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Indicates New Matter

COMMITTEE REPORT

May 15, 2014

**S. 909**

Introduced by Senator Hayes

S. Printed 5/15/14--H.

Read the first time May 6, 2014.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 909) to amend Section 38‑90‑10, as amended, Code of Laws of South Carolina, 1976, relating to definitions concerning captive insurance companies, so as to define, 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 deleting all after the enacting words and inserting:

/ SECTION 1. Article 1, Chapter 90, Title 38 of the 1976 Code is amended by adding:

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

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

(1) 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

(2) exempt the captive insurance company from the requirement to file such reports as set forth in the order.”

SECTION 2. Article 1, Chapter 90, Title 38 of the 1976 Code is amended by adding:

“Section 38‑90‑215. (A) A protected cell may be either unincorporated or incorporated.

(B) With regard to unincorporated protected cells:

(1) The unincorporated protected cell shall have its own distinct name or designation, which shall include the words ‘Protected Cell’ or the abbreviation ‘PC’. Any captive insurance company or protected cell formed prior to the effective date of this section may not be required to change its name to comply with the provisions of this paragraph.

(2) An unincorporated protected cell must meet the paid‑in capital and free surplus requirements applicable to a special purpose captive insurance company 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.

(3) The creation of an unincorporated protected cell does not create, with respect to that protected cell, a legal person separate from the sponsored captive insurance company. Amounts attributed to a protected cell, including assets transferred to a protected cell account, are owned by the sponsored captive insurance company of which the protected cell is a part, and the sponsored captive insurance company may not be, or may not hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding the provisions of this subsection, the sponsored captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(4) This subsection may not be construed to prohibit the sponsored captive insurance company from:

(a) entering into contracts of insurance on behalf of the protected cell; or

(b) contracting with or arranging for third‑party managers or advisors to manage the protected cell to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third party manager or advisor is payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the sponsored captive insurance company’s general account.

(C) Incorporated protected cells shall be subject to all of the following:

(1) An incorporated protected cell may be organized and operated in any form of business organization set forth in Section 38‑90‑60(A).

(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 company.

(3) A participant in an incorporated protected cell need not be a shareholder of the protected cell or of the sponsored captive insurance company or any affiliate thereof.

(D) The name of an incorporated protected cell must include the words ‘Incorporated Cell’ or the abbreviation ‘IC’.

(E) Any captive insurance company or protected cell formed prior to July 31, 2013 shall not be required to change its name to comply with the provisions of subsection (D).”

SECTION 3. Article 1, Chapter 90, Title 38 of the 1976 Code is amended by adding:

“Section 38‑90‑250. A licensed captive insurance company that meets the necessary requirements of this title imposed upon an insurer must be considered for issuance of a certificate of authority to act as an insurer in this State.”

SECTION 4. Section 38‑90‑10 of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“Section 38‑90‑10. As used in this chapter, unless the context requires otherwise:

(1) ‘Alien captive insurance company’ means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction.

(2) ‘Affiliated company’ means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(3) ‘Association’ means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or associations that has been in continuous existence for at least one year:

(a) the member organizations of which collectively, or which does itself:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company; or

(ii) have complete voting control over an association captive insurance company organized as a mutual insurer; or

(b) the member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(4) ‘Association captive insurance company’ means a company that insures risks of the member organizations of the association and their affiliated companies.

(5) ‘Branch business’ means any insurance business transacted by a branch captive insurance company in this State.

(6) ‘Branch captive insurance company’ means an alien 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.

(7) ‘Branch operations’ means any business operations of a branch captive insurance company in this State.

(8) ‘Captive insurance company’ means a pure captive insurance company, association captive insurance company, captive reinsurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under this chapter. For purposes of this chapter, a branch captive insurance company must be a pure captive insurance company with respect to operations in this State, unless otherwise permitted by the director.

(9) ‘Captive reinsurance company’ means a reinsurance company that is formed or licensed pursuant to this chapter and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation.

(10) ‘Consolidated debt to total capital ratio’ means the ratio of the sum of (a) all debts and hybrid capital instruments including, but not limited to, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding to (b) total capital, consisting of all debts and hybrid capital instruments as described in subitem (a) plus owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(11) ‘Consolidated GAAP net worth’ means the consolidated owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(12) ‘Controlled unaffiliated business’ means a company:

(a) that is not in the corporate system of a parent and affiliated companies;

(b) that has an existing contractual relationship with a parent or affiliated company; and

(c) whose risks are managed by a captive insurance company in accordance with Section 38‑90‑190.

(13) ‘Director’ means the Director of the South Carolina Department of Insurance or the director’s designee.

(14) ‘Department’ means the South Carolina Department of Insurance.

(15) ‘GAAP’ means generally accepted accounting principles.

(16) ‘General account’ means the assets and liabilities of a sponsored captive insurance company other than protected cell assets and protected cell liabilities.

(~~16~~17) ‘Industrial insured’ means an insured as defined in Section 38‑25‑150(8).

(~~17~~18) ‘Industrial insured captive insurance company’ means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(~~18~~19) ‘Industrial insured group’ means a group that meets either of the following criteria:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer or limited liability company; or

(ii) have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) a group which is created under the Liability Risk Retention Act of 1986 15 U.S.C. Section 3901, et seq., as amended, and Chapter 87, Title 38, as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under this title.

(~~19~~20) ‘Member organization’ means any individual, corporation, limited liability company, partnership, or association that belongs to an association.

(~~20~~21) ‘Parent’ means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting interests of a captive insurance company.

(~~21~~22) ‘Participant’ means an entity as defined in Section 38‑90‑240, 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.

(~~22~~23) ‘Participant contract’ means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.

(~~23~~24) ‘Protected cell’ means ~~a separate account established and maintained by a sponsored captive insurance company for one participant~~ an identified pool of assets and liabilities of a sponsored captive insurance company for one or more participants that is segregated and insulated from the remainder of the sponsored captive insurance company’s assets and liabilities as set forth in this chapter. A protected cell may be unincorporated or incorporated.

(25) ‘Protected cell account’ means a specifically identified bank or custodial account established by a sponsored captive insurance company for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the sponsored captive insurance company’s general account.

(26) ‘Protected cell assets’ means all assets, contract rights, and general intangibles, identified with and attributable to a specific protected cell of a sponsored captive insurance company.

