**South Carolina General Assembly**

120th Session, 2013-2014

**S. 1171**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hayes

Document Path: l:\council\bills\agm\18165ab14.docx

Companion/Similar bill(s): 4911

Introduced in the Senate on March 27, 2014

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Small Employer Health Insurance Availability Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/27/2014 Senate Introduced and read first time ([Senate Journal‑page 3](file:///H:\SJ%20Archive\2014\03-27-14.docx))

3/27/2014 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 3](file:///H:\SJ%20Archive\2014\03-27-14.docx))

3/27/2014 Scrivener's error corrected

**VERSIONS OF THIS BILL**

[3/27/2014](file:///p:\pprever\2013-14\1171_20140327.docx)

[3/27/2014-A](file:///p:\pprever\2013-14\1171_20140327A.docx)

**A** **BILL**

TO AMEND SECTION 38‑71‑1320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, SECTION 38‑71‑1330, AS AMENDED, SECTION 38‑71‑1360, AND SECTION 38‑71‑1440, ALL RELATING TO THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT, ALL SO AS TO MAKE CHANGES TO REFLECT THE ELIMINATION OF THE SOUTH CAROLINA SMALL EMPLOYER INSURER REINSURANCE PROGRAM; TO PROVIDE THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA SMALL EMPLOYER INSURER REINSURANCE PROGRAM MUST DEVELOP A PLAN TO PHASE OUT AND TERMINATE THAT PROGRAM AND THE PHASE OUT OF COVERAGE IT OFFERS BEFORE JANUARY 1, 2015; AND TO REPEAL SECTION 38‑71‑1380, SECTION 38‑71‑1390, SECTION 38‑71‑1400, SECTION 38‑71‑1410, AND SECTION 38‑71‑1420 ALL RELATING TO THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT.

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

SECTION 1. Section 38‑71‑1320 of the 1976 Code, as last amended by Act 180 of 2008, is further amended to read:

“Section 38‑71‑1320. The purpose and intent of this article is to promote the availability of health insurance coverage to small employers, excluding individual health insurance plans, regardless of their health status or claims experience, ~~to provide for development of ‘basic’ and ‘standard’ health insurance plans to be offered to all small employers, to provide for establishment of a reinsurance program,~~ to improve the overall fairness and efficiency of the small group health insurance market, and to allow small employers to form cooperatives for the purpose of providing health insurance to their employees.”

SECTION 2.A. Section 38‑71‑1330 of the 1976 Code, as last amended by Act 48 of 2013, is further amended to read:

“Section 38‑71‑1330. As used in this article:

(1) ~~‘Basic health insurance plan’ means a lower cost health insurance plan developed pursuant to Section 38‑71‑1420.~~

~~(2)~~ ~~‘Board’ means the board of directors of the program established pursuant to Section 38‑71‑1410.~~

~~(3)~~ ‘Commissioner’ means the Chief Insurance Commissioner of this State.

~~(4)~~ ~~‘Committee’ means the advisory committee to the commissioner referred to in Section 38‑71‑1420.~~

(~~5~~2) ‘Dependent’ means a spouse, an unmarried child under the age of nineteen years, an unmarried child who is a full‑time student between the ages of nineteen and twenty‑two and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(~~6~~3) ‘Eligible employee’ means an employee:

(a) as defined in Section 38‑71‑710(1) or Section 38‑71‑840(7) who works on a full‑time basis and has a normal workweek of thirty or more hours; or

(b) who is a licensed real estate person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis, who has signed a valid independent contractor agreement with the broker who works on a full‑time basis and has a normal workweek of thirty or more hours.

(~~7~~4) ‘Employer contribution rule’ means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries.

(~~8~~5) ‘Group participation rule’ means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of eligible individuals or employees of an employer.

(~~9~~6) ‘Health group cooperative’ or ‘cooperative’ means a private purchasing cooperative composed of small employers formed under this article.

(~~10~~7)(a) ‘Health insurance plan’ or ‘plan’ means any hospital or medical policy or certificate, major medical expense insurance, hospital or medical service plan contract, or health maintenance organization subscriber contract that provides benefits consisting of medical care provided directly through insurance or reimbursement, or otherwise and including items and services paid for medical care. It includes the entire contract between the insurer and the insured, including the policy, riders, endorsements, and the application, if attached.

(b) ‘Health insurance plan’ does not include: accident only; blanket accident and sickness; specified disease or hospital indemnity or other fixed indemnity insurance if offered as independent noncoordinated benefits; credit; limited scope dental or vision if offered separately; Medicare supplement if offered as a separate policy; long‑term care if offered separately; disability income insurance; coverage issued as a supplement to liability or other liability insurance, including general liability insurance and automobile liability insurance; coverage designed only to provide payments on a per diem, fixed indemnity, or nonexpense incurred basis; coverage for Medicare or Medicaid services pursuant to a contract with state or federal government; workers’ compensation or similar insurance; automobile medical payment insurance; coverage for on‑site medical clinics; or other similar coverage specified in regulations under which benefits for medical care are secondary or incidental to other insurance benefits.

