

South Carolina General Assembly
117th Session, 2007-2008

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A78, R142, H3820

STATUS INFORMATION

General Bill

Sponsors: Reps. Cato, Viers, Clemmons, Bales, Hardwick, Miller, Haley, Perry, Leach, Anderson, Witherspoon, Barfield, Battle, Dantzler, Edge, Herbkersman and Hodges

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Companion/Similar bill(s): 711

Introduced in the House on March 29, 2007

Introduced in the Senate on May 15, 2007

Last Amended on May 31, 2007

Passed by the General Assembly on June 6, 2007

Governor's Action: June 11, 2007, Signed

Summary: Omnibus Coastal Property Insurance Reform Act of 2007

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/29/2007	House	Introduced and read first time HJ-18
3/29/2007	House	Referred to Committee on Labor, Commerce and Industry HJ-21
5/2/2007	House	Committee report: Favorable with amendment Labor, Commerce and Industry HJ-5
5/4/2007		Scrivener's error corrected
5/8/2007	House	Member(s) request name added as sponsor: Hodges
5/8/2007	House	Amended HJ-20
5/8/2007	House	Read second time HJ-46
5/9/2007	House	Read third time and sent to Senate HJ-23
5/15/2007	Senate	Introduced and read first time SJ-9
5/15/2007	Senate	Referred to Committee on Banking and Insurance SJ-9
5/24/2007	Senate	Committee report: Favorable with amendment Banking and Insurance SJ-24
5/29/2007		Scrivener's error corrected
5/31/2007	Senate	Committee Amendment Adopted SJ-26
5/31/2007	Senate	Amended SJ-26

5/31/2007	Senate	Read second time SJ-26
5/31/2007	Senate	Unanimous consent for third reading on next legislative day SJ-26
6/1/2007	Senate	Read third time and returned to House with amendments SJ-2
6/6/2007	House	Concurred in Senate amendment and enrolled HJ-28
6/6/2007		Scrivener's error corrected
6/7/2007		Ratified R 142
6/11/2007		Signed By Governor
6/18/2007		Copies available
6/18/2007		Effective date See Act for Effective Date
6/18/2007		Act No. 78

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VERSIONS OF THIS BILL

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(A78, R142, H3820)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE "OMNIBUS COASTAL PROPERTY INSURANCE REFORM ACT OF 2007"; BY ADDING ARTICLE 11 TO CHAPTER 6, TITLE 12 SO AS TO ALLOW AN INSURANCE POLICYHOLDER TO ESTABLISH A CATASTROPHE SAVINGS ACCOUNT, TO DEFINE QUALIFIED CATASTROPHE SAVINGS EXPENSES AND QUALIFIED DEDUCTIBLE, AND TO ALLOW A TAXPAYER TO CLAIM A CREDIT AGAINST THE STATE INCOME TAX FOR DEPOSITS MADE INTO A CATASTROPHE SAVINGS ACCOUNT; BY ADDING SECTION [12-6-3660](#) SO AS TO ALLOW A TAXPAYER TO CLAIM A CREDIT AGAINST THE STATE INCOME TAX FOR COSTS INCURRED TO RETROFIT A LEGAL RESIDENCE TO MAKE IT MORE RESISTANT TO LOSS DUE TO HURRICANE, RISING WATER, OR OTHER CATASTROPHIC WINDSTORM EVENT; BY ADDING SECTION [12-6-3665](#) SO AS TO PROVIDE FOR THE CALCULATION OF THE TAX CREDIT ALLOWED BY SECTION [12-6-3660](#); BY ADDING

SECTION [12-6-3670](#) SO AS TO ALLOW A TAXPAYER TO CLAIM A CREDIT AGAINST THE STATE INCOME TAX FOR EXCESS PREMIUM PAID FOR PROPERTY AND CASUALTY INSURANCE UNDER CERTAIN CIRCUMSTANCES; TO DESIGNATE SECTIONS [38-3-10](#) THROUGH [38-3-240](#) AS ARTICLE 1, CHAPTER 3, TITLE 38 AND ENTITLED "GENERAL PROVISIONS"; BY ADDING ARTICLE 3 TO CHAPTER 3, TITLE 38 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF INSURANCE HAS AUTHORITY TO ISSUE EMERGENCY REGULATIONS APPLICABLE TO ALL INSURANCE COMPANIES AFTER THE GOVERNOR DECLARES A STATE OF EMERGENCY, TO PROVIDE THAT THE DEPARTMENT BY REGULATION MAY ADOPT ANY PROCEDURE THAT FACILITATES RECOVERY FROM THE EMERGENCY, TO PROVIDE THAT THE DEPARTMENT SHALL ADOPT REGULATIONS STANDARDIZING REQUIREMENTS THAT MAY BE APPLIED TO INSURERS AFTER A HURRICANE, ADDRESSING CLAIMS REPORTING REQUIREMENTS, GRACE PERIODS FOR PAYMENT OF PREMIUMS, TEMPORARY POSTPONEMENT OF CANCELLATIONS AND NONRENEWABLE, AND ANY OTHER REGULATION THE DIRECTOR CONSIDERS NECESSARY TO IMPLEMENT THE PROVISIONS OF ARTICLE 3, CHAPTER 3, TITLE 38; BY ADDING SECTION [38-7-200](#) SO AS TO ALLOW TAX CREDIT INCENTIVES TO INSURANCE COMPANIES THAT PROVIDE FULL INSURANCE COVERAGE TO PROPERTY OWNERS ALONG THE COAST OF SOUTH CAROLINA, SPECIFYING THE AMOUNT OF THE CREDIT, AND ALLOWING UNUSED CREDITS TO BE APPLIED IN SUCCEEDING TAXABLE YEARS UNDER CERTAIN CIRCUMSTANCES; BY ADDING SECTION [38-75-755](#) SO AS TO REQUIRE INSURERS TO DISCLOSE ALL AVAILABLE DISCOUNTS TO THE INSURED; TO AMEND SECTION [38-3-110](#), RELATING TO THE DUTIES OF THE CHIEF INSURANCE COMMISSIONER, SO AS TO REQUIRE THE DIRECTOR TO HOLD A PUBLIC HEARING AT LEAST ANNUALLY 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; TO AMEND SECTION [38-73-260](#), AS AMENDED, SO AS TO CLARIFY THAT RATES FALLING WITHIN THE LIMITATION REMAIN SUBJECT TO THE PROHIBITION AGAINST RATES NOT BEING EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY, THAT THE DEPARTMENT MAY CONSIDER THE RATE IMPACT ON INDIVIDUALS AND TERRITORIES WHEN DETERMINING WHETHER A RATE IS EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION [38-73-1095](#), RELATING TO ESSENTIAL PROPERTY INSURANCE AND RATING PLAN FACTORS, SO AS TO PROVIDE CREDITS AND DISCOUNTS OR SURCHARGES AND DEBITS CALCULATED ON CERTAIN RATING FACTORS FOR RETROFITTING PROPERTY; TO AMEND ARTICLE 5, CHAPTER 75, TITLE 38, RELATING TO WIND AND HAIL INSURANCE, SO AS TO CLARIFY CERTAIN DEFINITIONS RELATING TO ELIGIBILITY FOR COVERAGE BY THE SOUTH CAROLINA WIND AND HAIL UNDERWRITING ASSOCIATION, TO CLARIFY THE PURPOSE OF ARTICLE 5, TO CLARIFY THAT THE SOUTH CAROLINA WIND AND HAIL UNDERWRITING ASSOCIATION SHALL PROVIDE WIND AND HAIL INSURANCE FOR RESIDENTIAL AND COMMERCIAL PROPERTY TO APPLICANTS UNABLE TO PROCURE IT IN THE COASTAL AREAS OF THIS STATE, TO PROVIDE INFORMATION THAT MUST BE ADDRESSED IN THE PLAN OF OPERATION, TO MAKE TECHNICAL CHANGES, TO PROVIDE FOR ADDITIONAL GENERAL CORPORATE POWERS AND DUTIES FOR THE SOUTH CAROLINA WIND AND HAIL UNDERWRITING ASSOCIATION, TO PROVIDE THAT RATES CHARGED BY THE SOUTH CAROLINA WIND AND HAIL UNDERWRITING ASSOCIATION BE ESTABLISHED AT A SELF-SUSTAINING LEVEL, TO PROVIDE OBJECTIVE STANDARDS FOR EXPANDING THE TERRITORY COVERED BY THE SOUTH CAROLINA WIND AND HAIL UNDERWRITING ASSOCIATION; TO AMEND ARTICLE 8, CHAPTER 75, TITLE 38, RELATING TO THE ADVISORY

