

South Carolina Legislature

4675 found 2 times. 

H*4675

Session 122 (2017-2018)

H*4675 (Rat #0262) General Bill, By Sandifer and Spires

AN ACT TO AMEND ARTICLE 1, CHAPTER 90, TITLE 38, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CAPTIVE INSURANCE COMPANIES, SO AS TO REMOVE REFERENCES TO CAPTIVE REINSURANCE COMPANIES, TO REQUIRE A CAPTIVE INSURANCE COMPANY TO POSSESS AND MAINTAIN FREE AND UNIMPAIRED PAID-IN CAPITAL, SURPLUS, OR A COMBINATION THEREOF AND ESTABLISH REQUIREMENTS, TO DELETE CERTAIN SURPLUS REFERENCES AND INCORPORATION REQUIREMENTS, TO PROVIDE THE PROVISIONS OF CHAPTER 90 APPLY TO CAPTIVE INSURANCE COMPANIES FORMED AS A MUTUAL INSURER, TO ESTABLISH REPORTING REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES AND REMOVE CERTAIN PROVISIONS, TO ALLOW A CAPTIVE INSURANCE COMPANY TO DISCOUNT ITS LOSS AND LOSS ADJUSTMENT WITH APPROVAL BY THE DIRECTOR, TO ESTABLISH OVERSIGHT REQUIREMENTS FOR RISK RETENTION GROUPS AND CAPTIVE INSURANCE COMPANIES, TO ALLOW FOR CERTAIN CAPTIVE INSURANCE COMPANIES TO MAKE LOANS TO ITS PARENT COMPANY AND AFFILIATES WITH APPROVAL BY THE DIRECTOR, TO ESTABLISH STANDARDS FOR AGGREGATE TAXES FOR PROTECTED CELLS, TO ALLOW THE DIRECTOR TO REDUCE CAPITAL REQUIREMENTS FOR AN INACTIVE CAPTIVE INSURANCE COMPANY, TO REMOVE CERTAIN ASSET REQUIREMENTS, AND TO ALTER PARTICIPANT REQUIREMENTS FOR A SPONSORED CAPTIVE INSURANCE COMPANY; AND TO REPEAL ARTICLE 5, CHAPTER 90, TITLE 38 RELATING TO THE COASTAL CAPTIVE INSURANCE COMPANY ACT. - ratified title

01/24/18	House	Introduced and read first time (House Journal-page 27)
01/24/18	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 27)
02/13/18	House	Committee report: Favorable Labor, Commerce and Industry (House Journal-page 11)
02/14/18	House	Read second time (House Journal-page 23)
02/14/18	House	Roll call Yeas-103 Nays-0 (House Journal-page 24)
02/14/18		Scrivener's error corrected
02/15/18	House	Read third time and sent to Senate (House Journal-page 8)
02/15/18	Senate	Introduced and read first time (Senate Journal-page 9)
02/15/18	Senate	Referred to Committee on Banking and Insurance (Senate Journal-page 9)
04/25/18	Senate	Committee report: Favorable Banking and Insurance (Senate Journal-page 14)
05/01/18	Senate	Read second time (Senate Journal-page 40)
05/01/18	Senate	Roll call Ayes-41 Nays-0 (Senate Journal-page 40)
05/08/18	Senate	Read third time and enrolled (Senate Journal-page 38)
05/14/18		Ratified R 262
05/18/18		Signed By Governor

VERSIONS OF THIS BILL

[1/24/2018](#)
[2/13/2018](#)
[2/14/2018](#)

4/25/2018

H. 4675

NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R262, H4675)