(27) ‘Protected cell liabilities’ means all liabilities and other obligations identified with and attributable to a specific protected cell of a sponsored captive insurance company..

(~~24~~28) ‘Pure captive insurance company’ means a company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.

(~~25~~29) ‘Qualifying reinsurer parent company’ means a reinsurer authorized to write reinsurance by this State and that has a consolidated GAAP net worth of not less than five hundred million dollars and consolidated debt to total capital ratio not greater than 0.50.

(30) ‘Risk retention group’ means a captive insurance company formed under the Product Liability Risk Retention Act of 1986, 15 U.S.C. Section 3901, et seq., as amended.

(~~26~~31) ‘Special purpose captive insurance company’ means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

(~~27~~32) ‘Sponsor’ means an entity that ~~meets the requirements of Section 38‑90‑220 and~~ is approved by the director to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(~~28~~33) ‘Sponsored captive insurance company’ means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(b) that is formed or licensed under this chapter;

(c) that ~~insures the risks of separate participants through the contract~~ segregates liability through one or more protected cells; and

(d) that ~~segregates each participant’s liability through one or more protected cells~~ insures the risks of participants through participant contracts.

(~~29~~34) ‘Treasury rates’ means the United States Treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.”

SECTION 5. Section 38‑90‑20(F) of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“(F) A foreign or alien captive insurance company, upon approval of the director or his designee, 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~~, along with a certificate of general good issued by the director~~. 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.”

SECTION 6. Section 38‑90‑35 of the 1976 Code, as added by Act 291 of 2004, is amended to read:

“Section 38‑90‑35. (A) Information submitted pursuant to the provisions of this chapter is confidential and may not be made public by the director or an agent or employee of the director without the written consent of the company, except that~~:~~

~~(1)~~ information may be discoverable by a party in a civil action or contested case to which the submitting captive insurance company is a party, upon a showing by the party seeking to discover the information that:

(~~a~~1) the information sought is relevant to and necessary for the furtherance of the action or case and the information sought is unavailable from other nonconfidential sources; or

(~~b~~2) a subpoena applicable to the information ~~sought is unavailable from other nonconfidential sources; or~~

~~(c)~~ ~~a subpoena issued by a judicial or administrative law officer of competent jurisdiction has been submitted to the director; and~~ is issued by a judicial or administrative law officer of competent jurisdiction has been submitted to the director.

(~~2~~B) The director may disclose the information to the public officer having jurisdiction over the regulation of insurance in another state if:

(~~a~~1) the public official agrees in writing to maintain the confidentiality of the information; and

(~~b~~2) the laws of the state in which the public official serves require the information to be confidential.”

SECTION 7. Section 38‑90‑40 of the 1976 Code, as last amended by Act 217 of 2010, is amended to read:

“Section 38‑90‑40. (A)(1) The director may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired paid‑in capital of:

(a) in the case of a pure captive insurance company, not less than one hundred thousand dollars;

(b) in the case of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than four hundred thousand dollars;

(c) in the case of an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, or in the case of a captive insurance company formed as a risk retention group, not less than two hundred thousand dollars;

(d) in the case of a sponsored captive insurance company, not less than five hundred thousand dollars; however, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous and there are no more than ten cells, the director may reduce this amount to an amount not less than one hundred fifty thousand dollars;

(e) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.

(2)(a) Except for a sponsored captive insurance company that does not assume any risk, the unimpaired, paid‑in capital required in subsection (A)(1) must be in the form of ~~cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director.~~:

(i) cash on deposit with a bank located in South Carolina;

(ii) cash equivalent accessible through a bank or investment manager located in South Carolina; or

(iii) an irrevocable letter of credit in a form approved by the director and issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director.

(b) For a sponsored captive insurance company that does not assume any risk, the capital also may be in the form of other high quality securities as approved by the director.

(B)(1) The director may not issue a license to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unrestricted net assets of:

(a) in the case of a pure captive insurance company, not less than two hundred fifty thousand dollars; ~~and~~

(b) in the case of a special purpose captive insurance company formed as a risk retention group, not less than five hundred thousand dollars; and

(~~b~~c) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.

(2) Contributions to a captive insurance company incorporated as a nonprofit corporation must ~~be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director~~ conform with the requirements of subsection (A)(2)(a).

(C) For purposes of subsections (A) and (B), the director may issue a license expressly conditioned upon the captive insurance company providing to the director satisfactory evidence of possession of the minimum required unimpaired paid‑in capital. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The director summarily may revoke the conditional license without legal recourse by the company if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed one year, to be established by the director at the time the conditional license is issued.

(D) Notwithstanding the provisions of this section, the director may prescribe additional capital or net assets based upon the type, volume, and nature of insurance business transacted including, but not limited to, the net amount of risk retained for an individual risk. Contributions in connection with these prescribed additional net assets or capital must be in the form of:

(1) cash;

(2) cash equivalent;

(3) an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director; or

(4) securities invested as provided in Section 38‑90‑100.

(E) In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the director shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security may be no less than the capital and surplus required by this chapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch operations; however, the director may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer or front company to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer or front company. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this State or a member bank of the Federal Reserve System.

(F)(1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in Section 38‑21‑250 through Section 38‑21‑270, without the prior approval of the director. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the director.

(2) A captive insurance company incorporated as a nonprofit corporation may not make any distributions without the prior approval of the director.

(G) An irrevocable letter of credit, which is issued by a financial institution other than a bank chartered by this State or a member bank of the Federal Reserve System, shall meet the same standards as an irrevocable letter of credit which has been issued by either entity.”

SECTION 8. Section 38‑90‑50 of the 1976 Code, as last amended by Act 217 of 2010, is amended to read:

“Section 38‑90‑50. (A)(1) The director may not issue a license to a captive insurance company unless the company possesses and maintains free surplus of:

(a) in the case of a pure captive insurance company, not less than one hundred fifty thousand dollars;

(b) in the case of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than three hundred fifty thousand dollars;

(c) in the case of an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, or in the case of a captive insurance company formed as a risk retention group, not less than three hundred thousand dollars;

(d) in the case of an association captive insurance company incorporated as a mutual insurer, not less than seven hundred fifty thousand dollars;

(e) in the case of an industrial insured captive insurance company, or a captive insurance company formed as a risk retention group incorporated as a mutual insurer, not less than five hundred thousand dollars;

(f) in the case of a sponsored captive insurance company, not less than five hundred thousand dollars; however, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous and there are no more than ten cells, the director may reduce this amount to an amount not less than one hundred fifty thousand dollars; and

(g) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.