COMMITTEE TO THE DIRECTOR AND THE SOUTH CAROLINA BUILDING CODES COUNCIL AND LOSS MITIGATION GRANT PROGRAM, SO AS TO MODIFY THE MEMBERSHIP OF THE ADVISORY COMMITTEE AND TO CLARIFY THAT THE CONTINUED EXISTENCE OF THE PROGRAM IS SUBJECT TO ANNUAL LEGISLATIVE APPROPRIATIONS, TO CLARIFY THAT THE PURPOSE IS TO PROVIDE FOR ONGOING TRAINING FOR INSPECTORS AND FOR OTHER PURPOSES CONSISTENT WITH THE ARTICLE, TO ESTABLISH THE "SOUTH CAROLINA HURRICANE GRANT DAMAGE MITIGATION PROGRAM" WHICH PROVIDES FOR A GRANT PROGRAM FOR THE MITIGATION OF DAMAGE TO OR THE ENHANCEMENT OF MANUFACTURED HOMES, TO PROVIDE FOR MATCHING GRANTS TO ENCOURAGE SINGLE-FAMILY SITE-BUILT HOMES TO RETROFIT TO REDUCE THE STRUCTURE'S VULNERABILITY TO A HURRICANE, TO PROVIDE MATCHING GRANT FUNDS TO LOCAL GOVERNMENTS FOR PROJECTS THAT REDUCE HURRICANE DAMAGE TO SINGLE-FAMILY SITE-BUILT RESIDENTIAL PROPERTY, TO PROVIDE THAT IN ADDITION TO STATE APPROPRIATIONS AND OTHER POTENTIAL GRANT FUNDS, THE PREMIUM TAXES PAID BY THE SOUTH CAROLINA WIND AND HAIL UNDERWRITING ASSOCIATION AND ONE PERCENT OF THE COMMISSIONS PAID TO PRODUCERS MUST BE USED TO FUND THIS PROGRAM ANNUALLY, AND TO REQUIRE A STUDY AND PROPOSAL TO DEVELOP AN OBJECTIVE RATING SYSTEM THAT WILL ALLOW HOMEOWNERS TO EVALUATE THE RELATIVE ABILITY TO COASTAL PROPERTIES TO WITHSTAND THE WIND LOAD FROM A HURRICANE; TO AMEND SECTION [38-75-1140](#), RELATING TO THE EVALUATION OF NATURAL HAZARD CATASTROPHE MODELS AND REQUIREMENTS FOR MODELING ORGANIZATIONS, SO AS TO REQUIRE MODELERS TO PROVIDE THE DEPARTMENT WITH A LIST OF VARIABLES THAT ARE SUBJECT TO INSURER INPUT WITH THEIR FILING AND TO PROVIDE THAT THE DEPARTMENT MAY IMPOSE A FEE ON MODELERS AND INSURERS TO RECOVER THE COSTS OF EVALUATING HURRICANE MODELS; TO AMEND SECTION [38-75-730](#), RELATING TO THE RENEWAL OF AN INSURANCE POLICY, SO AS TO PROVIDE THAT A POLICY MAY NOT BE CANCELLED BECAUSE OF SUBSTANTIAL CHANGE OR RISK ASSUMED BY THE INSURER WHICH IS BASED ON CHANGES IN CLIMATIC CONDITIONS, BASED ON STATISTICAL DATA RELATIVE TO SOUTH CAROLINA THAT HAS BEEN APPROVED BY THE DIRECTOR OR HIS DESIGNEE AS A BASIS FOR SUBSTANTIAL CHANGE IN THE RISK ASSUMED; TO AMEND SECTION [38-75-740](#), RELATING TO THE NONRENEWAL BY AN INSURER OF A POLICY, SO AS TO MAKE THIS PROVISION CONSISTENT WITH THE PROVISIONS OF SECTION [38-75-730](#); TO AMEND SECTION [38-75-1160](#), RELATING TO NOTICE REQUIREMENTS AND EXCEPTIONS BEFORE CANCELLATION OR REFUSAL TO RENEW A POLICY OF INSURANCE, SO AS TO INCREASE THE TIME PERIOD FOR NOTIFYING AN INSURED OF THE CANCELLATION OR REFUSAL TO RENEW A POLICY OF INSURANCE, ADD OTHER PROVISIONS WHICH MUST BE INCLUDED IN THE NOTICE, AND PROVIDE OTHER EXCEPTIONS TO THIS PROVISION; BY ADDING ARTICLE 5 TO CHAPTER 90, TITLE 38 SO AS TO ENACT THE "SOUTH CAROLINA COASTAL CAPTIVE INSURANCE ACT OF 2007", TO PROVIDE FOR THE MANNER IN WHICH A SOUTH CAROLINA COASTAL CAPTIVE INSURANCE COMPANY MAY BE FORMED, LICENSED, AND REGULATED, TO DEFINE AND TO LIMIT THE TYPES OF RISK A SOUTH CAROLINA COASTAL CAPTIVE INSURANCE COMPANY MAY UNDERWRITE, TO ESTABLISH MINIMUM CAPITALIZATION REQUIREMENTS FOR SOUTH CAROLINA COASTAL CAPTIVE INSURANCE COMPANIES, AND TO PERMIT THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO SET ADDITIONAL DISCRETIONARY CAPITALIZATION REQUIREMENTS NECESSARY TO PROTECT THE PUBLIC, AND TO PROVIDE FOR CERTAIN REQUIRED DISCLOSURES TO CONSUMERS IN ALL APPLICATIONS FOR INSURANCE AND POLICIES.

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

Citation of act

SECTION 1. This act may be cited as the "Omnibus Coastal Property Insurance Reform Act of 2007".

Catastrophe savings account

SECTION 2. Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Article 11

Catastrophe Savings Account

Section [12-6-1610](#). As used in this article:

- (1) 'Qualified catastrophe expenses' mean expenses paid or incurred by reason of a major disaster that has been declared by the Governor to be an emergency by executive order.
- (2) 'Qualified deductible' means the deductible for the individual's homeowner's policy for a taxpayer's legal residence.
- (3) 'Legal residence' means the taxpayer's legal residence pursuant to Section [12-43-220](#)(c).

Section [12-6-1620](#). (A)(1) An individual taxpayer is allowed a deduction from the tax imposed pursuant to Section [12-6-510](#) for amounts contributed to a Catastrophe Savings Account in accordance with subsection (B)(3); and

(2) all interest income earned by the Catastrophe Savings Account is exempt from the tax imposed pursuant to Section [12-6-510](#) as provided in this article.

(B)(1) As used in this article, 'Catastrophe Savings Account' means a regular savings account or money market account established by an insurance policyholder for residential property in this State to cover an insurance deductible under an insurance policy for the taxpayer's legal residence property that covers hurricane, rising floodwaters, or other catastrophic windstorm event damage or by an individual to cover self-insured losses for the taxpayer's legal residence from a hurricane, rising floodwaters, or other catastrophic windstorm event. The account must be labeled as a Catastrophe Savings Account in order to qualify as a Catastrophe Savings Account as defined in this article. A taxpayer shall establish only one Catastrophe Savings Account and shall specify that the purpose of the account is to cover the amount of insurance deductibles and other uninsured portions of risks of loss from hurricane, rising floodwater, or other catastrophic windstorm event.

(2) A Catastrophe Savings Account is not subject to attachment, levy, garnishment, or legal process in this State.

(3) The total amount that may be contributed to a Catastrophe Savings Account must not exceed:

(a) in the case of an individual whose qualified deductible is less than or equal to one thousand dollars, two thousand dollars;

- (b) in the case of an individual whose qualified deductible is greater than one thousand dollars, the amount equal to the lesser of fifteen thousand dollars or twice the amount of the taxpayer's qualified deductible; or
- (c) in the case of a self-insured individual who chooses not to obtain insurance on his legal residence, two hundred fifty thousand dollars, but shall not exceed the value of the individual taxpayer's legal residence.
- (4) If a taxpayer contributes in excess of the limits provided in item (3), the taxpayer shall withdraw the amount of the excess contributions and include that amount in South Carolina income for purposes of Section [12-6-510](#) in the year of withdrawal.

Section [12-6-1630](#). (A) A distribution from a Catastrophe Savings Account must be included in the income of the taxpayer unless the amount of the distribution is used to cover qualified catastrophe expenses.