AN ACT TO AMEND ARTICLE 1, CHAPTER 90, TITLE 38, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CAPTIVE INSURANCE COMPANIES, SO AS TO REMOVE REFERENCES TO CAPTIVE REINSURANCE COMPANIES, TO REQUIRE A CAPTIVE INSURANCE COMPANY TO POSSESS AND MAINTAIN FREE AND UNIMPAIRED PAID-IN CAPITAL, SURPLUS, OR A COMBINATION THEREOF AND ESTABLISH REQUIREMENTS, TO DELETE CERTAIN SURPLUS REFERENCES AND INCORPORATION REQUIREMENTS, TO PROVIDE THE PROVISIONS OF CHAPTER 90 APPLY TO CAPTIVE INSURANCE COMPANIES FORMED AS A MUTUAL INSURER, TO ESTABLISH REPORTING REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES AND REMOVE CERTAIN PROVISIONS, TO ALLOW A CAPTIVE INSURANCE COMPANY TO DISCOUNT ITS LOSS AND LOSS ADJUSTMENT WITH APPROVAL BY THE DIRECTOR, TO ESTABLISH OVERSIGHT REQUIREMENTS FOR RISK RETENTION GROUPS AND CAPTIVE INSURANCE COMPANIES, TO ALLOW FOR CERTAIN CAPTIVE INSURANCE COMPANIES TO MAKE LOANS TO ITS PARENT COMPANY AND AFFILIATES WITH APPROVAL BY THE DIRECTOR, TO ESTABLISH STANDARDS FOR AGGREGATE TAXES FOR PROTECTED CELLS, TO ALLOW THE DIRECTOR TO REDUCE CAPITAL REQUIREMENTS FOR AN INACTIVE CAPTIVE INSURANCE COMPANY, TO REMOVE CERTAIN ASSET REQUIREMENTS, AND TO ALTER PARTICIPANT REQUIREMENTS FOR A SPONSORED CAPTIVE INSURANCE COMPANY; AND TO REPEAL ARTICLE 5, CHAPTER 90, TITLE 38 RELATING TO THE COASTAL CAPTIVE INSURANCE COMPANY ACT.

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

Captive Reinsurance Company capital and surplus requirements

SECTION 1. Article 1, Chapter 90, Title 38 of the 1976 Code is amended to read:

"Article 1**Captive Insurance Companies**

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

- (1) 'Alien captive insurance company' means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction.
- (2) 'Affiliate of' or 'affiliated with' means a specific person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.
- (3) 'Association' means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or associations:
 - (a) the member organizations of which collectively, or which does itself:
 - (i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company; or
 - (ii) have complete voting control over an association captive insurance company organized as a mutual insurer; or

- (b) the member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.
- (4) 'Association captive insurance company' means a company that insures risks of the member organizations of the association and their affiliated companies.
- (5) 'Branch business' means any insurance business transacted by a branch captive insurance company in this State.
- (6) 'Branch captive insurance company' means an alien captive insurance company licensed by the director to transact the business of insurance in this State through a business unit with a principal place of business in this State.
- (7) 'Branch operations' means any business operations of a branch captive insurance company in this State.
- (8) 'Captive insurance company' means a pure captive insurance company, association captive insurance company, sponsored captive insurance company, special purpose captive insurance company, risk retention group, or industrial insured captive insurance company formed or licensed under this chapter. For purposes of this chapter, a branch captive insurance company must be a pure captive insurance company with respect to operations in this State, unless otherwise permitted by the director.
- (9) 'Consolidated GAAP net worth' means the consolidated owners' equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.
- (10) 'Control', including the terms 'controlling,' 'controlled by', and 'under common control with', means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 38-21-220 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support his determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- (11) 'Controlled unaffiliated business' means a person that:
- (a) is not an affiliate of a parent; and
 - (b) has an existing contractual relationship pursuant to which a parent or affiliated company exercises control of the risk management function of the person.
- (12) 'Director' means the Director of the South Carolina Department of Insurance or the director's designee.
- (13) 'Department' means the South Carolina Department of Insurance.
- (14) 'GAAP' means generally accepted accounting principles.
- (15) 'General account' means the assets and liabilities of a sponsored captive insurance company other than protected cell assets and protected cell liabilities.
- (16) 'Industrial insured' means an insured as defined in Section 38-25-150(8).
- (17) 'Industrial insured captive insurance company' means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
- (18) 'Industrial insured group' means a group that meets either of the following criteria:

- (a) a group of industrial insureds that collectively:
- (i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer or limited liability company; or
 - (ii) have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or
- (b) a risk retention group.
- (19) 'Member organization' means any individual, corporation, limited liability company, partnership, or association that belongs to an association.
- (20) 'Parent' means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting interests of a captive insurance company.
- (21) 'Participant' means an entity as defined in Section 38-90-240, and any affiliates of that entity, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to the assets of a protected cell.
- (22) 'Participant contract' means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.
- (23) 'Person' means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or combination thereof.
- (24) 'Principal place of business' means the physical location in the State of South Carolina where the complete books and records of the captive company are available for examination by the director.
- (25) 'Protected cell' means an identified pool of assets and liabilities of a sponsored captive insurance company for one or more participants that is segregated and insulated from the remainder of the sponsored captive insurance company's assets and liabilities as set forth in this chapter. A protected cell may be unincorporated or incorporated.
- (26) 'Protected cell account' means a specifically identified bank or custodial account established by a sponsored captive insurance company for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the sponsored captive insurance company's general account.
- (27) 'Protected cell assets' means all assets, contract rights, and general intangibles, identified with and attributable to a specific protected cell of a sponsored captive insurance company.
- (28) 'Protected cell liabilities' means all liabilities and other obligations identified with and attributable to a specific protected cell of a sponsored captive insurance company.
- (29) 'Pure captive insurance company' means a company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof or cedes or assumes business from a risk pool for the purpose of risk sharing.
- (30) 'Risk retention group' means a captive insurance company formed under the Liability Risk Retention Act of 1986, 15 U.S.C. Section 3901, et seq., as amended.
- (31) 'Special purpose captive insurance company' means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.
- (32) 'Sponsor' means an entity that is approved by the director to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(33) 'Sponsored captive insurance company' means a captive insurance company:

- (a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;
- (b) that is formed or licensed under this chapter;
- (c) that segregates liability through one or more protected cells; and
- (d) that insures the risks of participants through participant contracts.

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

- (1) a pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated business, risks assumed from a risk pool for the purpose of risk sharing, or a combination of them;
- (2) an association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;
- (3) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;
- (4) a special purpose captive insurance company may provide insurance or reinsurance, or both, for risks as approved by the director;
- (5) a captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage written on a direct basis;
- (6) a captive insurance company may not accept or cede reinsurance except as provided in Section 38-90-110.

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

- (1) obtain from the director a license authorizing it to conduct insurance business in this State;
- (2) beginning the year immediately following the issuance of its license, annually hold at least one board of director's meeting, or in the case of a reciprocal insurer, a subscriber's advisory committee meeting, or in the case of a limited liability company a meeting of the managing board, at which a majority of the directors are physically present in this State;
- (3) maintain its principal place of business in this State, or in the case of a branch captive insurance company, maintain the principal place of business for its branch operations in this State; and
- (4) appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this State. In the case of a captive insurance company:
 - (a) formed as a corporation, a nonprofit corporation, or a limited liability company, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director must be an agent of the captive insurance company upon whom any process, notice, or demand may be served;
 - (b) formed as a reciprocal insurer, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