(2)(a) Except for a sponsored captive insurance company that does not assume any risk, the free surplus required in subsection (A)(1) must be in the form of ~~cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with the branch office in this State and approved by the director~~:

(i) cash on deposit with a bank located in South Carolina;

(ii) cash equivalent accessible through a bank or investment manager located in South Carolina; or

(iii) an irrevocable letter of credit in a form approved by the director and issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director.

(b) For a sponsored captive insurance company that does not assume any risk, the surplus also may be in the form of other high quality securities as approved by the director.

(B) Notwithstanding the requirements of subsection (A) a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a license unless it possesses and thereafter maintains free surplus of one million dollars.

(C) For purposes of subsections (A) and (B), the director may issue a license expressly conditioned upon the captive insurance company providing to the director satisfactory evidence of possession of the minimum required free surplus. Until this evidence is provided, the captive may not issue any policy, assume any liability, or otherwise provide coverage. The director summarily may revoke the conditional license without legal recourse by the company if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed one year, to be established by the director at the time the conditional license is issued.

(D) Notwithstanding another provisions of this section, the director may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted including, but not limited to, the net amount of risk retained for an individual risk. This additional surplus must be in the form of:

(1) cash;

(2) cash equivalent;

(3) an irrevocable letter of credit issued by a bank chartered by this State, or a member bank of the Federal Reserve System with a branch in this State or as approved by the director; or

(4) securities invested as provided in Section 38‑90‑100.

(E) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in Section 38‑21‑270, without the prior approval of the director. Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the director.

(F) An irrevocable letter of credit, which is issued by a financial institution other than a bank chartered by this State or a member bank of the Federal Reserve System, shall meet the same standards as an irrevocable letter of credit which has been issued by either entity.”

SECTION 9. Section 38‑90‑55 of the 1976 Code, as last amended by Act 28 of 2009, is further amended to read:

“Section 38‑90‑55. (A) A captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders.

(B) ~~A captive reinsurance company may not have fewer than three incorporators of whom at least two must be residents of this State.~~

~~(C)~~ ~~Before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall petition the director to issue a certificate finding that the establishment and maintenance of the proposed corporation promotes the general good of this State. In arriving at this finding the director may consider:~~

~~(1)~~ ~~the character, reputation, financial standing, and purposes of the incorporators;~~

~~(2)~~ ~~the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and~~

~~(3)~~ ~~other factors the director considers advisable.~~

~~(D)~~ ~~The capital stock of a captive reinsurance company must be issued at par value or greater.~~

~~(E)~~ At least one of the members of the board of directors of a captive reinsurance company incorporated in this State must be a resident of this State.”

SECTION 10. Section 38‑90‑60 of the 1976 Code, as last amended by Act 28 of 2009, is further amended to read:

“Section 38‑90‑60. (A) A ~~pure captive insurance company or a sponsored~~ captive insurance company may be:

(1) incorporated as a stock insurer ~~with its capital divided into shares and held by the stockholders~~;

(2) incorporated as a ~~public benefit, mutual benefit, or religious~~ nonprofit corporation ~~with members in accordance with the South Carolina Nonprofit Corporation Act of 1994~~; ~~or~~

(3) organized as a limited liability company ~~with its capital divided into capital accounts and held by its members~~;

(4) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of the insurer; or

(5) organized as a reciprocal insurer pursuant to Chapter 17.

(B) ~~An association captive insurance company or an industrial insured captive insurance company may be:~~

~~(1)~~ ~~incorporated as a stock insurer with its capital divided into shares and held by the stockholders;~~

~~(2)~~ ~~organized as a limited liability company with its capital divided into capital accounts and held by its members;~~

~~(3)~~ ~~incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association; or~~

~~(4)~~ ~~organized as a reciprocal insurer in accordance with Chapter 17.~~

~~(C)~~ ~~A captive insurance company may not have fewer than three incorporators or organizers of whom not fewer than two must be residents of this State.~~

~~(D)~~ ~~In the case of a captive insurance company formed as a corporation, a nonprofit corporation, or a limited liability company, before the articles of incorporation or articles of organization are transmitted to the Secretary of State, the incorporators or organizers shall petition the director to issue a certificate setting forth a finding that the establishment and maintenance of the proposed entity will promote the general good of the State. In arriving at this finding the director may consider:~~

~~(1)~~ ~~the character, reputation, financial standing, and purposes of the incorporators or organizers;~~

~~(2)~~ ~~the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers; and~~

~~(3)~~ ~~other aspects as the director considers advisable.~~

~~(E)~~ ~~The articles of incorporation or articles of organization, the certificate issued pursuant to subsection (D), and the organization fees required by Section 33‑1‑220, 33‑31‑122, or 33‑44‑1204, as applicable, must be transmitted to the Secretary of State, who shall record both the articles of incorporation or articles of organization and the certificate.~~

~~(F)~~ ~~In the case of a captive insurance company formed as a reciprocal insurer, the organizers shall petition the director to issue a certificate setting forth the director’s finding that the establishment and maintenance of the proposed association will promote the general good of the State. In arriving at this finding the director may consider:~~

~~(1)~~ ~~the character, reputation, financial standing, and purposes of the incorporators or organizers;~~

~~(2)~~ ~~the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers; and~~

~~(3)~~ ~~other aspects the director considers advisable.~~ No captive insurance company shall do any business in this State unless it first obtains from the director a certificate of authority authorizing it to do business in this State. In determining whether to issue a certificate of authority to a captive insurance company, the director may consider:

(1) the character, reputation, financial responsibility, insurance experience, and business qualifications of the incorporators, officers, and directors or managers; and

(2) other aspects the director considers advisable.

(~~G~~C) In the case of a captive insurance company licensed as a branch captive insurance company, the alien captive insurance company ~~shall petition the director to issue a certificate setting forth the director’s finding that the licensing and maintenance of the branch operations will promote the general good of the State. In arriving at this finding, the director or his designee may consider the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers of the alien captive insurance company and other aspects the director considers advisable. The alien captive insurance company may~~ must register to do business in this State after the ~~director’s~~ certificate of authority has been issued.