(B) No amount is included in income, pursuant to subsection (A) of this section, if the qualified catastrophe expenses of the taxpayer during the taxable year are equal to or greater than the aggregate distributions during the taxable year.

(C) If aggregate distributions exceed the qualified catastrophe expenses during the taxable year, the amount otherwise included in income must be reduced by the amount of the distributions for qualified catastrophe expenses.

(D)(1) The tax paid pursuant to Section [12-6-510](#) attributable to a taxable distribution must be increased by two and one-half percent of the amount which is includable in income.

(2) This additional tax does not apply if the:

- (a) taxpayer no longer owns a legal residence that qualifies under Section [12-43-220](#)(C); or
- (b) distribution is from an account conforming with Section [12-6-1620](#)(B)(3)(c) and is made on or after the date on which the taxpayer attains the age of seventy.

(E)(1) No amount is includable in taxable income, pursuant to subsection (A) of this section, if the distribution is from an account conforming with Section [12-6-1620](#)(B)(3)(a) or (b) and is made on or after the date on which the taxpayer attains the age of seventy.

(2) If a taxpayer receives a nontaxable distribution under this subsection, the taxpayer must not make further contributions to any Catastrophe Savings Account.

(F) If a taxpayer who owns a Catastrophe Savings Account dies, his account is included in the income of the person who receives the account, unless that person is the surviving spouse of the taxpayer. Upon the death of the surviving spouse, the account is included in the income of the person who receives the account. The additional tax in subsection (D) does not apply to distribution on death of the taxpayer or the surviving spouse."

Credit

SECTION 3. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section [12-6-3660](#). (A) An individual taxpayer is allowed a credit against the tax imposed pursuant to Section [12-6-510](#) for costs incurred to retrofit, as specified in subsection (B), a structure qualifying as the taxpayer's legal residence pursuant to Section [12-43-220\(c\)](#) to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event.

(B) In order to qualify for the state income tax credit allowed pursuant to this section, costs must not include ordinary repair or replacement of existing items, and must be associated with those fortification measures defined in subsection (C), and must increase the residence's resistance to hurricane, rising floodwater, or catastrophic windstorm event damage, as defined by the director or his designee by regulation.

(C) The fortification measures qualifying for the state income tax credit allowed pursuant to this section must be promulgated by the Department of Insurance in regulations pursuant to the Administrative Procedures Act.

(D) The tax credit allowed pursuant to this section for any taxable year must not exceed the lesser of:

(1) twenty-five percent of the cost incurred; or

(2) one thousand dollars.

(E) The cost of items that otherwise qualify for the credit that are purchased with grant funds awarded pursuant to Section [38-75-485](#) are not eligible for this credit if the grants are not included in the income of the taxpayer.

Section [12-6-3665](#). (A) An individual taxpayer is allowed a credit from the income tax imposed pursuant to Section [12-6-510](#) for South Carolina state sales or use taxes paid on purchases of tangible personal property used to retrofit the individual's legal residence pursuant to Section [12-6-3660](#). The credit amount is calculated by multiplying by six percent the purchase price of tangible personal property for which the individual may claim the income tax credit in Section [12-6-3660](#). The maximum credit allowed under this section is one thousand five hundred dollars.

(B) The cost of items that otherwise qualify for the credit that are purchased with grant funds awarded pursuant to Section [38-75-485](#) are not eligible for this credit if the grants are not included in the income of the taxpayer.

Section [12-6-3670](#). (A) An individual taxpayer may claim a credit against the income tax imposed pursuant to Section [12-6-510](#) for excess premium paid during the applicable tax year for property and casualty insurance, as defined in Articles 1, 3, and 5 of Chapter 75, Title 38, providing coverage on the taxpayer's legal residence pursuant to Section [12-43-220\(c\)](#).

(B) For the purposes of computing the credit allowed by this section, excess premium paid is the amount by which the premium paid exceeds five percent of the taxpayer's adjusted gross income.

(C)(1) The credit allowed pursuant to this section for any taxable year may not exceed one thousand two hundred fifty dollars.

(2) If the credit allowed under this section exceeds the state income tax liability for the taxable year, any unused credit may be carried forward for five succeeding taxable years."

Sections designated, emergency powers

SECTION 4. A. Sections [38-3-10](#) through [38-3-240](#) of the 1976 Code are designated as Article 1, Chapter 3, Title 38 and entitled "General Provisions".

B. Chapter 3, Title 38 of the 1976 Code is amended by adding:

"Article 3

Emergency Powers

Section [38-3-410](#). (A) If the Governor declares a state of emergency pursuant to Section [1-3-420](#), the director may issue one or more emergency regulations pursuant to Section [1-23-130](#)(A) applicable to all insurance companies, entities, and persons, as defined in Section [38-1-20](#), that are subject to Title 38.

(B)(1) The provisions of Section [1-23-130](#)(A), (B), and (D) are applicable to emergency regulations promulgated under this section.

(2) The provisions of Section [1-23-130](#)(C) are not applicable to emergency regulations promulgated under this section. An emergency regulation promulgated under this section becomes effective upon issuance and continues for one hundred twenty days unless terminated sooner by the director. The director may extend an emergency regulation for additional periods of one hundred twenty days, whether or not the General Assembly is in session, for as long as he determines that the conditions that gave rise to the emergency regulation still exist. Each extension of the emergency regulation must be published in the State Register as provided in Section [1-23-130](#)(D). By concurrent resolution, the General Assembly may terminate an emergency regulation issued under this section.

(C) The text of an emergency regulation promulgated under this section together with a statement explaining how the emergency regulation facilitates recovery from the emergency must be published in the State Register as provided in Section [1-23-130](#)(D).

Section [38-3-420](#). (A) By an emergency regulation issued pursuant to Section [38-3-410](#), the director may adopt any procedure that facilitates recovery from the emergency and is fair under the circumstances if the:

- (1) procedure provides at least the procedural protection given by other statutes, the Constitution of this State, or the United States Constitution;
- (2) department takes only that action necessary to protect the public interest under the emergency procedure; and
- (3) department publishes in writing, at the time of or before its action, the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.

(B) Subject to applicable constitutional and statutory provisions, an emergency regulation becomes effective immediately on filing. After notice of the emergency regulation is published in the State Register as provided in Section [1-23-130](#)(D) and Section [38-3-410](#), then the department's findings of immediate danger, necessity, and

procedural fairness are judicially reviewable under Section [38-3-210](#).

Section [38-3-430](#). (A) The department may promulgate by emergency regulation, pursuant to Section [38-3-410](#), standardized requirements that may be applied to insurers as a consequence of a hurricane or other natural disaster. The emergency regulations must address the following areas:

- (1) claims reporting requirements;
- (2) grace periods for payment of premiums and performance of other duties by insureds;
- (3) temporary postponement of cancellations and nonrenewals; and
- (4) any other rule the director considers necessary.

(B) The emergency regulations adopted under this section shall require the department to issue an order within ten days after the occurrence of a hurricane or other natural disaster specifying, by line of insurance, which of the standardized requirements apply, the geographic areas in which they apply, the time at which applicability commences, and the time at which applicability terminates. An order issued pursuant to this subsection must comply with the requirements of Section [1-23-140](#).

Section [38-3-440](#). The department may promulgate the regulations pursuant to the South Carolina Administrative Procedures Act, Chapter 23 of Title 1, necessary to implement the provisions of this article."

Coverage may be expanded, nonrefundable credit

SECTION 5. Chapter 7, Title 38 of the 1976 Code is amended by adding:

"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) 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) 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) 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) 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."

Applicants to be notified

SECTION 6. Article 9, Chapter 75, Title 38 is amended by adding:

"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. The notice must describe generally what measures the policyholders may take to reduce their windstorm premium.

(B) 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."

Public meeting

SECTION 7. Section [38-3-110](#) of the 1976 Code is amended by adding at the end:

"(5) 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 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. The director must submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by no later than January thirty-first of each year regarding the 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."

Impact to be considered

SECTION 8. Section [38-73-260](#) of the 1976 Code, as last amended by Act 332 of 2006, is further amended by adding at the end:

"(F)(1) Nothing in this section prevents the director or his designee from considering the impact on individual territories or individual insureds when determining whether the rate is excessive, inadequate, or unfairly discriminatory. Rate level increases or decreases falling within the limitation specified in this subsection must comply with the requirements of this chapter prohibiting rate increases from being excessive, inadequate, or unfairly discriminatory.