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

- (a) formed as a corporation or a nonprofit corporation, shall file with the director a certified copy of its articles of incorporation and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the director;
- (b) formed as a limited liability company, shall file with the director a certified copy of its articles of organization and operating agreement, a statement under oath by its managers showing its financial condition, and any other statements or documents required by the director;
- (c) formed as a reciprocal shall:
 - (i) file with the director a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the director; and
 - (ii) submit to the director for approval a description of the coverages, deductibles, coverage limits, and rates and any other information the director may reasonably require. If there is a subsequent material change in an item in the description, the reciprocal captive insurance company shall submit to the director for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the director. The reciprocal captive insurance company shall inform the director of any material change in rates within thirty days of the adoption of the change.
- (2) In addition to the information required by item (1), an applicant captive insurance company shall file with the director evidence of:
 - (a) the amount and liquidity of its assets relative to the risks to be assumed;
 - (b) the adequacy of the expertise, experience, and character of the person or persons who will manage it;
 - (c) the overall soundness of its plan of operation;
 - (d) the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and
 - (e) such other factors considered relevant by the director in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.
- (3) In addition to the information required by items (1) and (2) an applicant sponsored captive insurance company shall file with the director:
 - (a) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the director, and how it will report the experience to the director;
 - (b) all contracts or sample contracts between the sponsored captive insurance company and any participants; and
 - (c) a statement that expenses will be allocated to each protected cell in an equitable manner.
- (4) Information submitted pursuant to this section is confidential as provided in Section 38-90-35 except that information is discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a specific finding by the court that:
 - (a) the captive is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this chapter;
 - (b) the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in litigation; and
 - (c) the information sought is not available through another source.

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

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

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

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

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

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

Section 38-90-25. Reserved.

Section 38-90-30. A captive insurance company may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this State.

Section 38-90-35. (A) Information submitted pursuant to the provisions of this chapter is confidential and may not be made public by the director or an agent or employee of the director without the written consent of the company, except that information may be discoverable by a party in a civil action or contested case to which the submitting captive insurance company is a party, upon a showing by the party seeking to discover the information that:

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

(2) a subpoena applicable to the information is issued by a judicial or administrative law officer of competent jurisdiction has been submitted to the director.

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

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

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

Section 38-90-40. (A)(1) The director may not issue a license to a captive insurance company unless the company possesses and maintains free and unimpaired paid-in capital, surplus, or unrestricted net assets for a nonprofit corporation, or a combination thereof of:

- (a) in the case of a pure captive insurance company, not less than two hundred and fifty thousand dollars;
 - (b) in the case of an association captive insurance company incorporated as a stock insurer, mutual insurer, or organized as a limited liability company, not less than seven hundred and fifty thousand dollars;
 - (c) in the case of an industrial insured captive insurance company or risk retention group, not less than five hundred thousand dollars;
 - (d) in the case of a sponsored captive insurance company, not less than two hundred fifty thousand dollars;
 - (e) in the case of a special purpose captive insurance company that is not a risk retention group, an amount determined by the director after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature, scale, and complexity of the risks to be insured.
- (2) The director may prescribe additional capital and surplus requirements based upon the type, volume, and nature of insurance business to be transacted.
- (3) The free and unimpaired paid-in capital, surplus, or combination thereof required by this section must be in the form of cash, securities approved by the director, a clean irrevocable letter of credit issued by a bank approved by the director, or other form 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 and unimpaired paid-in capital, surplus, or combination thereof. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The director summarily may revoke the conditional license without legal recourse by the company if satisfactory evidence of the required capital, surplus, or combination thereof 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) In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the director shall require that a trust account, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security may be no less than the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch operations; however, the director may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer or front company to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer or front company. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this State or a member bank of the Federal Reserve System.
- (D) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in Section 38-21-250 through Section 38-21-270, without the 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.
- (E) 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, must be in a form as prescribed by the director.

Section 38-90-45. Reserved.

Section 38-90-50. Reserved.

Section 38-90-55. Reserved.

Section 38-90-60. (A) A captive insurance company may be:

- (1) incorporated as a stock insurer;
- (2) incorporated as a nonprofit corporation;
- (3) organized as a limited liability company;
- (4) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of the insurer; or
- (5) organized as a reciprocal insurer pursuant to Chapter 17.

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

- (1) the character, reputation, financial responsibility, insurance experience, and business qualifications of the incorporators, officers, and directors or managers;
- (2) the nature, scale, and complexity of the risks to be insured; and
- (3) other aspects the director considers advisable.