~~(H)~~ ~~The capital stock or membership interests of a captive insurance company incorporated as a stock insurer or limited liability company must be issued at not less than par value.~~

~~(I)~~ ~~In the case of a captive insurance company formed as a corporation or a nonprofit corporation, at least one of the members of the board of directors of a captive insurance company incorporated in this State must be a resident of this State.~~

~~(J)~~ ~~In the case of a captive insurance company formed as a limited liability company, at least one of the managers of the captive insurance company must be a resident of this State.~~

~~(K)~~ ~~In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the subscribers’ advisory committee must be a resident of this State.~~

(D) The articles of incorporation, articles of organization, or the application of a branch captive insurance company to qualify to do business in South Carolina, and the organization fees required by Section 33‑1‑220, 33‑31‑122, or 33‑44‑1204, as applicable, must be transmitted to the Secretary of State, who shall record the articles of incorporation, articles of organization, or application to qualify to do business in South Carolina.

(~~L~~E) A captive insurance company formed as a corporation, a nonprofit corporation, or a limited liability company, pursuant to the provisions of this chapter has the privileges and is subject to the provisions of the general corporation law, including the South Carolina Nonprofit Corporation Act of 1994 for nonprofit corporations and the South Carolina Uniform Limited Liability Company Act of 1996 for limited liability companies, as applicable, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the general corporation law, including the South Carolina Nonprofit Corporation Act of 1994 for nonprofit corporations and the South Carolina Uniform Limited Liability Company Act of 1996 for limited liability companies, as applicable, and a provision of this chapter, the latter controls. The provisions of this title pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions, except the director may waive or modify the requirements for public notice and hearing in accordance with regulations which the director may promulgate addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the director may cancel the hearing.

(~~M~~F) A captive insurance company formed as a reciprocal insurer pursuant to the provisions of this chapter has the privileges and is subject to Chapter 17 in addition to the applicable provisions of this chapter. If a conflict occurs between the provisions of Chapter 17 and the provisions of this chapter, the latter controls. To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Chapter 17, the provisions are not applicable to a reciprocal insurer formed pursuant to the provisions of this chapter unless the provisions are expressly made applicable to a captive insurance company pursuant to the provisions of this chapter.

(G) In the case of a captive insurance company formed as a corporation, a mutual insurer, or a nonprofit corporation, at least one of the members of the board of directors of a captive insurance company incorporated in this State must be a resident of this State.

(H) In the case of a captive insurance company formed as a limited liability company, at least one of the managers of the captive insurance company must be a resident of this State.

(I) In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the subscribers’ advisory committee must be a resident of this State.

(~~N~~J) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no fewer than one‑third of the fixed or prescribed number of directors as provided for in Section 33‑8‑240(b). In the case of a limited liability company, the articles of organization or operating agreement of a captive insurance company may authorize a quorum to consist of no fewer than one‑third of the managers required by the articles of organization or the operating agreement.”

SECTION 11. Section 38‑90‑70(B) of the 1976 Code, as last amended by Act 217 of 2010, is further amended to read:

“(B) Before March first of each year, a captive insurance company or a captive reinsurance company shall submit to the director a report of its financial condition, verified by oath of two of its executive officers. Except as provided in Sections 38‑90‑40 and 38‑90‑50, a captive insurance company or a captive reinsurance 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 ~~and~~, an industrial insured group, and a captive insurance company formed as 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 captive insurance company formed as a 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 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 ~~captive insurance company~~ risk retention group formed as a risk retention group under the Product Liability Risk Retention Act of 1986, 15 U.S.C. Section 3901, et seq., as amended.”

SECTION 12. Section 38‑90‑80(A) of the 1976 Code, as last amended by Act 28 of 2009, is further amended to read:

“(A) 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 visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this chapter. The director may waive the requirement for a visit to the captive insurance company ~~for pure captive insurance companies and for special purpose captive insurance companies~~. 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.”

SECTION 13. Section 38‑90‑90(C) of the 1976 Code, as added by Act 28 of 2009, is amended to read:

“(C) ~~Instead~~ In lieu of suspending or revoking the license of a captive insurance company, the director may impose fines as provided for in Section 38‑2‑10.”

SECTION 14. Section 38‑90‑100 of the 1976 Code, as last amended by Act 332 of 2006, is further amended to read:

“Section 38‑90‑100. (A) An association captive insurance company ~~and~~, an industrial insured captive insurance company insuring the risks of an industrial insured group, and a captive insurance company formed as a risk retention group shall comply with the investment requirements contained in this title. Notwithstanding any other provision of this title, the director may approve the use of alternative reliable methods of valuation and rating.

(B) A pure captive insurance company, a captive reinsurance company, a special purpose captive insurance company, other than a special purpose captive insurance company formed as a risk retention group, and a sponsored captive insurance company are not subject to any restrictions on allowable investments contained in this title; however, the director may request a written investment plan and may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(C) Only a pure captive insurance company or a sponsored captive insurance company may make loans to its parent company or affiliates and only ~~upon the prior written approval~~ by order of the director and must be evidenced by a note in a form approved by the director. Loans of minimum capital and surplus funds required by Sections 38‑90‑40(A) and 38‑90‑50(A) are prohibited.”

SECTION 15. Section 38‑90‑110(B)(2) of the 1976 Code, as last amended by Act 86 of 2007, is further amended to read:

“(2) An industrial insured captive insurance company or a captive insurance company formed as a risk retention group may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with Sections 38‑9‑200, 38‑9‑210, and 38‑9‑220.”

SECTION 16. Section 38‑90‑130 of the 1976 Code, as last amended by Act 28 of 2009, is further amended to read:

“Section 38‑90‑130. A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this State, and a captive insurance company, or its insured or its parent or any affiliated company or any member organization of its association, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company, may not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company. Subject to the prior written approval of the director or his designee, participation by a captive insurance company, including a pure captive insurance company, in a pool for the purpose of commercial risk sharing is not prohibited under this section. Nothing in this section may be interpreted to permit the writing of third‑party risk by a captive insurance company outside of a commercial risk sharing arrangement approved by the director.”

SECTION 17. Section 38‑90‑160 of the 1976 Code, as last amended by Act 18 of 2013, is further amended to read:

“Section 38‑90‑160. (A) No provisions of this title, other than those contained in this chapter or contained in specific references contained in this chapter and regulations applicable to them, apply to captive insurance companies.