- (2) With respect to fire, allied lines, and homeowner's rates, the director or his designee shall specifically review all rate filings made on or after June 1, 2007, to ensure that each insurer's rates for policies that exclude wind coverage reflect a discount commensurate with that insurer's previously filed surcharge for policies that include wind coverage.
- (3) This subsection does not apply to private passenger automobile insurance nor to insurance against liability arising out of the ownership, maintenance, or the use of:
 - (a) an individual private passenger automobile as defined in Section [38-77-30](#)(5.5)(a); or
 - (b) property having wheels."

Rating plans

SECTION 9. Section [38-73-1095](#)(C) of the 1976 Code is amended to read:

"(C) Rating plans for essential property insurance in the coastal area or in the seacoast area, shall include discounts and credits or surcharges and debits calculated upon the following rating factors:

- (1) use of storm shutters;
- (2) use of roof tie downs;
- (3) construction standards;
- (4) building codes;
- (5) distance from water;
- (6) elevation;
- (7) flood insurance;
- (8) policy deductibles; and
- (9) other applicable factors requested by the insurer or rating organization or selected by order of the director involving the risk or hazard. An order issued pursuant to this section must comply with the requirements of Section [1-23-140](#).

The department may by regulation define how the implementation of these factors qualify for credits or discounts. The regulation must specify what evidence or proof the policyholder or applicant shall present to obtain the credit or discount. This section applies to policies issued or renewed after December 31, 2007."

Wind and hail insurance

SECTION 10. Article 5, Chapter 75, Title 38 of the 1976 Code is amended to read:

"Article 5

Wind and Hail Insurance

Section [38-75-310](#). In this article, unless the context otherwise requires:

(1) 'Essential property insurance' means insurance against direct loss to property as defined and limited in the wind and hail insurance policy and forms approved by the director or his designee; and after January 1, 1995, at the request of the insured, coverage for:

- (a) actual loss of business income;
- (b) additional living expense; or
- (c) fair rental value loss.

Before November 1, 1994, the South Carolina Wind and Hail Underwriting Association must file with the department for approval additional policy forms defining the terms of and providing coverage for actual loss of business income, additional living expense, and fair rental value loss.

(2) 'Association' means the South Carolina Wind and Hail Underwriting Association established pursuant to the provisions of this article.

(3) 'Plan of operation' means the plan of operation of the association approved or promulgated by the department pursuant to the provisions of this article.

(4) 'Insurable property' means immovable property at fixed locations in coastal areas of the State as that term is defined, or tangible personal property located in it, which property is determined by the association to be in an insurable condition as determined by reasonable underwriting standards, but not to include farm or manufacturing property, or motor vehicles which are eligible to be licensed for highway use. A structure commenced on or after September 15, 1971, not built in substantial compliance with the most recent building code, adopted by the Building Codes Council as referenced in Section [6-9-50](#), or the approved building code in existence at the time of construction or the standards promulgated under the National Manufactured Housing Construction Standards and Safety Act, including the design-wind requirements in it, is not an insurable risk under the terms of this article. A structure commenced on or after September 15, 1971, must comply with any construction and zoning requirements affecting the structure, promulgated or adopted pursuant to the requirements of the Federal Flood Insurance Program.

(5) 'Coastal area' means:

- (a) all areas in Beaufort County and Colleton County which are east of the west bank of the intracoastal waterway;
- (b) the following areas in Georgetown County: all areas between the Harrell Siau Bridge and the Georgetown-Horry County border which are east of a line paralleling U.S. Highway No. 17, and Cedar Island, North Island, and South Island;
- (c) all areas in Horry County east of U.S. Highway No. 17 or By-Pass 17, whichever is farther to the west;

(d) the following areas in Charleston County: Edisto Island, Edingsville Beach, Kiawah Island, Botany Bay Island, Folly Island, Seabrook Island, Morris Island, and all areas north of the City of Charleston which are east of the west bank of the intracoastal waterway and the following areas:

- (i) the portion of James Island which is east of the west bank of the James Island Creek;
- (ii) the portion of John's Island which is east of a line paralleling Exchange Road which becomes Plow Ground Road to Hoopstick Island Road to Church Creek; and
- (iii) the portion of Wadmalaw Island which is east of a line paralleling Roseville Road to west of Cherry Point Road to Maybank Highway to Brigger Hill Road.

(6) 'Net direct premiums' means gross direct premiums excluding reinsurance assumed and ceded written on property other than farm or manufacturing in this State for fire and extended coverage insurance, including the fire and extended coverage components of homeowners policy and commercial multiple peril package policies, less return premiums upon canceled contracts, dividends paid or credited to policyholders, or the unused or unabsorbed portion of premium deposits.

(7) 'Seacoast area' means all areas within Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, and Jasper Counties.

Section [38-75-320](#). The purpose of this article is to assure an adequate market for wind and hail insurance in the coastal areas of this State.

Section [38-75-330](#). (A) There is created the South Carolina Wind and Hail Underwriting Association, an unincorporated association whose responsibilities, liability, and regulations are governed and defined by this article. The association shall function as a residual market mechanism to provide wind and hail insurance for residential and commercial property to applicants who are unable to procure this insurance in the coastal area.

(B) The association consists of all private insurers authorized to write and engage in writing property insurance within this State on a direct and statewide basis, but excluding insurers whose writings are limited to property wholly owned by parent, subsidiary, or allied organizations, or insurers whose writings are limited to property wholly owned by religious organizations. However, as a condition of exemption from membership these insurers providing property insurance for insurable property in the coastal area as defined by this article also shall provide essential property insurance for these risks. Each insurer must be a member of the association and shall remain a member of the association so long as the association is in existence as a condition of its authority to continue to transact the business of insurance in this State.

Section [38-75-340](#). (A) The association shall operate pursuant to a plan of operation which provides for the following:

(1) the number, qualifications, terms of office, and manner of election of the members of the board of directors, provided that four members of the board of directors must be consumers who are representative of business policyholders, residential single family dwelling policyholders, and apartment, condominium, or multiple-family dwelling policyholders, and who are selected from recommendations from the members of the legislative delegations from the seacoast area;

- (2) the efficient, economical, fair, and nondiscriminatory administration of the association;
 - (3) the prompt and efficient provision of essential property insurance in the coastal areas of the State;
 - (4) the manner of election of officers;
 - (5) the establishment of necessary facilities;
 - (6) the management of the association;
 - (7) the assessment of members to defray losses and expenses;
 - (8) reasonable underwriting standards, rating subdivisions, and rates including, but not limited to, developing multiple-tiered rates within the coastal area territory that reflect the relative risks of the properties located within a particular tier;
 - (9) commissions to be paid to agents or brokers;
 - (10) procedures for an open, competitive process for the acceptance and cession of reinsurance, provided that the association is not required to follow the provisions of the South Carolina Consolidated Procurement Code, and for determining the amounts of insurance to be provided to specific risks;
 - (11) time limits and procedures for processing applications for insurance; and
 - (12) other provisions considered necessary by the director or his designee to carry out the purposes of this article.
- (B) Insurance effected pursuant to this article must have limits of liability provided in the plan of operation. The director or his designee shall approve the limits. Excess insurance is not permitted until the maximum available under the plan has been purchased. After that, excess insurance may be purchased and must be included for the purpose of meeting any coinsurance requirement.
- (C) The board of the association, subject to the approval of the director or his designee, may amend the plan of operation at any time. The director or his designee shall review the plan of operation annually. The director or his designee shall review the rate structure and loss experience semi-annually in accordance with Section [38-75-400](#). After review of the plan, the director or his designee may amend the plan and the amendment takes effect immediately upon ratification by the board.

Section [38-75-350](#). (A) A person having an insurable interest in insurable property is entitled to apply to the association for coverage and for an inspection of the property. The application must be made on behalf of the applicant by a licensed broker or agent authorized by him. An application must be submitted on a form prescribed by the association and approved by the director or his designee. The application must contain a statement as to whether or not there are any unpaid premiums due from the applicant for fire insurance on the property. The term 'insurable interest' as used in this section includes any lawful and substantial economic interest in the safety or preservation of property from loss, destruction, or pecuniary damage.

(B) If the association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the association upon receipt of the premium, or a portion of it as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance for a term of at least one year.

(C) If the association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to an applicant or takes no action on an application within the time prescribed in the plan of operation, the applicant may appeal to the director or his designee and the director or a member of his staff designated by him, after reviewing the facts, may direct the association to issue or cause to be issued an insurance policy to the applicant. In carrying out its duties pursuant to this section, the director or his designee may request, and the association shall provide, any information the director or his designee considers necessary to a determination concerning the reasons for the denial or delay of the application.