(~~11~~8) ‘Insurer’ means an entity that provides health insurance in this State. For the purposes of this article, insurer includes an insurance company, a health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation, including multiple employer self‑insured health plans licensed pursuant to the provisions of Chapter 41, Title 38.

(~~12~~9) ‘Medical care’ means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting a structure or function of the body;

(b) amounts paid for transportation primarily for and essential to medical care referred to in subitem (a); and

(c) amounts paid for insurance covering medical care referred to in subitems (a) and (b).

(~~13~~10) ‘Network plan’ means a health insurance plan issued by an insurer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the insurer.

~~(14)~~ ~~‘Plan of operation’ means the plan of operation of the program established pursuant to Section 38‑71‑1410.~~

~~(15)~~ ~~‘Program’ means the South Carolina Small Employer Insurer Reinsurance Program pursuant to Section 38‑71‑1410.~~

~~(16)~~ ~~‘Reinsuring insurer’ means a small employer insurer participating in the reinsurance program pursuant to Section 38‑71‑1410.~~

~~(17)~~ ~~‘Risk‑assuming insurer’ means a small employer insurer whose application is approved by the commissioner pursuant to Section 38‑71‑1390.~~

(~~18~~11) ‘Small employer’ means, in connection with a health insurance plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, association, or employer, as defined in Section 3(5) of the Employee Retirement Income Security Act of 1974, that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar year, employed no more than fifty eligible employees or employed an average of not more than fifty employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

(a) In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state taxation or that are treated as a single employer under subsections (b), (c), (m), or (o) of Section 414 of the Internal Revenue Code of 1986 are considered one employer; and

(b) In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether that employer is a small or large employer must be based on the average number of employees that it reasonably is expected to employ on business days in the current calendar year; and

(c) Any reference in this article to an employer includes a reference to any predecessor of the employer.

(~~19~~12) ‘Small employer insurer’ means an insurer that offers health insurance plans covering eligible employees of one or more small employers in this State.

~~(20)~~ ~~‘Standard health insurance plan’ means a health insurance plan developed pursuant to Section 38‑71‑1420.~~”

B. This SECTION takes effect January 1, 2015.

SECTION 3. Section 38‑71‑1360 of the 1976 Code is amended to read:

“Section 38‑71‑1360. (A)(1) Every small employer insurer shall, as a condition of transacting business in this State with small employers, actively offer to small employers all health insurance plans actively marketed to small employers in this State~~, including at least two health insurance plans. One health insurance plan offered by each small employer insurer must be a basic health insurance plan and one plan must be a standard health insurance plan~~.

(2) Coverage under such health insurance plan must be offered to every eligible employee of a small employer and his or her dependents who apply for enrollment during the period in which the employee first becomes eligible to enroll under the terms of the health insurance plan and may not place any restriction which is inconsistent with Section 38‑71‑860 on an eligible employee being a participant or beneficiary. A small employer insurer may not offer coverage only to certain individuals in a small employer group, or to only part of the group, except as provided in Section 38‑71‑850 for late enrollees.

(3) Except with respect to applicable preexisting condition limitation periods or late enrollees as provided in Section 38‑71‑850, a small employer insurer shall not modify a health insurance plan with respect to a small employer or any eligible employee or dependent through rider, endorsement, or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions or services otherwise covered under the plan.

(4)(a) Except as provided in Sections 38‑71‑1360(C) and (D), a small employer insurer shall issue these health insurance plans to any eligible small employer that applies for any such plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health insurance plan relating to employer contribution rules and group participation rules and not inconsistent with this article.

(b) In the case of a small employer insurer that establishes more than one class of business pursuant to Section 38‑71‑920, the small employer insurer shall maintain and issue to eligible small employers these health insurance plans ~~in addition to at least one basic health insurance plan and at least one standard health insurance plan~~ in each class of business so established. A small employer insurer may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(i) the criteria are not intended to discourage or prevent acceptance of small employers applying for a ~~basic or standard~~ health insurance plan;

(ii) the criteria are not related to the health status or claim experience of the small employer;

(iii) the criteria are applied consistently to all small employers applying for coverage in the class of business; and

(iv) the small employer insurer provides for the acceptance of all eligible small employers into one or more classes of business.

The requirement to offer these health insurance plans to small employers shall not apply to a class of business into which the small employer insurer is no longer enrolling new small businesses.