(B) The director may exempt, by rule, regulation, or order, special purpose captive insurance companies, other than a special purpose captive insurance company formed as a risk retention group, on a case by case basis, from provisions of this chapter that he determines to be inappropriate given the nature of the risks to be insured.

(C) The provisions of Sections 38‑5‑120(A)~~(3)~~(5), 38‑5‑120~~(C)~~(B), 38‑5‑120(D)(1), 38‑5‑120(D)(2), 38‑9‑225, 38‑9‑230, 38‑21‑10, 38‑21‑30, 38‑21‑60, 38‑21‑70, 38‑21‑90, 38‑21‑95, 38‑21‑120, 38‑21‑130, 38‑21‑140, 38‑21‑150, 38‑21‑160, 38‑21‑170, 38‑21‑250, 38‑21‑270, 38‑21‑280, 38‑21‑310, 38‑21‑320, 38‑21‑330, 38‑21‑360, 38‑55‑75 and Chapters 44 and 46, Title 38 apply in full to a risk retention group licensed as ~~an industrial insured~~ a captive insurance company and, if a conflict occurs between those code sections and chapters referenced in this subsection and this chapter (Chapter 90, Title 38), then the code sections and chapters referenced in this subsection control.

(D) Except as provided elsewhere in this chapter, the provisions of Chapter 87, Title 38 apply to a risk retention group licensed as ~~an industrial insured~~ a captive insurance company.

(E)(1) Except for Section 38‑9‑330(F) and Section 38‑9‑440, the provisions of Article 3 and Article 5, Chapter 9, Title 38 apply in full to a risk retention group licensed as ~~an industrial insured~~ a captive insurance company, and if a conflict occurs between those provisions and this chapter, the provisions of this subsection control.

(2) The director may elect not to take regulatory action as otherwise required by Sections 38‑9‑330, 38‑9‑340, 38‑9‑350, and 38‑9‑360 if any of the following conditions exist:

(a) the director establishes that the risk retention group’s members, sponsoring organizations, or both, are well‑capitalized entities whose financial condition and support for the risk retention group is adequately documented. In making this determination, the director shall, at a minimum, require the filing of at least three years of historical, audited financial statements of the members, sponsor, or both, to assess the financial ability of the members’, sponsor’s, or both, support of the risk retention group. In addition, one year of projected financial information must be reviewed if available. The members, sponsor, or both, shall have:

(i) an investment grade rating from a nationally recognized statistical rating organization or A.M. Best rating of A‑ or better; or

(ii) equity equal to or greater than one hundred million dollars or equity equal to or greater than ten times the risk retention group’s largest net retained per occurrence limit;

(b) each policyholder qualifies as an industrial insured in their state or this State, depending on which has the greater requirements, provided that if the policyholder’s home state does not have an industrial insured exemption or equivalent, the policyholder must qualify under the industrial insured requirement of this State; or

(c) the risk retention group’s certificate of authority date of issue was before January 1, 2011, and, based on a minimum five‑year history of successful operations, is specifically exempted, in writing, from the requirements for mandatory risk‑based capital action by the director.”

SECTION 18. Section 38‑90‑180(B) of the 1976 Code, as last amended by Act 58 of 2001, is further amended to read:

“(B) In the case of a sponsored captive insurance company:

(1) the assets of the protected cell may not be used to pay expenses or claims other than those attributable to the protected cell; and

(2) its capital and surplus at all times must be available to pay expenses of or claims against the sponsored captive insurance company and may not be used to pay expenses or claims attributable to a protected cell.

(3) Notwithstanding another provision of law or regulation, upon an order of conservation, rehabilitation, or liquidation of a sponsored captive insurance company, the receiver shall deal with the sponsored captive insurance company’s assets and liabilities, including protected cell assets and protected cell liabilities, pursuant to the requirements of this chapter.”

SECTION 19. Section 38‑90‑210 of the 1976 Code is amended to read:

“Section 38‑90‑210. (A) One or more sponsors may form a sponsored captive insurance company under this chapter.

(B) A sponsored captive insurance company formed or licensed under this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) the shareholders of a sponsored captive insurance company must be limited to its participants and sponsors;

(2) each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the participants of the protected cell, the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors may be provided in the participant contract or required by the director;

(3) the assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) no sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;

(5) no sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the director’s approval and in no event may the approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

(6) a sponsored captive insurance company annually shall file with the director financial reports the director requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell;

(7) a sponsored captive insurance company shall notify the director in writing within ten business days of a protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

(8) no participant contract shall take effect without the director’s prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell constitutes a change in the business plan requiring the director’s prior written approval.

(C) The name of a sponsored captive insurance company shall include the words ‘Sponsored Captive’ or the abbreviation ‘SC’. Any captive insurance company or protected cell formed prior to July 31, 2013 may not be required to change its name to comply with the provisions of this subsection.

(D) A sponsored captive insurance company may establish one or more protected cells with the prior written approval of the director of a plan of operation or amendments submitted by the sponsored captive insurance company with respect to each protected cell. Upon the written approval of the director of the plan of operation, which shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell, the sponsored captive insurance company, in accordance with the approved plan of operation, may attribute to the protected cell insurance obligations with respect to its insurance business and assets to fund the obligations. The sponsored captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(E) All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the director. No other attribution of assets or liabilities may be made by a sponsored captive insurance company between the sponsored captive insurance company’s general account and its protected cells.

(F) A sponsored captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the sponsored captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a sponsored captive insurance company shall keep protected cell assets and protected cell liabilities:

(1) separate and separately identifiable from the assets and liabilities of the sponsored captive insurance company’s general account; and

(2) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

Notwithstanding the provisions of this subsection, if this subsection is violated, the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the sponsored captive insurance company’s general account. The remedy of tracing must not be construed as an exclusive remedy.

(G) When establishing a protected cell, the sponsored captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.”

SECTION 20. Section 38‑90‑220 of the 1976 Code, as last amended by Act 58 of 2001, is further amended to read:

“Section 38‑90‑220. ~~A sponsor of a sponsored captive insurance company must be an insurer licensed pursuant to the laws of a state, an insurance holding company that controls an insurer licensed pursuant to the laws of any state and subject to registration pursuant to the insurance holding company system laws of the state of domicile of the insurer, a reinsurer authorized or approved pursuant to the laws of a state, or a captive insurance company formed or licensed pursuant to this chapter. A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company. The business written by a sponsored captive insurance company with respect to each protected cell must be:~~

~~(1)~~ ~~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;~~

~~(2)~~ ~~reinsured by a reinsurer authorized or approved by this State; or~~

~~(3)~~ ~~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.~~

(A) The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a participant’s risks to the participant’s protected cell.