Section [38-75-360](#). (A) The association, pursuant to the provisions of this article and the plan of operation, and with respect to essential property insurance on insurable property, has the power on behalf of its members to:

- (1) cause to be issued policies of insurance to applicants;
- (2) assume reinsurance from its members;
- (3) cede reinsurance to its members and to purchase reinsurance on risks insured by the association in amounts that are in accordance with procedures adopted by the board;
- (4) receive, hold, and transfer personal and real property in the name of the association;
- (5) contract for goods and services that reasonably may not be performed by its employees;
- (6) solicit and accept goods, loans, grants, etc. in the name of the association;
- (7) borrow funds; and
- (8) issue bonds, surplus notes, or other debentures.

(B) The association, pursuant to the provisions of this article and the plan of operation, and with respect to essential property insurance on insurable property, shall perform other acts necessary or proper to effectuate the purpose of this subsection.

Section [38-75-370](#). (A) All members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premium of the member written in this State during the calendar year two years before the current year bears to the aggregate net direct premiums written in this State by all members of the association, as certified to the association by the department after review of annual statements, other reports, and other statistics which the department considers necessary to provide the information required and which the department is authorized to obtain from a member of the association. After certification by the department, the association may rely on the member company's annual statement in determining the company's participation in profits and losses for each year.

(B) Each member's participation in the association must be determined annually in the same manner as the initial determination. An insurer authorized to write and engage in writing insurance, the writing of which requires the insurer to be a member of the association pursuant to Section [38-75-330](#), becomes a member of the association on January first immediately following the authorization. The determination of the insurer's participation in the association must be made as of the date of the membership in the same manner as for all other members of the association. Member insurers shall receive credit annually for essential property insurance voluntarily written in the coastal area and their participation in the writings of the association must be reduced accordingly. The board of directors shall authorize the method of determining the credit. In order to receive credit for essential property voluntarily written in the coastal area, each member company shall submit its requests by March thirty-first of the year preceding the year for which credit is sought.

(C) The assessment of a member insurer after hearing may be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the director or his designee, payment of the assessment would render the insurer insolvent or in danger of insolvency or would otherwise leave the insurer in a condition so that further transaction of the insurer's business would be hazardous to its policyholders, creditors, members, subscribers, stockholders, or the public. If payment of an assessment against a member insurer is deferred by order of the director or his designee in whole or in part, the amount by which the assessment is deferred must be assessed against other member insurers in the same manner as provided in this section. In its order of deferral, or in necessary subsequent orders, the director or his designee shall prescribe a plan by which the assessment so deferred must be repaid to the association by the impaired insurer with interest at the six-month treasury bill rate adjusted semi-annually. Profits, dividends, or other funds of the association to which the insurer is otherwise entitled must not be distributed to the impaired insurer but must be applied toward repayment of an assessment until the obligation has been satisfied. The association shall distribute the repayments, including interest, to the other member insurers on the basis at which assessments were made.

Section [38-75-375](#). (A) If a member company perceives an assessment or interest levied by the association to be unjust or illegal, the company shall pay the assessment or interest under protest in writing within thirty days of the assessment or interest charge. Upon receiving this payment, the association shall pay the money collected into the association account and designate the money as having been paid under protest.

(B) A member company paying an assessment or interest under protest shall appeal to the association within thirty days after making the payment. If it is determined in that appeal that the assessment or interest was collected unjustly or illegally, the association shall refund the assessment or interest to the payor.

(C) If a member company fails to pay an assessment or interest within thirty days of the assessment or interest charge by the association, the company is subject to disciplinary procedures pursuant to Section [38-5-120](#) or [38-5-130](#).

Section [38-75-380](#). There may be no liability on the part of and no cause of action of any nature may arise against the department or any of its staff or the association or its agents, employees, or any participating insurer for any inspections made hereunder or any statements made in good faith by them in any reports or communications concerning risk submitted to the association or at any administrative hearings conducted in connection with it under the provisions of this article.

Section [38-75-385](#). There is no liability on the part of, and no cause of action of any nature may arise against, any member insurer, the association's agents or employees, the board of directors, or the director, his designees, or his representatives for any act or omission in the performance of their powers and duties under this article. This section

does not relieve the association of any of its liability.

Section [38-75-386](#). No liability on the part of, and no cause of action of any nature may arise against, the director, the Department of Insurance or its staff, the association, any member insurer, the association's agents or employees, its board of directors, or the legal representatives of any of the above persons, for any act or omission made in good faith or for any statement made to, or for information provided to, any insurer regarding rates; premiums; classifications; cancellations, determinations, or nonrenewals of coverage; underwriting; inspections; or claims experience history made to facilitate the underwriting of essential property insurance for risks in the coastal area by private insurers or to facilitate competition for the underwriting of essential property insurance for risks in the coastal area among private insurers.

Section [38-75-390](#). A member of the association who is designated to receive and write essential property insurance from or through the association shall cede one hundred percent to the association the essential property insurance.

Section [38-75-400](#). (A) The rates, rating plans, and rating rules applicable to the insurance written by the association are those approved for use of the association by the director or his designee. Surcharges may be used as approved by the director or his designee. Rates may include rules for classification of risks insured under the provisions of this article and rate modifications of it.

(B) As a residual market mechanism, the association is not intended to offer rates competitive with the admitted market. Rates for policies issued by the association must be adequate and established at a level that permits the association to operate as a self-sustaining mechanism. The association shall maintain the necessary rate-making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured by the association. The association shall monitor rate adequacy and shall notify the director semi-annually to enable the director to take corrective action by an order. Rates adjusted by a corrective action order are exempt from the twelve-month limitation requirement of Section [38-73-920](#). The corrective action order is subject to judicial review by the Administrative Law Court.

Section [38-75-410](#). (A) A person insured pursuant to this article or his representative or a member company who is aggrieved by an act, ruling, or decision of the association:

- (1) regarding rates, classification of risks, assessments, voluntary credits, cancellation or termination of policies, or underwriting shall appeal to the director or his designee within sixty days after the act, ruling, or decision;
- (2) other than those specified in item (1), may appeal to the director or his designee within thirty days after the act, ruling, or decision.

(B) A hearing held by the director or his designee pursuant to this section must be in accordance with the procedures set forth in Chapter 3, Title 38 and Article 3, Chapter 23, Title 1, 'Administrative Procedures'.

Section [38-75-420](#). All reports of inspection performed by or on behalf of the association must be made available to the members of the association, applicants, agent, broker, and the department.

Section [38-75-430](#). The association shall file with the department by March thirty-first of each year a statement which summarizes the transactions, conditions, operations, and affairs of the association during the preceding fiscal

year ending October thirty-first. The statement must contain any matters and information prescribed by the department and must be in the form required by it. The department may at any time require the association to furnish to it any additional information with respect to its transactions or any other matter which it considers material to assist it in evaluating the operation and experience of the association.

Section [38-75-440](#). The department may make an examination into the affairs of the association and in undertaking the examination may hold a public hearing. The expense of the examination must be borne and paid by the association.

Section [38-75-450](#). The department has authority to make reasonable regulations, not inconsistent with law, to enforce, carry out, and make effective the provisions of this article after notice and hearing before the Administrative Law Judge Division.

Section [38-75-460](#). (A) In order to maintain stability in the property insurance market and to assure the continued, consistent availability of essential property insurance coverage in the coastal area, the Director of the Department of Insurance, who is selected as defined in Section [38-1-20](#)(16), or his designee, by written order complying with the requirements of Section [1-23-140](#), may expand the coastal area in which the association shall provide essential property insurance for periods up to twenty-four months. The order is subject to renewal by the director but no renewal shall exceed twenty-four months. In determining whether expansion of the coastal area is warranted, the director or his designee shall consider:

- (1) changes in the number of insurers writing essential property insurance in the seacoast area and the capacity of those insurers including, but not limited to, the number of policies those insurers have cancelled or nonrenewed, as provided in Sections [38-75-730](#), [38-75-740](#), and [38-75-1160](#), during the previous twelve months;
- (2) changes in the extent to which (a) nonadmitted or surplus lines insurers, or (b) South Carolina Coastal Captive Insurance Companies, pursuant to Article 5 of Chapter 90 of Title 38, are providing essential property insurance in the seacoast area;
- (3) changes in reinsurance activity impacting insurers writing essential property insurance in the seacoast area;
- (4) changes in the demand for property insurance in the seacoast area; and
- (5) any other information considered relevant to effectuate the purpose of this chapter including, but not limited to, the availability of essential property insurance coverage for insurable property that is within the coastal area and is located in a Coastal Barrier Resource Act (CBRA) zone.

