CHAPTER 14

Special Purpose Reinsurance Vehicle Model Act

**SECTION 38‑14‑10.** Purpose of chapter.

This chapter provides for the creation of Special Purpose Reinsurance Vehicles (SPRVs) exclusively to facilitate the securitization of one or more ceding insurers’ risk as a means of accessing alternative sources of capital and achieving the benefits of securitization. Investors in fully funded insurance securitization transactions provide funds that are available to the SPRV to secure the aggregate limit under a SPRV contract that provides coverage against the occurrence of a triggering event. The creation of SPRVs is intended to achieve greater efficiencies in conducting insurance securitizations, to diversify and broaden insurers’ access to sources of risk‑bearing capital, and to make insurance securitization generally available on reasonable terms to as many United States insurers as possible.

Under the terms of the typical securities underlying an insurance securitization transaction, proceeds from the issuance of securities are repaid to the investor on a specified maturity date with interest or dividends unless a triggering event occurs. The insurance securitization proceeds are available to pay the SPRV’s obligations to the ceding insurer if a triggering event occurs, as well as being available to satisfy the SPRV’s obligation to repay the insurance securitization investors if a triggering event does not occur. Insurance securitization transactions have been performed by alien companies to utilize efficiencies available to alien companies that are not currently available to domestic companies. This chapter allows more efficiency in conducting insurance securitizations, allows domestic ceding insurers easier access to alternative sources of risk‑bearing capital, and promotes the benefits of insurance securitization to United States insurers.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1138, 3590.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 157 to 158, 167, 170, 181, 2051, 2351.

**SECTION 38‑14‑20.** Other sections applicable.

(A) The following sections of Title 38, Code of Laws of South Carolina, 1976, apply to SPRVs: 38‑2‑10, 38‑3‑110 through 38‑3‑240, 38‑5‑120, 38‑5‑130, 38‑13‑10 through 38‑13‑420, and 38‑57‑200.

(B) No other provisions of this title are applicable to a SPRV organized under this chapter, except as provided in this chapter.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

**SECTION 38‑14‑30.** Definitions.

For purposes of this chapter, the following terms have the indicated meanings:

(1) “Aggregate limit” means the maximum sum payable to the ceding insurer under a SPRV contract.

(2) “Ceding insurer” means one or more insurers or reinsurers under common control that enters into a SPRV contract with a SPRV.

(3) “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 must be 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 that control does not, in fact, exist. Notwithstanding the foregoing, for purposes of this chapter, the fact that a SPRV exclusively provides reinsurance to a ceding insurer under a SPRV contract must not by itself be sufficient grounds for a finding that the SPRV or the SPRV organizer or owner is controlled by or under common control with the ceding insurer.

(4) “Fair value” means:

(a) as to cash, the amount of it; and

(b) as to an asset other than cash:

(1) the amount at which that asset could be bought or sold in a current transaction between arms‑length, willing parties;

(2) the quoted market price for the asset in active markets should be used if available; and

(3) if quoted market prices are not available, a value determined using the best information available considering values of like assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets or comparison to values of other asset classes, the value of which have been historically related to the subject asset.

(5) “Fully funded” means that, with respect to a SPRV contract, the fair value of the assets held in trust by or on behalf of the SPRV under the SPRV contract on the date on which the SPRV contract is effected, equals or exceeds the aggregate limit as defined in this chapter.

(6) “Indemnity trigger” means a transaction term by which the SPRV’s obligation to pay the ceding insurer for losses covered by a SPRV contract is triggered by the ceding insurer incurring a specified level of losses.

(7) “Insolvency” or “insolvent” means that the SPRV is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute.

(8) “Nonindemnity trigger” means a transaction term by which the SPRV’s obligation to pay the ceding insurer under a SPRV contract arises from the occurrence or existence of some event or condition other than the ceding insurer incurring a specified level of losses under its insurance or reinsurance contracts.

(9) “Permitted investments” means those investments that meet the qualifications pursuant to Section 38‑14‑170 of this chapter.

(10) “Qualified United States financial institution” means, for purposes of meeting the requirements of a trustee as specified in Section 38‑12‑60, a financial institution that is eligible to act as a fiduciary of a trust, and is:

(a) organized, or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state of the United States; and

(b) regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(11) “SPRV” or “Special Purpose Reinsurance Vehicle” means an entity domiciled in and organized under the laws of South Carolina, which has received a Limited Certificate of Authority from the director, or his designee, under this chapter exclusively for the limited purpose of entering into and effectuating SPRV insurance securitizations, SPRV contracts, and other related transactions permitted by this chapter.