(B) The protected cell assets of a protected cell may not be charged with liabilities arising out of any other business the sponsored captive insurance company may conduct. All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. Under no circumstances may a protected cell be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or have any obligation to the policyholders or reinsureds of the sponsored captive insurance company’s general account.

(C) The income, gains and losses, realized or unrealized, from protected cell assets and protected cell liabilities must be credited to or charged against the protected cell without regard to other income, gains or losses of the sponsored captive insurance company, including income, gains or losses of other protected cells. Investments must be handled pursuant to Section 38‑90‑100(B).

(D) In all sponsored captive insurance company transactions, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed. In addition, the contracts or other documentation must clearly disclose that the assets of that protected cell, and only those assets are available to pay the obligations of that protected cell. Notwithstanding the provisions of this subsection and subject to the provisions of this chapter and any other applicable law or regulation, the failure to include such language in the contracts or other documentation may not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this chapter.

(E) Assets attributed to a protected cell must be valued at their market value on the date of valuation or if there is no readily available market, as provided in the contract or the rules or other written documentation applicable to the protected cell.

(F) At the cessation of business of a protected cell in accordance with the plan approved by the director, the sponsored captive insurance company voluntarily shall close out the protected cell account.”

SECTION 21. Section 38‑90‑230 of the 1976 Code, as last amended by Act 58 of 2001, is further amended to read:

“Section 38‑90‑230. (A) ~~An association, a corporation, a limited liability company, a partnership, a trust, or other business entity may be a participant in a sponsored captive insurance company formed or licensed pursuant to this chapter.~~

~~(B)~~ ~~A sponsor may be a participant in a sponsored captive insurance company.~~

~~(C)~~ ~~A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.~~

~~(D)~~ ~~A participant shall insure only its own risks through a sponsored captive insurance company, unless otherwise approved by the director.~~ Protected cell assets are only available to the creditors of the sponsored captive insurance company that are creditors with respect to that protected cell and are therefore entitled, in conformity with this chapter, to have recourse to the protected cell assets attributable to that protected cell. Protected cell assets are absolutely protected from the creditors of the sponsored captive insurance company that are not creditors with respect to that protected cell and who, therefore, are not entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets or the sponsored captive insurance company’s general account. Protected cell assets are only available to creditors of a sponsored captive insurance company after all protected cell liabilities have been extinguished or otherwise provided for in accordance with the plan of operation relating to that protected cell.

(B) When an obligation of a sponsored captive insurance company to a person arises from a transaction, or is otherwise imposed, with respect to a protected cell:

(1) that obligation of the sponsored captive insurance company extends only to the protected cell assets attributable to that protected cell, and the person, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell; and

(2) that obligation of the sponsored captive insurance company does not extend to the protected cell assets of any other protected cell or the assets of the sponsored captive insurance company’s general account, and that person, with respect to that obligation, is not entitled to have recourse to the protected cell assets of any other protected cell or the assets of the sponsored captive insurance company’s general account.

(C) When an obligation of a sponsored captive insurance company relates solely to the general account, the obligation of the sponsored captive insurance company extends only to the sponsored captive insurance company, and that person, with respect to that obligation, is entitled to have recourse only to the assets of the sponsored captive insurance company’s general account.

(D) The establishment of one or more protected cells alone does not constitute, and may not be deemed to be, a fraudulent conveyance, an intent by the sponsored captive insurance company to defraud creditors, or the carrying out of business by the sponsored captive insurance company for any other fraudulent purpose.”

SECTION 22. Section 38‑90‑240 of the 1976 Code is amended to read:

“Section 38‑90‑240. ~~A licensed captive insurance company that meets the necessary requirement of this title imposed upon an insurer must be considered for issuance of a certificate of authority to act as an insurer in this State.~~ (A) The following may be participants in a sponsored captive insurance company formed or licensed pursuant to this chapter:

(1) an association, a corporation, limited liability company, partnership, trust, or other business entity; and

(2) a sponsor may be a participant in a sponsored captive insurance company.

(B) A participant does not need to be a shareholder of the sponsored captive insurance company or an affiliate of the company.

(C) A participant shall insure only its own risks through a sponsored captive insurance company, unless otherwise approved by the director.

(D) A risk retention group may not be either a sponsor or participant in a sponsored captive insurance company.

(E) A sponsored captive insurance company established pursuant to Section 38‑90‑210 may not be used to facilitate insurance securitizations, but may be established for the purpose of isolating the expenses and claims. Insurance securitization transactions utilizing protected cells are governed by Chapter 10 of this title.”

SECTION 23. Section 38‑90‑450 of the 1976 Code, as last amended by Act 28 of 2009, is further amended to read:

“Section 38‑90‑450. (A) A SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the director.

(B) The SPFC’s organizational documents must limit the SPFC’s authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this article.

(C) The SPFC may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this State.

(D) ~~A SPFC may not have fewer than three incorporators or organizers of whom not fewer than two must be residents of this State.~~

~~(E)~~ ~~Before transmitting its organizational documents to the Secretary of State, the incorporators or organizers shall petition the director to issue a certificate setting forth a finding that the establishment and maintenance of the proposed SPFC promotes the general good of the State. In arriving at this finding the director may consider:~~

~~(1)~~ ~~the character, reputation, financial standing, and purposes of the incorporators or organizers;~~

~~(2)~~ ~~the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers, directors, partners, members, manager, or organizers, as applicable;~~

~~(3)~~ ~~other aspects as the director considers advisable.~~

~~(F)~~ The organizational documents~~, the certificate issued pursuant to subsection (E),~~ and the required organization fees must be transmitted to the Secretary of State, who shall record the relevant organizational documents.

(~~G~~E) At least one of the members of the management of the SPFC must be a resident of this State.

(~~H~~F) A SPFC formed pursuant to the provisions of this article has the privileges of and is subject to the provisions of the 1976 Code, applicable to its formation, as well as the applicable provisions contained in this article. If a conflict occurs between a provision of the applicable law and a provision of this article, the latter controls. Nothing contained in this provision with respect to a SPFC shall abrogate, limit, or rescind in any way the authority of the Securities Commissioner pursuant to the provisions of Title 35.”