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

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

(E) A captive insurance company formed as a corporation, a nonprofit corporation, or a limited liability company, pursuant to the provisions of this chapter has the privileges and is subject to the provisions of the general corporation law, including the South Carolina Nonprofit Corporation Act of 1994 for nonprofit corporations and the South Carolina Uniform Limited Liability Company Act of 1996 for limited liability companies, as applicable, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the general corporation law, including the South Carolina Nonprofit Corporation Act of 1994 for nonprofit corporations and the South Carolina Uniform Limited Liability Company Act of 1996 for limited liability companies, as applicable, and a provision of this chapter, the latter controls.

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

(G) A captive insurance company formed as a mutual insurer pursuant to the provisions of this chapter has the privileges and is subject to the provisions of Chapter 19 in addition to the applicable provisions of this chapter. If a conflict occurs between the provisions of Chapter 19 and this chapter, the latter controls. To the extent a mutual insurer is made subject to other provisions of this title, those provisions are not applicable unless they are expressly made applicable to a captive insurance company pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

(D) Except as provided in Section 38-90-40, a captive insurance company shall report using generally accepted accounting principles, unless the director approves the use of statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the director for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the director. Except as otherwise provided, an association captive insurance company, an industrial insured group, and a risk retention group shall file its report in the form and manner required by Section 38-13-80, and each industrial insured group and each risk retention group shall comply with the requirements provided for in Section 38-13-85. The director by regulation shall prescribe the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. Information submitted pursuant to this section is confidential as provided in Section 38-90-35, except for reports submitted by a risk retention group.

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

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

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

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

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

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

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

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

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

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

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

Section 38-90-90. (A) The license of a captive insurance company to conduct an insurance business in this State may be suspended or revoked by the director for:

(1) insolvency or impairment of capital or surplus;

(2) failure to meet the requirements of Section 38-90-40;

(3) refusal or failure to submit an annual report, as required by Section 38-90-70, or any other report or statement required by law or by lawful order of the director;

- (4) failure to comply with its own charter, bylaws, or other organizational document;
- (5) failure to submit to examination or any legal obligation relative to an examination, as required by Section 38-90-80;
- (6) refusal or failure to pay the cost of examination as required by Section 38-90-80;
- (7) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (8) failure otherwise to comply with laws of this State.

(B) If the director finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in subsection (A) of this section, the director may suspend or revoke such license if the director considers it in the best interest of the public and the policy holders of the captive insurance company, notwithstanding any other provision of this title.

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

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

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

Section 38-90-105. Upon approval by the director, only a pure captive insurance company, a special purpose captive insurance company, or a sponsored captive insurance company may make loans to its parent company or affiliates evidenced by a note in a form acceptable to and approved by the director. Loans of minimum capital or surplus funds or a combination thereof required by Section 38-90-40 are prohibited.

Section 38-90-110. (A) A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded by any other insurer.

(B)(1) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of Sections 38-9-200, 38-9-210, and 38-9-220.

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

(3) All other captive insurance companies may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with Sections 38-9-200, 38-9-210, and 38-9-220, unless specific approval has been granted for this credit or the reinsurer by approval of the director, or the captive insurance company is participating in a risk pool for the purpose of risk sharing, as approved by the director.

Section 38-90-120. A captive insurance company may not be required to join a rating organization.

Section 38-90-130. A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this State, and a captive insurance company, or its insured or its parent or any affiliated company or any member organization of its association, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company, may not receive a benefit from a

plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company. Subject to the approval of the director, participation by a captive insurance company, including a pure captive insurance company, in a pool for the purpose of risk sharing is not prohibited under this section.