(12) “SPRV contract” means a contract between the SPRV and the ceding insurer pursuant to which the SPRV agrees to pay the ceding insurer an agreed amount upon the occurrence of a triggering event.

(13) “SPRV insurance securitization” means a package of related risk transfer instruments and facilitating administrative agreements by which proceeds are obtained by a SPRV through the issuance of securities, which proceeds are held in trust pursuant to the requirements of this chapter to secure the obligations of the SPRV under a SPRV contract with one or more ceding insurers, wherein the SPRV’s obligation to return the full initial investment to the holders of such securities, pursuant to the transaction terms, is contingent upon the funds not being used to pay the obligations of the SPRV to the ceding insurers under the SPRV contract.

(14) “SPRV organizer” means one or more persons who have organized or intend to organize a SPRV, under authority obtained pursuant to Section 38‑14‑40 of this chapter.

(15) “SPRV securities” means the securities issued by a SPRV.

(16) “Triggering event” means an event or condition that, if and when it occurs or exists, obligates the SPRV to make a payment to the ceding insurer under the provisions of a SPRV contract.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

**SECTION 38‑14‑40.** Application process and requirements; limited certificate of authority; approval in changes in plan of operation.

(A) Within thirty days after receipt by the director, or his designee, of a complete filing by the prospective SPRV organizer for authority to form or acquire a SPRV, which SPRV must exist and operate expressly for the limited purposes set forth in this chapter, the application must be deemed approved and a limited certificate of authority must be issued, unless before the expiration of the thirty‑day period the director, or his designee, approves or disapproves the application in writing. A limited certificate of authority may not be issued unless the country or state of domicile of each ceding insurer has notified the director or his designee in writing that they have not disapproved the transaction.

(B) A complete filing of the application must include the following:

(1) an affidavit verifying that each prospective SPRV organizer meets the requirements of this chapter;

(2) a representation that the prospective SPRV organizer intends to form a SPRV that must operate in accordance with the requirements set forth in this chapter;

(3) the proposed name of the SPRV;

(4) biographical affidavits of all SPRV organizers setting forth their legal names, any names under which they have or are conducting their affairs, and any affiliations with other persons as defined in Chapter 21, together with such other biographical information as the director, or his designee, may request;

(5) the source and form of the minimum capital to be contributed to the SPRV;

(6) any persons with which the SPRV is or, upon formation, will be affiliated as defined in Chapter 21;

(7) the names and biographical affidavits of the proposed members of the board of directors and principal officers of the SPRV, setting forth their legal names, any names under which they have or are conducting their affairs and any affiliations with other persons as defined in Chapter 21, together with such other biographical information as the director, or his designee, may request; and

(8) a plan of operation, consisting of a description of the contemplated insurance securitization, the SPRV contract and related transactions, which must include:

(a) draft documentation or, at the discretion of the director, or his designee, a written summary of all material agreements that are entered into to effectuate the insurance securitization and the related SPRV contract, to include the names of the ceding insurers, the nature of the risks being assumed, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;

(b) the investment strategy of the SPRV and a representation that the investment strategy complies with the investment requirements set forth in this chapter and that the strategy will include investment practices or other provisions to preserve asset values, which will facilitate attainment of full funding during the term of the securitization with assets that may be monetized in response to a triggering event without a substantial loss in value;

(c) a description of the method by which losses covered by the SPRV contract that may develop after the termination of the contract period are to be addressed under the provisions of the SPRV contract; and

(d) a representation that the trust agreement and the trusts holding assets that secure the obligations of the SPRV under the SPRV contract and the SPRV contract with the ceding insurers in connection with the contemplated insurance securitization will be structured in accordance with the requirements set forth in this chapter.

(C) The director, or his designee, must approve the application and issue a limited certificate of authority upon a finding that:

(1) the proposed plan of operation provides a reasonable expectation of a successful operation;

(2) the terms of the SPRV contract and related transactions comply with this chapter;

(3) the proposed plan of operation is not hazardous to any ceding insurer or to policyholders; and

(4) the commissioner of the state of domicile of each ceding insurer has notified the director, or his designee, in writing that it has not disapproved the transaction. In evaluating the expectation of a successful operation, the director, or his designee, must consider, among other factors, whether the proposed SPRV organizer, directors, and officers are of known good character and not reasonably believed to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance. If the director, or his designee, denies the application, he must grant the prospective SPRV organizer a hearing upon request.