~~(5)~~ ~~The provisions of this subsection (A) of this section shall be effective one hundred eighty days after the commissioner’s approval of the basic health insurance plan and the standard health insurance plan developed pursuant to Section 38‑71‑1420; provided that if the Small Employer Insurer Reinsurance Program created pursuant to Section 38‑71‑1410 is not yet operative on that date, the provisions of this paragraph shall be effective on the date that the program begins operation.~~

~~(B)(1)~~ ~~After the commissioner’s approval of the basic health insurance plan and the standard health insurance plan developed pursuant to Section 38‑71‑1420, a small employer insurer shall file with the commissioner, in the form and manner prescribed by the commissioner, the basic and standard health insurance plans to be used by the insurer. The insurer shall certify to the commissioner that the plans as filed are in substantial compliance with the provisions as approved by the commissioner. Upon the commissioner’s receipt of the certification, the insurer may use the certified plans unless their use is disapproved by the commissioner.~~

~~(2)~~ ~~The commissioner may, at any time, after providing notice and an opportunity for hearing, disapprove the continued use by a small employer insurer of a basic or standard health insurance plan on the grounds that the plan does not meet the requirements of this article.~~

(~~C~~B)(1) In the case of a small employer insurer that offers health insurance coverage through a network plan, the small employer insurer may:

(a) limit the employers that may apply for such coverage to those with eligible employees who live, work, or reside in the service area for such network plan; and

(b) within the service area of any such plan, deny such coverage to such employers if such insurer has demonstrated to the satisfaction of the commissioner that:

(i) it will not have the capacity to deliver services adequately to members of any additional groups because of its obligations to existing group contract holders and enrollees, and

(ii) it is applying this item uniformly to all employers without regard to claims experience of those employers and their employees and their dependents or any health status‑related factors relating to such employees and dependents.

(2) A small employer insurer that offers health insurance coverage through a network plan that cannot offer coverage pursuant to item (1)(b) may not offer coverage in the applicable area to new cases of employer groups with more than fifty eligible employees or to any small employer groups until the later of one hundred eighty days following each such refusal or the date on which the insurer notifies the commissioner that it has regained capacity to deliver services to small employer groups.

(~~D~~C)(1) A small employer insurer may deny health insurance coverage to small employers for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (A) would place the small employer insurer in a financially impaired condition or if the small employer insurer has demonstrated to the commissioner that it:

(a) does not have the financial reserves necessary to underwrite additional coverage; and

(b) is applying this item uniformly to all small employers in the State without regard to claims experience of those employers and their employees and their dependents or any health status‑related factor relating to such employees and dependents.

(2) A small employer insurer that denies coverage to a small employer pursuant to item (1) may not offer coverage in the State to new cases of employer groups with more than fifty eligible employees or to any small employer groups until the later of one hundred eighty days following each such refusal or the date on which the small employer insurer demonstrates to the commissioner that it has sufficient financial reserves to underwrite additional coverage. The commissioner may provide for the application of this subsection on a service‑area‑specific basis.”

SECTION 4. Section 38‑71‑1440 of the 1976 Code is amended to read:

“Section 38‑71‑1440. (A) Each small employer insurer shall fairly market health insurance plan coverage~~, including the basic and standard health insurance plans,~~ to eligible small employers in the State. A small employer insurer shall not deny coverage to a small employer based solely on the employer’s occupation.

(B)(1) Except as provided in paragraph (2), no small employer insurer or its agent shall, directly or indirectly, engage in the following activities:

(a) encouraging or directing small employers to refrain from filing an application for coverage with the small employer insurer because of the health status, claims experience, industry, occupation, or geographic location of the small employer;

(b) encouraging or directing small employers to seek coverage from another insurer because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(2) The provisions of paragraph (1) shall not apply with respect to information provided by a small employer insurer or agent to a small employer regarding the established geographic service area or a restricted network provision of a small employer insurer or health maintenance organization.

(C)(1) Except as provided in paragraph (2), no small employer insurer shall, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for or results in the compensation paid to an agent for the sale of a health insurance plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(2) Paragraph (1) shall not apply with respect to a compensation arrangement that provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

(D) ~~A small employer insurer shall provide reasonable compensation, if provided under the plan of operation of the program, to an agent, if any, for the sale of a basic or standard health insurance plan.~~

~~(E)~~ No small employer insurer may terminate, fail to renew, or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation, or geographic location of the small employers placed by the agent with the small employer insurer.

(~~F~~E) No small employer insurer or agent may induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee’s employment.

(~~G~~F) Denial by a small employer insurer of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.

(~~H~~G) If a small employer insurer enters into a contract, agreement, or other arrangement with a third‑party administrator to provide administrative, marketing, or other services related to the offering of health insurance plans to small employers in this State, the third‑party administrator shall be subject to this article as if it were a small employer insurer.”

SECTION 5. The board of directors of the South Carolina Small Employer Insurer Reinsurance Program, must develop a plan to phase out and terminate the South Carolina Small Employer Insurer Reinsurance Program under Title 38, Chapter 71, Sections 38‑71‑1380 through 38‑71‑1430. This plan must be submitted to the director or his designee for approval and provide for the accounting for the funds and expenses for the program, phasing out of coverage, if any, and a detailed description of the methodology for reimbursement of any funds or monies, if any, from the initial assessment to any reinsuring carriers. The termination plan must be submitted within ninety days after the effective date of this act. The termination and phase out of coverage shall be completed before January 1, 2015.

SECTION 6. Upon the effective date of this act, the Small Employer Insurer Reinsurance Program shall be prohibited from offering any insurance coverage.

SECTION 7. Sections 38‑71‑1380, 38‑71‑1390, 38‑71‑1400, 38‑71‑1410, and 38‑71‑1420 of the 1976 Code are repealed.

SECTION 8. Except as otherwise provided, this act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