Section 38-90-140. (A) A captive insurance company shall pay to the department by March first of each year, a tax at the rate of four-tenths of one percent on the first twenty million dollars and three-tenths of one percent on each dollar after that, up to a maximum tax of one hundred thousand dollars. Taxes are based on the direct premiums written or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December thirty-first next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which must include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(B) A captive insurance company shall pay to the department by March first of each year, a tax at the rate of two hundred and twenty-five thousandths of one percent on the first twenty million dollars of assumed reinsurance premium, and one hundred fifty thousandths of one percent on the next twenty million dollars and fifty thousandths of one percent on the next twenty million dollars and twenty-five thousandths of one percent of each dollar of assumed reinsurance premium after that up to a maximum tax of one hundred thousand dollars. However, reinsurance tax does not apply to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (A). A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer or other funding mechanism under common ownership and control if the transaction is part of a plan to discontinue the operations related to the loss reserves and other liabilities being assumed of the other insurer or funding mechanism and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

(C)(1) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (A) and (B) amount to less than five thousand dollars in any year, the captive insurance company shall pay a minimum tax of five thousand dollars for that year. However, in the calendar year in which a captive is first licensed, the minimum tax must be prorated on a quarterly basis.

(2) For captives licensed in the:

- (a) first quarter, the prorated minimum tax is five thousand dollars;
- (b) second quarter, the prorated minimum tax is three thousand seven hundred fifty dollars;
- (c) third quarter, the prorated minimum tax is two thousand five hundred dollars; and
- (d) fourth quarter, the prorated minimum tax is one thousand two hundred fifty dollars.

(3) In the calendar year in which a captive is first licensed, if the aggregate taxes to be paid by a captive insurance company calculated under subsections (A) and (B) amount to less than the minimum tax prorated on a quarterly basis, the captive insurance company shall pay the prorated minimum tax for that calendar year.

(4) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (A) and (B) amount to more than one hundred thousand dollars in any year, the captive insurance company shall pay a maximum tax of one hundred thousand dollars for that year.

(D) A captive insurance company failing to make returns or to pay all taxes required by this section, is subject to the relevant sanctions of this title.

(E) Two or more captive insurance companies under common ownership and control must be taxed, as separate captive insurance companies.

(F) For the purposes of this section, 'common ownership and control' means:

- (1) in the case of stock corporations or limited liability companies, the direct or indirect ownership of eighty percent or more of the outstanding voting stock or membership interests of two or more corporations or limited liability companies by the same person or entity;
 - (2) in the case of nonprofit corporations, the direct or indirect ownership of eighty percent or more of the voting power of two or more nonprofit corporations by the same member or members; and
 - (3) in the case of mutual corporations, the direct or indirect ownership of eighty percent or more of the capitalization and the voting power of two or more corporations by the same member or members.
- (G) In the case of a branch captive insurance company, the tax provided for in this section applies only to the branch business of the company.
- (H) In the case of a sponsored captive insurance company, with respect to any:
- (1) unincorporated protected cells, the aggregate taxes to be paid as calculated under subsections (A) and (B) must be calculated and paid on a consolidated basis;
 - (2) incorporated protected cells that are affiliates of the sponsor, the aggregate taxes to be paid as calculated under subsections (A) and (B) must be calculated and paid on a consolidated basis; and
 - (3) incorporated protected cells that are not affiliates of the sponsor, the aggregate taxes to be paid as calculated under subsections (A) and (B) shall apply to each incorporated protected cell.
- (I) The tax provided for in this section constitutes all taxes collectible under the laws of this State from a captive insurance company, and no other occupation tax or other taxes may be levied or collected from a captive insurance company by the State or a county, city, or municipality within this State, except ad valorem taxes on real and personal property used in the production of income.

Section 38-90-145. Reserved.

Section 38-90-150. The director may promulgate and, from time to time, amend rules and regulations and issue orders or written approvals relating to captive insurance companies as are necessary to enable the director to carry out the provisions of this chapter.