(D) Upon approval by the director, or his designee, of the application and the issuance of a limited certificate of authority, the SPRV may be acquired or formed and, in accordance with the approved plan of operation, the SPRV may enter into contracts and conduct other activities within the scope of the filed plan of operation.

(E) The limited certificate of authority must state that the SPRV’s authorization to be involved in the business of reinsurance must be limited only to the reinsurance activities that the SPRV is allowed to conduct pursuant to this chapter.

(F) The SPRV organizer must provide a complete set of the documentation of the insurance securitization to the director, or his designee, upon closing of the transactions, including an opinion of legal counsel with respect to compliance with this chapter and any other applicable laws as of the effective date of the transaction. Any material change of the SPRV’s plan of operation described in items (1) through (8) of subsection (B) including, but not limited to, the issuance of new securities to continue the securitization activities of the SPRV pursuant to this chapter after expiration and full satisfaction of the initial securitization transactions, must require prior approval of the director, or his designee; however, the change in the counterparty to swap transactions for an existing securitization as allowed under this chapter must not be considered a material change. Any material change that is not disapproved by the director, or his designee, in writing within fifteen days after its submission must be deemed approved.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1127, 1138, 3590.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71, 157 to 158, 167, 170, 181, 2051, 2351.

**SECTION 38‑14‑50.** Purpose of SPRVs.

SPRVs authorized under this chapter are created for the limited purpose of entering into insurance securitization transactions with investors and into related agreements to pay one or more ceding insurers agreed upon amounts under a SPRV contract upon the occurrence of triggering events related to the insurance business of the ceding insurer. A SPRV may not issue a contract for assumption of risk or indemnification of loss other than a SPRV contract as defined in this section.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1138, 3590.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 157 to 158, 167, 170, 181, 2051, 2351.

**SECTION 38‑14‑60.** Contracts with ceding insurers; requirements and guidelines for conducting business; trust agreements.

(A) SPRVs authorized under this chapter may at any given time enter into and effectuate SPRV contracts with one or more ceding insurers, provided that the SPRV contracts obligate the SPRV to indemnify the ceding insurer for losses and that contingent obligations of the SPRV under the SPRV contracts are securitized in full through a single SPRV insurance securitization and are funded fully and secured with assets held in trust in accordance with the requirements of this chapter pursuant to agreements contemplated by this chapter and invested in a manner that meets the criteria set forth in Section 38‑14‑170.

(B) A SPRV may enter into agreements with third parties and conduct business necessary to fulfill its obligations and administrative duties incident to the insurance securitization and the SPRV contract. The agreements may include entering into swap agreements or other transactions that have the objective of leveling timing differences in funding up‑front or ongoing transaction expenses or managing credit or interest rate risk of the investments in trust to assure that the assets held in trust will be sufficient to satisfy payment or repayment of the securities issued pursuant to an insurance securitization transaction or the obligations of the SPRV under the SPRV contract. In fulfilling its function, the SPRV must adhere to the following requirements and must, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines:

(1) A SPRV must have a distinct name, which must include the designation “ SPRV”. The name of the SPRV must not be deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this State.

(2) Unless otherwise provided in the plan of operation, the principal place of business and office of any SPRV organized under this chapter must be located in this State.

(3) The assets of a SPRV must be preserved and administered by or on behalf of the SPRV to satisfy the liabilities and obligations of the SPRV incident to the insurance securitization and other related agreements, including the SPRV contract.

(4) Assets of the SPRV that are pledged to secure obligations of the SPRV to a ceding insurer under a SPRV contract must be held in trust and administered by a qualified United States financial institution. The qualified United States financial institution must not control, be controlled by, or be under common control with, the SPRV or the ceding insurers.

(5) The agreement governing any such trust must create one or more trust accounts into which all pledged assets must be deposited and held until distributed in accordance with the trust agreement. The pledged assets must be held by the trustee at the trustee’s office in the United States and may be held in certificated or electronic form.