(B) The director or his designee shall find and declare the existence of conditions that threaten to destabilize the property insurance market and jeopardize the continued, consistent availability of essential property insurance in the seacoast area. The director or his designee shall utilize market surveys, data calls, catastrophe models, reinsurance information, and other objective sources to support the order of expansion.

(C)(1) The director or his designee may expand the coastal area in which the association shall provide essential property insurance. The expansion may encompass a portion of the seacoast area or the entire seacoast area, but may not extend further than the seacoast area. The area must not be expanded more than reasonably necessary to ensure a stable property insurance market.

- (2) In expanding the coastal area, the director or his designee may provide for the coastal area territory to be divided into multiple tiers to allow the association to develop multiple-tiered rates that reflect the relative risks of the properties located within a particular tier.
 - (3) An expansion of the coastal area is subject to the plan of operation as amended and approved by the director or his designee.
 - (4) The director or his designee shall report any expansion of the coastal area to the General Assembly within thirty days of the order of expansion or upon commencement of the next term of the General Assembly, if expansion occurs when the General Assembly is not in session. The General Assembly may approve, revise, or vacate any expansion order by passage of a joint resolution.
- (D) On the effective date of this section, the General Assembly ratifies the director's May 23, 2007, coastal area expansion order and the multiple-tier structure described in the order for the time period stated in the order and authorized by this section."

Advisory committee to the Director of Insurance and other councils and programs

SECTION 11. Article 8, Chapter 75, Title 38 of the 1976 Code is amended to read:

"Article 8

Advisory Committee to the Director and the South Carolina Building Codes Council, Loss Mitigation Grant Program,
and South Carolina Comprehensive Hurricane
Damage Mitigation Program

Section [38-75-470](#). (A) The Director of Insurance shall appoint an advisory committee to the director and the South Carolina Building Codes Council to study issues associated with the development of strategies for reducing loss of life and mitigating property losses due to hurricane, earthquake, and fire. The advisory committee also shall consider the costs associated with these strategies to individual property owners. The advisory committee is composed of:

- (1) the director or his designee;
- (2) the Chairman of the Building Codes Council or his designee;
- (3) a representative from Clemson University involved with wind engineering;
- (4) a representative from an academic institution involved with the study of earthquakes;
- (5) a representative from an insurer writing property insurance in South Carolina;
- (6) a representative from the Department of Commerce;

- (7) a representative from the South Carolina's Municipal Association;
- (8) a representative from the South Carolina Association of Counties;
- (9) a representative from the Homebuilders Association;
- (10) a representative from the Manufactured Housing Institute of South Carolina;
- (11) a representative from the State Fire Marshal's office;
- (12) a representative from the South Carolina Emergency Management Division;
- (13) a representative from the State Flood Mitigation Program;
- (14) two at-large members appointed by the director;
- (15) two at-large members appointed by the Governor;
- (16) a general contractor;
- (17) a representative from the South Carolina Association of Realtors; and
- (18) a structural engineer.

(B) Members shall serve for terms of two years and shall receive no per diem, mileage, or subsistence. Vacancies must be filled in the same manner as the original appointment.

(C) Within thirty days after its appointment, the advisory committee shall meet at the call of the Director of Insurance. The advisory committee shall elect from its members a chairman and a secretary and shall adopt rules not inconsistent with this chapter. Meetings may be called by the chairman on his own initiative and must be called at the request of three or more members of the advisory committee. All members must be notified by the chairman of the time and place of the meeting at least seven days in advance of the meeting. All meetings must be open to the public. At least two-thirds vote of those members in attendance at the meeting shall constitute an official decision of the advisory committee. Implementation of this program and continued existence of this program is subject to the availability of funding through legislative appropriations or alternative funding sources.

Section [38-75-480](#). (A) There is established within the Department of Insurance a loss mitigation grant program. Funds may be appropriated to the grant program, and any funds appropriated must be used for the purpose of making grants to local governments or for the study and development of strategies for reducing loss of life and mitigating property losses due to hurricane, flood, earthquake, and fire. Grants to local governments must be for the following purposes:

- (1) implementation of building code enforcement programs including preliminary and ongoing training of inspectors;
- (2) conducting assessments to determine need for and desirability of making agreements to provide enforcement

services pursuant to Section [6-9-60](#); and

(3) providing technical assistance to and acting as an information resource for local governments in the development of proactive hazard mitigation strategies as they relate to reducing the loss of life and mitigating property losses due to natural hazards to include hurricane, flood, earthquake, and fire.

(B) Funds may be appropriated for a particular grant only after a majority affirmative vote on each grant by the advisory committee.

(C) The Department of Insurance may make application and enter into contracts for and accept grants in aid from federal and state government and private sources for the purposes of:

(1) implementation of building code enforcement programs including preliminary and ongoing training of inspectors;

(2) conducting assessments to determine need for and desirability of making agreements to provide enforcement services pursuant to Section [6-9-60](#);

(3) study and development of strategies for reducing loss of life and mitigating property losses due to hurricane, flood, earthquake, and fire; and

(4) any other purposes consistent with this article.

Section [38-75-485](#). (A) There is established within the Department of Insurance, the South Carolina Hurricane Damage Mitigation Program. The advisory council, established pursuant to Section [38-75-470](#), shall provide advice and assistance to the program administrator with regard to his administration of the program.

(B) This section does not create an entitlement for property owners or obligate the State in any way to fund the inspection or retrofitting of residential property in this State. Implementation of this program is subject to annual legislative appropriations.

(C) The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that includes the following:

(1) The program administrator shall apply for financial grants to be used to assist single-family, site-built or manufactured or modular, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) To be eligible for a grant, a residential property must:

(i) have been granted a homestead exemption;

(ii) be a dwelling with an insured value of three hundred thousand dollars or less; and

(iii) have undergone an acceptable wind certification and hurricane mitigation inspection.

- (b) All grants must be matched on a dollar-for-dollar basis for a total of ten thousand dollars for the mitigation project with the state's contribution not to exceed five thousand dollars.
- (c) The program must create a process in which mitigation contractors agree to participate and seek reimbursement from the State and homeowners selected from a list of participating contractors. All mitigation must be based upon the securing of all required local permits and inspections. Mitigation projects are subject to random reinspection of up to at least ten percent of all projects.
- (d) Matching fund grants also must be made available to local governments and nonprofit entities for projects that reduce hurricane damage to single-family, site-built or manufactured or modular owner-occupied, residential property.
- (e) Grants may be used for the following improvements:
- (i) roof deck attachment;
 - (ii) secondary water barrier;
 - (iii) roof covering;
 - (iv) brace gable ends;
 - (v) reinforce roof-to-wall connections;
 - (vi) opening protection;
 - (vii) exterior doors, including garage doors;
 - (viii) tie downs;
 - (ix) problems associated with weakened trusses, studs, and other structural components;
 - (x) inspection and repair or replacement of manufactured home piers, anchors, and tiedown straps; and
 - (xi) any other mitigation techniques approved by the advisory committee.
- (f)(i) Low-income homeowners, who otherwise meet the requirements of subitems (a) and (c) are eligible for a grant of up to five thousand dollars and are not required to provide a matching amount to receive the grant. These grants must be used to retrofit single-family, site-built or manufactured or modular, owner-occupied, residential properties, valued at one hundred fifty thousand dollars or less, in order to make them less vulnerable to hurricane damage.
- (ii) For purposes of this item, 'low-income persons' means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed eighty percent of the median annual adjusted gross income for households within the county in which the person or family resides, whichever is greater.

- (2) The department shall define by regulation the details of the mitigation measures necessary to qualify for the grants or public assistance described in this section.
- (3) Multimedia public education, awareness, and advertising efforts designed to specifically address mitigation techniques must be employed, as well as a component to support ongoing consumer resources and referral services.
- (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 collected annually and remitted to the Department of Insurance.
- (5) The director or his designee may promulgate regulations necessary to implement the provisions of this article.

Section [38-75-490](#). (A) The Department of Insurance, in consultation with the Department of Consumer Affairs, the Department of Commerce, the Federal Alliance for Safe Homes, the Manufactured Housing Institute of South Carolina, South Carolina Building Codes Council, the Home Builders Association of South Carolina, the Civil Engineering Department of Clemson University, and the Institute for Business and Homes Safety shall study and prepare a proposal to develop an objective rating system that will allow homeowners to evaluate the relative ability of South Carolina's coastal properties to withstand the wind load from a hurricane.