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

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

(C) The provisions of Sections 38-5-120(A)(5), 38-5-120(B), 38-5-120(D)(1), 38-5-120(D)(2), 38-9-225, 38-9-230, 38-21-10, 38-21-30, 38-21-60, 38-21-70, 38-21-80, 38-21-90, 38-21-95, 38-21-100, 38-21-110, 38-21-120, 38-21-130, 38-21-140, 38-21-150, 38-21-160, 38-21-170, 38-21-220, 38-21-225, 38-21-230, 38-21-250, 38-21-270, 38-21-280, 38-21-285, 38-21-290, 38-21-310, 38-21-320, 38-21-330, 38-21-360, 38-55-75 and Chapters 44 and 46, Title 38 and applicable regulations apply in full to a risk retention group and, if a conflict occurs between those code sections and chapters referenced in this subsection and this chapter (Chapter 90, Title 38), then the code sections and chapters referenced in this subsection control.

(D) Except as provided elsewhere in this chapter, the provisions of Chapter 87, Title 38 apply to a risk retention group.

(E)(1) Except for Section 38-9-330(F) and Section 38-9-440, the provisions of Article 3 and Article 5, Chapter 9, Title 38 apply in full to a risk retention group, and if a conflict occurs between those provisions and this chapter, the provisions of this subsection control.

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

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

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

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

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

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

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

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

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

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

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

Section 38-90-175. (A) There is created a fund to be known as the 'Captive Insurance Regulatory and Supervision Fund' for the purpose of providing the financial means for the director to administer Chapter 87 and Chapter 90 of this title and for reasonable expenses incurred in promoting the captive insurance industry in the State. The transfer of twenty percent of the taxes collected by the department pursuant to Chapter 90 of this title, and all fees and assessments received by the department pursuant to the administration of this chapter must be credited to this fund. All fees received by the department from reinsurers who assume risk only from captive insurance companies, must be deposited into the Captive Insurance Regulatory and Supervision Fund. All fines and administrative penalties must be deposited directly into the general fund.

(B) All payments from the Captive Insurance Regulatory and Supervision Fund for the maintenance of staff and associated expenses including contractual services as necessary, shall be disbursed from the state treasury only upon warrants issued by the director, after receipt of proper documentation regarding services rendered and expenses incurred.

Section 38-90-180. (A) Except as otherwise provided in this section, the terms and conditions set forth in Chapters 26 and 27 of this title pertaining to insurance reorganizations, receiverships, and injunctions apply in full to captive insurance companies formed or licensed under this chapter.

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

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

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

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

Section 38-90-185. Reserved.

Section 38-90-190. Reserved.

Section 38-90-200. (A) An association captive insurance company or industrial insured group formed as a stock or mutual corporation, or a limited liability company may be converted to or merged with and into a reciprocal insurer in accordance with a plan and the provisions of this section.

(B) A plan for this conversion or merger:

(1) must be fair and equitable to the:

- (a) shareholders, in the case of a stock insurer;
- (b) members, in the case of a limited liability company; or
- (c) policyholders, in the case of a mutual insurer; and

(2) must provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer, of the member interest of any nonconsenting member of a limited liability company, of the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder, dissenting member, or a dissenting policyholder pursuant to the provisions of Chapter 13 or Chapter 44, Title 33. Provided, however, that the merger of a limited liability company requires the consent of all members unless this requirement has been waived in an operating agreement signed by all of the members of the limited liability company.

(C) In the case of a conversion authorized pursuant to the provisions of subsection (A):

(1) the conversion must be accomplished under a reasonable plan and procedure as may be approved by the director; however, the director may not approve the plan of conversion unless the plan:

- (a) satisfies the provisions of subsection (B);
- (b) provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer; members and managers, in the case of a limited liability company; or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing, except that the director may waive or modify the requirements for the hearing; however, if a notice of hearing is required, but no hearing is requested, the director may cancel the hearing;
- (c) provides for the conversion of existing stockholder, member, or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder, member, or policyholder interests in the stock or mutual insurer or limited liability company; and

(d) is approved:

- (i) in the case of a stock insurer or limited liability company, by a majority of the shares or interests entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - (ii) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - (2) the director shall approve the plan of conversion if the director finds that the conversion will promote the general good of the State in conformity with those standards provided in Section 38-90-60;
 - (3) if the director approves the plan, the director shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;
 - (4) upon issuance of an amended certificate of authority of a reciprocal insurer by the director, the conversion is effective; and
 - (5) upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.
- (D) A merger authorized pursuant to the provisions of subsection (A) must be accomplished substantially in accordance with the procedures provided in this title except that, only for purposes of the merger:
- (1) the plan or merger must satisfy subsection (B);
 - (2) the subscribers' advisory committee of a reciprocal insurer must be equivalent to the board of directors of a stock or mutual insurance company or the managers of a limited liability company;
 - (3) the subscribers of a reciprocal insurer must be the equivalent of the policyholders of a mutual insurance company;
 - (4) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are considered the president and secretary of the committee;
 - (5) the director shall approve the articles of merger if the director finds that the merger will promote the general good of the State in conformity with those standards provided in Section 38-90-60. If the director approves the articles of merger, the director shall endorse his or her approval on the articles and the surviving insurer shall present the name to the Secretary of State at the Secretary of State's office;
 - (6) notwithstanding Section 38-90-40, the director may permit the formation, without surplus, capitalization, or a combination thereof, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction provided for in this section; however, there may be no more than one authorized insurance company surviving the merger;
 - (7) an alien insurer may be a party to a merger authorized pursuant to the provisions of subsection (A) if the requirements for the merger between a domestic and a foreign insurer pursuant to the provisions of Chapter 21 apply to a merger between a domestic and an alien insurer provided by this subsection. The alien insurer must be treated as a foreign insurer pursuant to the provisions of Chapter 21 and other jurisdictions must be the equivalent of a state for purposes of Chapter 21.
- (E) A conversion or merger pursuant to the provisions of this section has all the effects set forth in Chapter 21, to the extent these effects are not inconsistent with this chapter.

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

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

- (1) the shareholders of a sponsored captive insurance company must be limited to its participants and sponsors;
- (2) each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the participants of the protected cell, the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors may be provided in the participant contract or required by the director;
- (3) the assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
- (4) no sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;
- (5) no sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the director's approval and in no event may the approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
- (6) a sponsored captive insurance company annually shall file with the director financial reports the director requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell;
- (7) a sponsored captive insurance company shall notify the director in writing within ten business days of a protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;
- (8) no participant contract shall take effect without the director's approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell constitutes a change in the business plan requiring the director's approval.

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

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

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

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

- (1) separate and separately identifiable from the assets and liabilities of the sponsored captive insurance company's general account; and
 - (2) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.
- (G) When establishing a protected cell, the sponsored captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

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

(B) With regard to unincorporated protected cells:

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

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

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

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

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

(A) any state; or

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

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

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

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

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

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

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

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

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

(2) Except as specifically set forth in this chapter, each incorporated protected cell of a sponsored captive insurance company shall be licensed and treated as a special purpose captive insurance company.

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

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

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

Section 38-90-220. (A) The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a participant's risks to the participant's protected cell.

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

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

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

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

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

Section 38-90-225. (A) The following may be participants in a sponsored captive insurance company formed or licensed pursuant to this chapter:

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

(2) a sponsor.

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

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

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

Section 38-90-230. (A) Protected cell assets are only available to the creditors of the sponsored captive insurance company that are creditors with respect to that protected cell and are therefore entitled, in conformity with this chapter, to have recourse to the protected cell assets attributable to that protected cell. Protected cell assets are absolutely protected from the creditors of the sponsored captive insurance company that are not creditors with respect to that protected cell and who, therefore, are not entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets or the sponsored captive insurance company's general account. Protected cell assets only are available to creditors of a sponsored captive insurance company after all protected cell liabilities have been extinguished or otherwise provided for in accordance with the plan of operation relating to that protected cell.

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

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

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

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

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

Section 38-90-240. Reserved.

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

South Carolina Coastal Captive Insurance Company Act repealed

SECTION 2. Article 5, Chapter 90, Title 38 of the 1976 Code is repealed.

Time effective

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

Ratified the 14th day of May, 2018.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2018.

Governor

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