(6) The provisions for withdrawal by ceding insurers of assets from the trust must be clean and unconditional, subject only to the following requirements:

(a) the ceding insurer must have the right to withdraw assets from the trust account at any time, without notice to the SPRV, subject only to written notice to the trustee from the ceding insurer that funds in the amount requested are due and payable by the SPRV;

(b) no other statement or document need be presented in order to withdraw assets, except the ceding insurer may be required to acknowledge receipt of withdrawn assets;

(c) the trust agreement must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;

(d) the trust agreement must not contain references to any other agreements or documents; and

(e) no reference must be made to the fact that these funds may represent reinsurance premiums or that the funds have been deposited for any specific purpose.

(7) The trust agreement must be established for the sole use and benefit of the ceding insurer at least to the full extent of the SPRV’s obligations to the ceding insurer under the SPRV contract. In the case of more than one ceding insurer, a separate trust agreement must be entered into with each ceding insurer and a separate trust account must be maintained for each ceding insurer.

(8) The trust agreement must provide for the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in a form that the ceding insurer or the trustee, upon direction by the ceding insurer may, whenever necessary, negotiate the assets, without consent or signature from the SPRV or any other person or entity;

(c) furnish to the SPRV, the director, or his designee, and the ceding insurer a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the SPRV and the ceding insurer, within ten days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the ceding insurer, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the ceding insurer and deliver physical custody of the assets to the ceding insurer; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the ceding insurer.

(9) The trust agreement must provide that at least thirty days, but not more than forty‑five days, before termination of the trust account, written notification of termination must be delivered by the trustee to the ceding insurer.

(10) The trust agreement may be made subject to and governed by the laws of any state, in addition to the requirements for the trust as provided in this chapter, provided that the state is disclosed in the plan of operation filed with and approved, or deemed approved, by the director, or his designee, under Section 38‑14‑40.

(11) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(12) The trust agreement must provide that the trustee must be liable for its own negligence, wilful misconduct, or lack of good faith.

(13) Notwithstanding the provisions of item (6)(c), (d), and (e) or item 14(e) of this subsection, when a trust agreement is established in conjunction with a SPRV contract, then the trust agreement may provide that the ceding insurer must undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the SPRV, for the following purposes:

(a) to pay or reimburse the ceding insurer amounts due to the ceding insurer under the specific SPRV contract including, but not limited to, unearned premiums due to the ceding insurer, if not otherwise paid by the SPRV in accordance with the terms of the agreement; or

(b) when the ceding insurer has received notification of termination of the trust account, and where the SPRV’s entire “obligations” under the specific SPRV contract remain unliquidated and undischarged ten days before the termination date, to withdraw amounts equal to the obligations and deposit the amounts in a separate account, in the name of the ceding insurer, in any qualified United States financial institution, apart from its general assets, in trust for those uses and purposes specified in subsubitem (i) of this subsection as may remain executory after the withdrawal and for any period after the termination date. “ Obligations” within the meaning of this subparagraph may, without duplication, include:

(i) losses and loss expenses paid by the ceding insurer but not recovered from the SPRV;

(ii) reserves for losses reported and outstanding;

(iii) reserves for losses incurred but not reported;

(iv) reserves for loss expenses;

(v) reserves for unearned premiums; and

(vi) any other amounts that, together with subsubitems (i) to (v), represent the aggregate limit remaining under the SPRV contract if the period of coverage or the agreed upon period of loss development has yet to expire.

(c) the provisions to be included in the trust agreement pursuant to this item may be included instead in the underlying SPRV contract.

(14) A SPRV contract must contain provisions that:

(a) require the SPRV to enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the ceding insurer;

(b) stipulate that assets deposited in the trust account must be valued according to their current fair value and must consist only of permitted investments;

(c) require the SPRV, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate any such assets without consent or signature from the SPRV or any other entity;

(d) require that all settlements of account between the ceding insurer and the SPRV be made in cash or its equivalent; and

(e) stipulate that the SPRV and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the SPRV contract, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the SPRV contract, and must be utilized and applied by the ceding insurer or any successor by operation of law of the ceding insurer, including, subject to the provisions of Section 38‑14‑160 , but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the SPRV, only for the following purposes:

(i) to transfer all such assets into one or more trust accounts for the benefit of the ceding insurer pursuant to the terms of the SPRV contract and in compliance with this chapter; and

(ii) to pay any other amounts that the ceding insurer claims are due under the SPRV contract.