SECTION 24. Section 38‑90‑235 of the 1976 Code is repealed.

SECTION 25. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑90‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING CAPTIVE INSURANCE COMPANIES, SO AS TO DEFINE ‘RISK RETENTION GROUP’; TO AMEND SECTION 38‑90‑40, AS AMENDED, RELATING TO CAPITALIZATION REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO INCLUDE CAPTIVE INSURANCE COMPANIES AND SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES FORMED AS A RISK RETENTION GROUP; TO AMEND SECTION 38‑90‑50, AS AMENDED, RELATING TO FREE SURPLUS REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO INCLUDE CAPTIVE INSURANCE COMPANIES AND SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES FORMED AS A RISK RETENTION GROUP; AND TO AMEND SECTION 38‑90‑70, AS AMENDED, SECTION 38‑90‑100, AS AMENDED, SECTION 38‑90‑110, AS AMENDED, AND SECTION 38‑90‑160, AS AMENDED, ALL RELATING TO MISCELLANEOUS REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO MAKE CONFORMING PROVISIONS FOR CAPTIVE INSURANCE COMPANIES FORMED AS RISK RETENTION GROUPS AND SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES FORMED AS RISK RETENTION GROUPS.

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

SECTION 1. Section 38‑90‑10 of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“Section 38‑90‑10. As used in this chapter, unless the context requires otherwise:

(1) ‘Alien captive insurance company’ means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction.

(2) ‘Affiliated company’ means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(3) ‘Association’ means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or associations that has been in continuous existence for at least one year:

(a) the member organizations of which collectively, or which does itself:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company; or

(ii) have complete voting control over an association captive insurance company organized as a mutual insurer; or

(b) the member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(4) ‘Association captive insurance company’ means a company that insures risks of the member organizations of the association and their affiliated companies.

(5) ‘Branch business’ means any insurance business transacted by a branch captive insurance company in this State.

(6) ‘Branch captive insurance company’ means an alien 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.

(7) ‘Branch operations’ means any business operations of a branch captive insurance company in this State.

(8) ‘Captive insurance company’ means a pure captive insurance company, association captive insurance company, captive reinsurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under this chapter. For purposes of this chapter, a branch captive insurance company must be a pure captive insurance company with respect to operations in this State, unless otherwise permitted by the director.

(9) ‘Captive reinsurance company’ means a reinsurance company that is formed or licensed pursuant to this chapter and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation.

(10) ‘Consolidated debt to total capital ratio’ means the ratio of the sum of (a) all debts and hybrid capital instruments including, but not limited to, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding to (b) total capital, consisting of all debts and hybrid capital instruments as described in subitem (a) plus owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(11) ‘Consolidated GAAP net worth’ means the consolidated owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(12) ‘Controlled unaffiliated business’ means a company:

(a) that is not in the corporate system of a parent and affiliated companies;

(b) that has an existing contractual relationship with a parent or affiliated company; and

(c) whose risks are managed by a captive insurance company in accordance with Section 38‑90‑190.

(13) ‘Director’ means the Director of the South Carolina Department of Insurance or the director’s designee.

(14) ‘Department’ means the South Carolina Department of Insurance.

(15) ‘GAAP’ means generally accepted accounting principles.

(16) ‘Industrial insured’ means an insured as defined in Section 38‑25‑150(8).

(17) ‘Industrial insured captive insurance company’ means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(18) ‘Industrial insured group’ means a group that meets either of the following criteria:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer or limited liability company; or

(ii) have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) a group which is created under the Liability Risk Retention Act of 1986 15 U.S.C. Section 3901, et seq., as amended, and Chapter 87, Title 38, as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under this title.

(19) ‘Member organization’ means any individual, corporation, limited liability company, partnership, or association that belongs to an association.

(20) ‘Parent’ means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting interests of a captive insurance company.

(21) ‘Participant’ means an entity as defined in Section 38‑90‑230, 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.

(22) ‘Participant contract’ means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.

(23) ‘Protected cell’ means a separate account established and maintained by a sponsored captive insurance company for one participant.

(24) ‘Pure captive insurance company’ means a company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.

(25) ‘Qualifying reinsurer parent company’ means a reinsurer authorized to write reinsurance by this State and that has a consolidated GAAP net worth of not less than five hundred million dollars and consolidated debt to total capital ratio not greater than 0.50.

(26) ‘Risk retention group’ means a captive insurance company formed under the Product Liability Risk Retention Act of 1986, 15 U.S.C. Section 3901, et seq., as amended.

(~~26~~27) ‘Special purpose captive insurance company’ means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

(~~27~~28) ‘Sponsor’ means an entity that meets the requirements of Section 38‑90‑220 and is approved by the director to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(~~28~~29) ‘Sponsored captive insurance company’ means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(b) that is formed or licensed under this chapter;

(c) that insures the risks of separate participants through the contract; and

(d) that segregates each participant’s liability through one or more protected cells.

(~~29~~30) ‘Treasury rates’ means the United States Treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.”

SECTION 2. Section 38‑90‑40(A) and (B) of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“(A)(1) The director may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired paid‑in capital of:

(a) in the case of a pure captive insurance company, not less than one hundred thousand dollars;

(b) in the case of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than four hundred thousand dollars;

(c) in the case of an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, or in the case of a captive insurance company formed as a risk retention group, not less than two hundred thousand dollars;

(d) in the case of a sponsored captive insurance company, not less than five hundred thousand dollars; however, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous and there are no more than ten cells, the director may reduce this amount to an amount not less than one hundred fifty thousand dollars;

(e) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.

(2)(a) Except for a sponsored captive insurance company that does not assume any risk, the capital must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director.

(b) For a sponsored captive insurance company that does not assume any risk, the capital also may be in the form of other high quality securities as approved by the director.

(B)(1) The director may not issue a license to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unrestricted net assets of:

(a) in the case of a pure captive insurance company, not less than two hundred fifty thousand dollars; ~~and~~

(b) in the case of a special purpose captive insurance company formed as a risk retention group, not less than five hundred thousand dollars; and

(~~b~~c) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.

(2) Contributions to a captive insurance company incorporated as a nonprofit corporation must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System with a branch office in this State or as approved by the director.”

