AREA, AND THE DIRECTOR OR HIS DESIGNEE SHALL DEVELOP PROCEDURES TO BE USED IN IMPLEMENTING THIS TAX CREDIT; TO AMEND SECTION 38-75-485, RELATING TO THE IMPLEMENTATION OF THE SOUTH CAROLINA HURRICANE DAMAGE MITIGATION PROGRAM BY THE DEPARTMENT, TO PROVIDE THAT ONE PERCENT OF THE PREMIUM TAXES DUE TO THIS STATE BY BROKERS PLACING PROPERTY INSURANCE WITHIN THE ELIGIBLE SURPLUS LINES MARKET AND TWO PERCENT OF THE PREMIUM TAXES COLLECTED ANNUALLY AND REMITTED TO THE DEPARTMENT BY INSURERS LICENSED TO DO BUSINESS IN THIS STATE; AND TO AMEND SECTION 38-75-755, RELATING TO NOTIFICATION OF APPLICANTS OR RENEWING POLICYHOLDERS OF AVAILABLE CREDITS, DISCOUNTS, AND DEDUCTIONS, TO PROVIDE THAT ALL INSURERS, AT THE ISSUANCE OF A NEW POLICY AND AT EACH RENEWAL SHALL NOTIFY THE APPLICANT OR POLICYHOLDER OF A PERSONAL LINES RESIDENTIAL PROPERTY INSURANCE POLICY OF CERTAIN DISCLOSURES, AND THE DIRECTOR OR HIS DESIGNEE SHALL PRESCRIBE THE FORM AND MANNER FOR INSURER NOTICES OR DISCLOSURES, AND ANY DISCLOSURE SHALL BE FOR INFORMATIONAL PURPOSES ONLY AND SHALL NOT AMEND, EXTEND, OR ALTER COVERAGE PROVIDED IN A POLICY.

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

SECTION 1. A. Section 38‑3‑110(5) of the 1976 Code is amended to read:

“(5)(a) The director must hold a public hearing at least annually at a location within the seacoast area, as defined in Section 38‑75‑310(7), to provide the public with information and an opportunity to discuss and offer input concerning the rates, territory, and other pertinent issues regarding the South Carolina Wind and Hail Underwriting Association. The director must provide publicized notice of the ~~public~~ hearing ~~in newspapers of general circulation within the seacoast area~~ at least thirty days before the date of the public hearing.

(b) The director must engage in efforts to provide market assistance and promote consumer education to coastal residential property insurance consumers. These efforts may include, but are not limited to:

(i) post on its website information to assist consumers in understanding the general provisions of homeowners insurance policies;

(ii) provide information on the mitigation discounts and credits available pursuant to Section 38‑73‑1095(C), including a summary of those offered by the twenty largest homeowners property insurance issuers by premium volume;

(iii) provide premium comparison information;

(iv) provide information to assist consumers in identifying

insurers writing property insurance coverage in their area;

(v) provide a listing of licensed property and casualty producers in their area; and

(vi) provide information on catastrophe savings accounts available pursuant to Article 11, Chapter 6, Title 12.

(c) The director must submit a report to the President Pro Tempore of the Senate, ~~and~~ the Speaker of the House of Representatives, the Chairman of the Senate Banking and Insurance Committee, and the Chairman of the House Labor, Commerce and Industry Committee by no later than January thirty‑first of each year regarding the status of the coastal property insurance market. The report shall be posted in an electronic format on the department’s website within five days of its submission. The report shall include, but not be limited to, the following:

(i) status of the South Carolina Wind and Hail Underwriting Association, including any recommended modifications to statutory or regulatory law regarding the operation of the South Carolina Wind and Hail Underwriting Association and its territory~~.~~;

(ii) status of operations and grants issued under the South Carolina Hurricane Damage Mitigation Program as provided for in Section 38‑75‑485;

(iii) availability and affordability of coverage in the coastal area as defined in Section 38‑75‑310(5), including any portion of the area as it may be expanded pursuant to Section 38‑75‑460;

(iv) consumer outreach and education efforts relating to coastal property insurance issues, including, but not limited to:

(a) summary of the annual meeting as required pursuant to subitem (5)(a); and

(b) specific projects and efforts undertaken pursuant to subitem (5)(b).”

B. The provisions of this SECTION take effect sixty days after the effective date of this act.

SECTION 2. A. Section 38‑7‑200 of the 1976 Code is amended to read:

“Section 38‑7‑200. (A) A licensed insurer providing full property and casualty coverage, to specifically include wind and hail coverage, to property owners within the area defined in Section 38‑75‑310(5), including any portion of the area as it may be expanded from time to time pursuant to Section 38‑75‑460, may claim as a nonrefundable credit against the premium tax imposed by Sections 38‑7‑20 and 38‑7‑40 in an amount equal to twenty‑five percent of the tax that otherwise is due on the premium written for the property owners for the taxable year.

(B)(1) For purposes of this subsection:

(a) ‘Coastal area’ means as defined in Section 38‑75‑310(5), including any portion of the area as it may be expanded from time to time pursuant to Section 38‑75‑460.