(B) The rating system must be designed in a manner the property owner may easily understand, based on proven readily verifiable mitigation techniques and devices, and able to be implemented through a visual inspection program. The rating system must be designed to facilitate a home inspection process to determine a home's existing as well as projected wind resistance capabilities.

(C) The rating system must contemplate the use of certified wind resistance and loss mitigation inspectors.

(D) The department must provide a report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives by March 5, 2008, detailing the nature and construction of the rating scale, its projected effectiveness based on implementation in a pilot program, an operational plan for statewide implementation of the rating scale, and any recommendations for additional legislation."

Supplemental report

SECTION 12. Section [38-75-1140](#)(C) of the 1976 Code, as added by Act 290 of 2004, is amended to read:

"(C) The modeling organization shall submit a supplemental report to the director or his designee following any substantially material revision of the model if the revision is used by insurers in determining rates for this State. The supplemental report must specify the changes made to the catastrophe model, specify a list of variables that are subject to insurer input, and contain one or more statements by experts attesting to the continuing validity of the model for use in predicting losses associated with natural hazard catastrophes in this State."

Filing fee

SECTION 13. Section [38-75-1140](#) of the 1976 Code, as added by Act 290 of 2004, is amended by adding at the

end:

"(G)(1) To recover the costs associated with the review and evaluation of catastrophe models, the director or his designee may impose a filing fee on:

- (a) all insurers who use catastrophe or other computer simulated models; and
 - (b) modelers or modeling organizations that submit a model to the department for its review, evaluation, or approval. This fee must be retained by the department to defray the costs of retaining actuaries and other experts to evaluate such models.
- (2) The fees collected pursuant to this section must be used only to offset expenses associated with the review of catastrophe models."

Cancellation of policy or renewal

SECTION 14. Sections [38-75-730](#) and [38-75-740](#) of the 1976 Code are amended to read:

"Section [38-75-730](#). (a) No insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term stated in the policy, except for one of the following reasons:

- (1) nonpayment of premium;
 - (2) material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy;
 - (3) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the policy;
 - (4) substantial breaches of contractual duties, conditions, or warranties;
 - (5) loss of the insurer's reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil the insurer's solvency or place that insurer in violation of the insurance laws of this State. Prior to cancellation for reasons permitted in this item (5), the insurer shall notify the director or his designee, in writing, at least sixty days prior to such cancellation and the director or his designee shall, within thirty days of such notification, approve or disapprove such action.
- (b) Cancellation under item (1) of subsection (a) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation. Cancellation under items (2) through (5) of subsection (a) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation. The notice must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Any notice of cancellation shall state the precise reason for cancellation. Proof of mailing is sufficient proof of notice.

(c) Subsections (a) and (b) of this section do not apply to any insurance policy which has been in effect for less than one hundred twenty days and is not a renewal of a previously existing policy. The policy may be cancelled for any reason by furnishing to the insured at least thirty days' written notice of cancellation, except where the reason for cancellation is nonpayment of premium, in which case not less than ten days' written notice must be furnished.

(d) For purposes of item (3) of subsection (a), substantial change in the risk assumed, if based upon changes in climatic conditions, must be based on statistical data relative to South Carolina that has been approved by the director or his designee as a basis for substantial change in the risk assumed.

Section [38-75-740](#). (a) No insurance policy may be nonrenewed by an insurer except in accordance with the provisions of this section or Section [38-75-730](#), and any nonrenewal attempted which is not in compliance with this section or Section [38-75-730](#) is ineffective.

(b) A policy written for a term of one year or less may be nonrenewed by the insurer at its expiration date by giving or mailing written notice of nonrenewal to the insured and the agent of record, if any, not less than sixty days prior to the expiration date of the policy for any nonrenewal that would be effective between November first and May thirty-first and not less than ninety days for any nonrenewal that would be effective between June first and October thirty-first.

(c) Subject to subsection (c) of Section [38-75-760](#), a policy written for a term of more than one year or for an indefinite term may be nonrenewed by the insurer at its anniversary date by giving or mailing written notice of nonrenewal to the insured and the agent of record, if any, not less than sixty days prior to the anniversary date of the policy for any nonrenewal that is effective between November first and May thirty-first and not less than ninety days prior to the anniversary date of the policy for any nonrenewal that is effective between June first and October thirty-first.

(d) The notice required by this section must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Proof of mailing is sufficient proof of notice.

(e) Any notice of nonrenewal shall state the precise reason for nonrenewal."

Written notice required

SECTION 15. Section [38-75-1160](#) of the 1976 Code, as added by Act 290 of 2004, is amended to read:

"Section [38-75-1160](#). (A)(1) Except for a cancellation pursuant to Section [38-75-730](#), a cancellation or refusal to renew by an insurer of a policy of insurance covered in this article is not effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice must:

(a) be approved as to form by the director or his designee before use;

(b) state the date not less than sixty days for any cancellation or refusal to renew that is effective between November first and May thirty-first and not less than ninety days for any cancellation or refusal to renew that is effective between June first and October thirty-first after the date of the mailing or delivering on which the

cancellation or refusal to renew becomes effective;

(c) state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by Section [38-75-1180\(B\)](#);

(d) inform the insured of his right to request in writing within thirty days of the receipt of notice that the director review the action of the insurer. The notice of cancellation or refusal to renew must contain the following statement in bold print to inform the insured of this right:

'IMPORTANT NOTICE: Within thirty days of receiving this notice, you or your attorney may request in writing that the director review this action to determine whether the insurer has complied with South Carolina laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the director may require that your policy be reinstated. However, the director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the director does not have the authority to overturn this action.'

(e) inform the insured of the possible availability of other insurance which may be obtained through his agent, or through another insurer; and

(f) state that the Department of Insurance has available a buyer's guide regarding property insurance shopping and availability, and provide applicable mailing addresses and telephone numbers, including a toll-free number, if available, for contacting the Department of Insurance.

(2) Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance.

(B) Subsection (A) does not apply if the:

(1) insurer has manifested to the insured its willingness to renew by actually issuing or offering to the insured to issue a renewal policy, certificate, or other evidence of renewal, or has manifested this intention to the insured by another means;

(2) named insured has demonstrated by some overt action to the insurer or its agent that he expressly intends that the policy be canceled or that it not be renewed; or

(3) the notice of cancellation or refusal to renew by an insurer regarding private passenger automobile insurance or to insurance against liability arising out of ownership, maintenance, or use of:

(a) an individual private passenger automobile as defined in Section [38-77-30\(5.5\)\(a\)](#); or

(b) property having wheels."

South Carolina Coastal Captive Insurance Company Act

SECTION 16. Chapter 90, Title 38 of the 1976 Code is amended by adding:

"Article 5

South Carolina Coastal Captive Insurance Companies

Section [38-90-810](#). This article may be cited as the 'South Carolina Coastal Captive Insurance Company Act'.

Section [38-90-820](#). For purposes of this article:

- (1) 'Peril' means the cause of an insured loss.
- (2) 'South Carolina coastal captive insurance company' means a captive insurance company, as it is defined by Section [38-90-10](#)(8), that is specifically formed to provide wind and storm surge property insurance coverage in this State.
- (3) 'Storm surge' means a temporary rise in sea level accompanying a hurricane or other intense storm that is associated with the hurricane's or storm's low barometric pressure and winds, and that is usually measured as the difference between the observed sea level height and the normal sea level height, such as the level that would have occurred in the absence of the storm, taking into account the predicted tide.
- (4) 'Wind' means windstorms, cyclones, hurricanes, tornadoes, high winds, and hail, and similar perils not normally among those covered under most property insurance policies but obtainable through the purchase of wind, wind and hail, storm or windstorm coverage, or both.

Section [38-90-830](#). (A) A South Carolina coastal captive insurance company, if permitted by its articles of incorporation or organization, operating agreement, or charter, may apply to the director for a license to write primary and excess wind and storm surge insurance covering property within the State of South Carolina, and may not write insurance covering any other perils nor may it write insurance coverage in any other state.

(B) A South Carolina coastal captive insurance company that qualified as an association captive under the provisions of Section [38-90-10](#)(3) is exempt from the requirement that the association be in existence for one year so long as the association is in good standing as an entity upon becoming an owner of a South Carolina coastal captive insurance company.