SECTION 3. Section 38‑90‑50(A)(1) of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

“(1) The director may not issue a license to a captive insurance company unless the company possesses and maintains free surplus of:

(a) in the case of a pure captive insurance company, not less than one hundred fifty thousand dollars;

(b) in the case of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than three hundred fifty thousand dollars;

(c) in the case of an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, or in the case of a captive insurance company formed as a risk retention group, not less than three hundred thousand dollars;

(d) in the case of an association captive insurance company incorporated as a mutual insurer, not less than seven hundred fifty thousand dollars;

(e) in the case of an industrial insured captive insurance company, or a captive insurance company formed as a risk retention group incorporated as a mutual insurer, not less than five hundred thousand dollars;

(f) in the case of a sponsored captive insurance company, not less than five hundred thousand dollars; however, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous and there are no more than ten cells, the director may reduce this amount to an amount not less than one hundred fifty thousand dollars; and

(g) in the case of a special purpose captive insurance company that is not a special purpose captive insurance company formed as a risk retention group, an amount determined by the director after giving due consideration to the company’s business plan, feasibility study, and pro‑formas, including the nature of the risks to be insured.”

SECTION 4. Section 38‑90‑70(B) of the 1976 Code, as last amended by Act 217 of 2010, is further amended to read:

“(B) Before March first of each year, a captive insurance company or a captive reinsurance company shall submit to the director a report of its financial condition, verified by oath of two of its executive officers. Except as provided in Sections 38‑90‑40 and 38‑90‑50, a captive insurance company or a captive reinsurance 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 ~~and~~, an industrial insured group, and a captive insurance company formed as 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 captive insurance company formed as a 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 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 ~~captive insurance company~~ risk retention group formed as a risk retention group under the Product Liability Risk Retention Act of 1986, 15 U.S.C. Section 3901, et seq., as amended.”

SECTION 5. Section 38‑90‑100 of the 1976 Code, as last amended by Act 332 of 2006, is further amended to read:

“Section 38‑90‑100. (A) An association captive insurance company ~~and~~, an industrial insured captive insurance company insuring the risks of an industrial insured group, and a captive insurance company formed as a risk retention group shall comply with the investment requirements contained in this title. Notwithstanding any other provision of this title, the director may approve the use of alternative reliable methods of valuation and rating.

(B) A pure captive insurance company, a captive reinsurance company, a special purpose captive insurance company, other than a special purpose captive insurance company formed as a risk retention group, and a sponsored captive insurance company are not subject to any restrictions on allowable investments contained in this title; however, the director may request a written investment plan and may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(C) Only a pure captive insurance company may make loans to its parent company or affiliates and only upon the prior written approval of the director and must be evidenced by a note in a form approved by the director. Loans of minimum capital and surplus funds required by Sections 38‑90‑40(A) and 38‑90‑50(A) are prohibited.”

SECTION 6. Section 38‑90‑110(B)(2) of the 1976 Code, as last amended by Act 86 of 2007, is further amended to read:

“(2) An industrial insured captive insurance company or a captive insurance company formed as a risk retention group may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with Sections 38‑9‑200, 38‑9‑210, and 38‑9‑220.”

SECTION 7. Section 38‑90‑160 of the 1976 Code, as last amended by Act 18 of 2013, is further amended to read:

“Section 38‑90‑160. (A) No provisions of this title, other than those contained in this chapter or contained in specific references contained in this chapter and regulations applicable to them, apply to captive insurance companies.

(B) The director may exempt, by rule, regulation, or order, special purpose captive insurance companies, other than a special purpose captive insurance company formed as a risk retention group, on a case by case basis, from provisions of this chapter that he determines to be inappropriate given the nature of the risks to be insured.

(C) The provisions of Sections 38‑5‑120(A)~~(3)~~(5), 38‑5‑120~~(C)~~(B), 38‑5‑120(D)(1), 38‑5‑120(D)(2), 38‑9‑225, 38‑9‑230, 38‑21‑10, 38‑21‑30, 38‑21‑60, 38‑21‑70, 38‑21‑90, 38‑21‑95, 38‑21‑120, 38‑21‑130, 38‑21‑140, 38‑21‑150, 38‑21‑160, 38‑21‑170, 38‑21‑250, 38‑21‑270, 38‑21‑280, 38‑21‑310, 38‑21‑320, 38‑21‑330, 38‑21‑360, 38‑55‑75 and Chapters 44 and 46, Title 38 apply in full to a risk retention group licensed as ~~an industrial insured~~ a captive insurance company and, if a conflict occurs between those code sections and chapters referenced in this subsection and this chapter (Chapter 90, Title 38), then the code sections and chapters referenced in this subsection control.

(D) Except as provided elsewhere in this chapter, the provisions of Chapter 87, Title 38 apply to a risk retention group licensed as ~~an industrial insured~~ a captive insurance company.

(E)(1) Except for Section 38‑9‑330(F) and Section 38‑9‑440, the provisions of Article 3 and Article 5, Chapter 9, Title 38 apply in full to a risk retention group licensed as ~~an industrial insured~~ a captive insurance company, and if a conflict occurs between those provisions and this chapter, the provisions of this subsection control.

(2) The director may elect not to take regulatory action as otherwise required by Sections 38‑9‑330, 38‑9‑340, 38‑9‑350, and 38‑9‑360 if any of the following conditions exist:

(a) the director establishes that the risk retention group’s members, sponsoring organizations, or both, are well‑capitalized entities whose financial condition and support for the risk retention group is adequately documented. In making this determination, the director shall, at a minimum, require the filing of at least three years of historical, audited financial statements of the members, sponsor, or both, to assess the financial ability of the members’, sponsor’s, or both, support of the risk retention group. In addition, one year of projected financial information must be reviewed if available. The members, sponsor, or both, shall have:

(i) an investment grade rating from a nationally recognized statistical rating organization or A.M. Best rating of A‑ or better; or

(ii) equity equal to or greater than one hundred million dollars or equity equal to or greater than ten times the risk retention group’s largest net retained per occurrence limit;

(b) each policyholder qualifies as an industrial insured in their state or this State, depending on which has the greater requirements, provided that if the policyholder’s home state does not have an industrial insured exemption or equivalent, the policyholder must qualify under the industrial insured requirement of this State; or

(c) the risk retention group’s certificate of authority date of issue was before January 1, 2011, and, based on a minimum five‑year history of successful operations, is specifically exempted, in writing, from the requirements for mandatory risk‑based capital action by the director.”

SECTION 8. This act takes effect upon approval by the Governor.

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