(b) ‘Full coverage policies’ means homeowners insurance that specifically includes wind and hail coverage.

(c) ‘Coastal market share’ means an insurer’s total premiums written for full coverage policies in the coastal area as a percentage of the total premiums written by all licensed insurers for full coverage policies in the coastal area.

(d) ‘Statewide market share’ means an insurer’s total premiums written for homeowners insurance in the State as a percentage of the total premiums written by all licensed insurers for homeowners insurance in the State.

(2) Insurers are eligible to receive a premium tax credit against the premium tax imposed by Section 38‑7‑20 on full coverage policies written outside of the coastal area. In order to be eligible for this credit, the insurer must maintain a coastal market share that is equal to at least eighty percent of the insurer’s statewide market share for the same period. This credit reduces the insurance premium tax levied pursuant to Section 38‑7‑20 to one percent of the total premiums written on full coverage policies outside of the coastal area. All other provisions of Section 38‑7‑20 shall apply.

(3) The director or his designee shall develop procedures to be used in implementing this tax credit, including the calculation and publication of the coastal market share and the statewide market share for a given taxable period.

~~(B)~~(C) The credit allowed by this section is available only to an insurer licensed or authorized to do business in this State with respect to a property and casualty insurance policy providing full coverage as defined in subsection (A).

~~(C)~~(D) A licensed insurer who claims the credit allowed by this section shall provide information required by the Department of Insurance to demonstrate that the taxpayer is eligible for the credit and that the amount paid for premiums for which the credit is claimed was not excluded from the licensed insurer’s gross income for the taxable year.

~~(D)~~(E) The tax credit allowed under this section for a taxable year may be claimed only once for any one structure, regardless of the number of policies written on the structure.

~~(E)~~(F) The department shall take the action necessary to monitor and examine the use of the credits claims under this section.

~~(F)~~ ~~This section applies to all new policies issued with an effective date after December 31, 2007.~~”

B. The provisions of this SECTION are applicable to taxable years beginning after December 31, 2013.

SECTION 3. A. Section 38‑75‑485(C)(4) of the 1976 Code is amended to read:

“(C)(4) The department shall use its best efforts to obtain grants or funds from the federal government to supplement the financial resources of the program. In addition to state appropriations, if any, this program must be implemented by the department through the use of the premium taxes due to this State by the South Carolina Wind and Hail Underwriting Association, ~~and~~ one percent of the premium taxes due to this State by brokers placing property insurance within the eligible surplus lines market and ~~one~~ two percent of the premium taxes collected annually and remitted to the Department of Insurance by insurers licensed to do business in this State.”

B. The provisions of this SECTION are applicable to premium taxes due and payable on or after July 1, 2013.

SECTION 4. A. Section 38‑75‑755 of the 1976 Code is amended to read:

“Section 38‑75‑755. (A) All insurers, at the issuance of a new policy and at each renewal, clearly shall notify the applicant or policyholder of a personal lines residential property insurance policy of the availability and the range of each premium discount, credit, other rate differential, or reduction in deductibles for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented, including information related to catastrophe savings accounts. The notice must describe generally what measures the policyholders may take to reduce their windstorm premium.

(B)(1) All insurers, at the issuance of a new policy and at each renewal, shall notify the applicant or policyholder of a personal lines residential property insurance policy of the following:

(a) whether or not the insured has coverage for flood or mold. The disclosure shall also state that insurance is available through the National Flood Insurance Program and that excess flood insurance may be available through an additional policy;

(b) a distinction between replacement cost for losses and actual cash value, the use of depreciation in determining payment for losses, and that the policy may contain time limitations for repairs to be completed in order to receive full replacement cost for the losses;

(c) that the policy determines the process for providing the insurer with a notification of a loss and the requirements of Section 38‑59‑10;

(d) that the insured may have the option to increase the deductible and thus lower the potential premium cost paid;

(e) whether a separate deductible is required for hurricane, wind, or named storm damage, and if so, includes an example which illustrates how the deductible functions for a policy valued at one hundred thousand dollars and this illustration will include a clear explanation of the event which will trigger the deductible to the requirements of S.C. Code of Regulations 69‑56.

(2) The director or his designee shall prescribe the form and manner for insurer notices or disclosures issued pursuant to this subsection.

(3) Any disclosure provided pursuant to this section shall be for informational purposes only and shall not amend, extend, or alter coverage provided in a policy. Any notice or disclosure provided shall not be admissible in any action brought concerning a policy except for the sole purpose of showing that the notice was or was not provided pursuant to this section.

~~(B)~~(C) All insurers, at the issuance of a new policy and at each renewal of a commercial property insurance policy, shall include a notice that advises the policyholder that a reduction in premium may be available if the policyholder has taken steps to prevent or reduce damage from windstorm and that the policyholder may contact its agent, broker, or insurer for additional information.

~~(C)~~ ~~This section applies to policies issued or renewed after December 31, 2007.~~”

B. The provisions of this SECTION apply to policies issued or renewed after December 31, 2013.

SECTION 5. Unless otherwise provided, this act takes effect upon approval by the Governor.

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