(C) A South Carolina coastal captive insurance company is exempt from the provisions of Section [38-90-20](#)(A)(5) that prohibit a captive insurance company from providing personal homeowners insurance coverage so long as the coverage is limited to the perils described in Section [38-90-820](#)(3) and (4).

(D)(1) A South Carolina coastal captive insurance company formed as a sponsored captive insurance company:

(a) is exempt from the provisions of Section [38-90-220](#) that require that the business written by a sponsored captive insurance company, with respect to each protected cell, must be fronted by an insurance company license pursuant to the laws of:

(i) a state; or

(ii) a jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of any state; provided that the South Carolina coastal captive insurance company also meets the requirements of subsection (E) of this section.

(b) may create a protected cell as a legal person separate from the protected cell company and may organize a protected cell under any incorporation or organization option available under Section [38-90-60](#), unless the director finds such option is not feasible pursuant to Section [38-90-860\(B\)](#);

(c) may have as its sponsor an association formed to address coastal property and insurance issues.

(2) A South Carolina coastal captive insurance company may issue directly its own policies to insureds.

(E) Any South Carolina coastal captive insurance company that otherwise qualifies for the limited exemption from the provisions of Section [38-90-220](#) pursuant to subsection (D)(1) of this section and any South Carolina coastal captive insurance company, regardless of form, that issues policies directly to the public shall comply with the following:

(1) it shall not expose itself to a loss on one risk in an amount exceeding ten percent of its surplus to policyholders and any risk or portion of it which has been reinsured must be deducted in determining this limitation of risk;

(2) it shall not have loss reserves in excess of five times its surplus to policyholders;

(3) it shall not have net premiums written in excess of three times its surplus to policyholders and any risk or portion of it which has been reinsured must be deducted in determining this limitation of risk; and

(4) it shall file quarterly and annual statements with the department in accordance with statutory accounting principles on forms and in the manner prescribed by Section [38-13-80](#) and in conformity with the requirements of Section [38-13-85](#) with useful or necessary modifications as required and approved by the director as contained in Section [38-90-70](#).

(F) To conduct business in this State, a South Carolina coastal captive insurance company shall:

(1) obtain from the director a license authorizing it to conduct business as a South Carolina coastal captive insurance company in this State;

(2) hold at least one meeting of its governing body each year in this State;

(3) maintain its principal place of business in this State;

(4) appoint a registered agent to accept service of process and act otherwise on its behalf in this State; and

(5) name the director as the agent for the South Carolina coastal captive insurance company upon whom process, notice, or demand may be served if a registered agent, with reasonable diligence, is not located and served.

(G) Before receiving a license, a South Carolina coastal captive insurance company shall file with the director:

- (1) a certified copy of its organizational documents;
 - (2) a statement under oath of its president and secretary or other persons considered appropriate by the director showing its financial condition; and
 - (3) other documents required by the director.
- (H) In addition to the information required by subsection (G), the applicant South Carolina coastal captive insurance company shall file with the director evidence of:
- (1) the amount and liquidity of its assets relative to the risks to be assumed;
 - (2) the adequacy of the expertise, experience, and character of the person who manages it;
 - (3) the overall soundness of its plan of operation;
 - (4) the adequacy of loss prevention programs;
 - (5) other overall factors considered relevant by the director in ascertaining if the proposed South Carolina coastal captive insurance company is able to meet its policy obligations; and
 - (6) any information required by Section [38-90-20](#) specifically applicable to the form of the South Carolina coastal captive insurance company, and fees prescribed by that section.
- (I) Information submitted pursuant to this section is confidential as provided in Section [38-90-35](#), except that information is discoverable by a party in a civil action or contested case to which the South Carolina coastal captive insurance company that submitted the information is a party, upon a finding by the court that:
- (1) the captive insurance company is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this chapter;
 - (2) the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in litigation; and
 - (3) the information sought is not available through another source.

Section [38-90-840](#). (A)(1) The director may not issue a license to a South Carolina coastal captive insurance company unless the company possesses and maintains unimpaired paid-in capital of not less than one million dollars; however, in the case of a South Carolina coastal captive insurance company formed as a sponsored captive insurance company that does not assume any risk, where the risks insured by the protected cells are homogeneous, the director may reduce this amount to an amount not less than five hundred thousand dollars.

(2)(a) Except for a South Carolina coastal captive insurance company formed as 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 South Carolina coastal captive insurance company formed as 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) For purposes of subsection (A), the director may issue a license expressly conditioned upon the South Carolina coastal 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 a 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.

(C) The director may prescribe additional capital or net assets based upon the type, volume, and nature of insurance business transacted. 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.

(D) Section [38-90-100](#)(C) does not apply and loans to its parent company and affiliates are prohibited.

(E)(1) A South Carolina coastal 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.

(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 [38-90-850](#). (A)(1) The director may not issue a license to a South Carolina coastal captive insurance company unless the company possesses and maintains free surplus of not less than one million dollars; however, in the case of a South Carolina coastal captive insurance company formed as a sponsored captive insurance company that does not assume any risk, where the risks insured by the protected cells are homogeneous, the director may reduce this amount to an amount not less than five hundred thousand dollars.

(2)(a) Except for a South Carolina coastal captive insurance company formed as a sponsored captive insurance company that does not assume any risk, the surplus 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 and approved by the director.

(b) For a South Carolina coastal captive insurance company formed as 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) For purposes of subsection (A), 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 insurance company may not issue a 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.

(C) The director may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted. 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.

(D) Section [38-90-100](#)(C) does not apply and loans to its parent company and affiliates are prohibited.

(E)(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 provided in Sections [38-21-250](#) through [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.

(2) A captive insurance company incorporated as a nonprofit corporation may not make any distributions without the prior approval of 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 [38-90-860](#). (A) The requirements of Section [38-90-60](#) apply to a South Carolina coastal captive insurance company.

(B) The director has the discretion to restrict the form of a South Carolina coastal captive insurance company to one or more of the types of defined captives listed in Section [38-90-10](#)(8), and has the discretion to accept or deny an application based on a finding that one or more of the incorporation or organization options available under Section [38-90-60](#) are not feasible for a South Carolina coastal captive insurance company.

Section [38-90-870](#). The director, by rule, regulation, or order, may exempt a South Carolina coastal captive insurance company, on a case by case basis, from provisions of this chapter that are determined to be inappropriate given the nature of the risks to be insured and the intent of this article.

Section [38-90-875](#). The confidentiality provisions of Sections [38-90-70\(B\)](#) and [38-90-80](#) do not extend to final reports of its financial condition produced by the director in inspecting or examining a South Carolina coastal captive insurance company and do not extend to reports submitted by a South Carolina coastal captive insurance company. All work papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the director, his designee, or other persons made under this chapter must be given confidential treatment as provided in Sections [38-90-35](#), [38-90-70\(B\)](#), and [38-90-80](#).

Section [38-90-880](#). (A) A South Carolina coastal captive insurance company shall include the following notice on each application form for insurance, as well as the declaration page of each policy, in no less than fourteen-point bold type:

'NOTICE

This policy is issued by a South Carolina coastal captive insurance company, which is not subject to all of the insurance laws and regulations of the State of South Carolina. State insurance insolvency guaranty funds are not available for a South Carolina coastal captive insurance company.'

(B) A South Carolina coastal captive insurance company shall include the following acknowledgment on each application form for insurance, as well as in each policy, in no less than fourteen-point bold type and directly above the applicant or insured's signature:

'I have read the Notice contained in this application (or policy) and understand that State of South Carolina insurance insolvency guaranty funds are not available for a South Carolina coastal captive insurance company.'

Section [38-90-890](#). The director may not issue a license to a South Carolina coastal captive insurance company unless the director finds that the:

- (1) coastal captive insurance company is capitalized adequately or properly reinsured, or both, after giving due consideration to the business plan, feasibility study, and proformas, including the level of risk to be retained by the coastal captive insurance company;
- (2) proposed business plan of the coastal captive insurance company provides for a reasonable and expected successful operation and is not hazardous to any policyholder;
- (3) proposed business plan, including any contracts or agreements to which the coastal captive insurance company is a party, and the intended operation of the coastal captive insurance company comply with this article and with any other applicable provisions of this title; and
- (4) proposed business plan and intended operation of the coastal captive insurance company satisfy the purpose of this article."

Time effective

SECTION 17. Unless otherwise provided, this act takes effect upon approval by the Governor and is applicable to all taxable years beginning after December 31, 2006.

Ratified the 8th day of June, 2007.

Approved the 11th day of June, 2007.

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