(15) The SPRV contract entered into by the SPRV may contain provisions that give the SPRV the right to seek approval from the ceding insurer to withdraw from the trust all or part of the assets contained in the trust and to transfer the assets to the SPRV, provided that:

(a) at the time of the withdrawal, the SPRV must replace the withdrawn assets with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of Section 38‑14‑170; and

(b) after the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPRV under the SPRV contract is no less than an amount needed to satisfy the fully funded requirement of the SPRV contract. The ceding insurer must be the sole judge as to the application of these provisions but must not unreasonably nor arbitrarily withhold its approval.

(16) The contract must provide that investors in the SPRV agree that any obligation to repay principal, interest, or dividends on the securities issued by the SPRV must be reduced upon the occurrence of a triggering event, to the extent that the assets of the SPRV held in trust for the benefit of the ceding insurer are remitted to the ceding insurer in fulfillment of the obligations of the SPRV under the SPRV contract.

(17) Assets held by a SPRV in trust must be valued at their fair value.

(18) The proceeds from the sale of securities by the SPRV to investors must be deposited with the trustee as contemplated by this chapter and must be held or invested by the trustee in accordance with the requirements of Section 38‑14‑170.

(19) A SPRV organized under this chapter must engage only in fully funded indemnity triggered SPRV contracts to support in full the ceding insurers’ exposures assumed by the SPRV. However, a SPRV may engage in a SPRV contract that is nonindemnity triggered only after the director, or his designee, in accordance with the authority granted under Section 38‑14‑200 of this chapter, adopts regulations addressing the treatment of the portion of the risk that is not indemnity based, to include accounting, disclosure, risk‑based capital treatment, and the manner in which risks associated with a nonindemnity based SPRV contract may be evaluated and managed. At no time may a SPRV enter into a SPRV contract that is not fully funded, whether indemnity triggered or nonindemnity triggered. Assets of the SPRV may be used to pay interest or other consideration on any outstanding debt or other obligation of the SPRV, and nothing in this item must be construed or interpreted to prevent a SPRV from entering into a swap agreement or other transaction that has the effect of guaranteeing interest or other consideration.

(20) In the SPRV insurance securitization, the contracts or other relating documentation must contain provisions identifying the SPRV that will enter into the special purpose reinsurance securitization and the contracts or other documentation must clearly disclose that the assets of the SPRV, and only those assets, are available to pay the obligations of that SPRV. Notwithstanding the foregoing, 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 must not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this chapter.

(21) A SPRV is not authorized to:

(a) issue or otherwise administer primary insurance policies;

(b) have any obligation to the policyholders or reinsureds of the ceding insurer;

(c) enter into a SPRV contract with a person that is not licensed or otherwise authorized to conduct the business of insurance or reinsurance in at least its state or country of domicile; or

(d) assume or retain exposure to insurance or reinsurance losses for its own account that is not initially fully funded by proceeds from a SPRV securitization that meets the requirements of this chapter.

(22) At the cessation of business of a SPRV, the limited certificate of authority granted by the director, or his designee, must expire and the SPRV must no longer be authorized to conduct activities pursuant to this chapter unless and until a new certificate of authority is issued pursuant to a new filing in accordance with Section 38‑14‑40.

(23) It is unlawful for a SPRV to lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from (other than by issuance of the securities pursuant to an insurance securitization) or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1138, 1139, 3590.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 157 to 158, 167 to 170, 178 to 181, 2051, 2351.

**SECTION 38‑14‑70.** Powers; bylaws.

(A) A SPRV authorized under this chapter must have the necessary powers to enter into contracts and to conduct other commercial activities necessary to fulfill the purposes of this chapter. Those activities may include, but are not limited to, entering into SPRV contracts, issuing securities of the SPRV, and complying with the terms of it, entering into trust, swap, and other agreements necessary to effectuate an insurance securitization in compliance with the limitations and pursuant to the authorities granted to the SPRV under this chapter or the plan of operation approved or deemed approved by the director, or his designee.

(B) A SPRV organized or doing business under this chapter must, by the name adopted by the SPRV, in law, be capable of suing or being sued, and may make or enforce contracts in relation to the business of the SPRV; may have and use a common seal, and in the name of the SPRV or by a trustee chosen by the board of directors, must be capable of taking, purchasing, holding, and disposing of real and personal property for carrying into effect the purposes of its organization; and may by its board of directors, trustees, officers, or managers, make bylaws and amendments not inconsistent with the laws or the Constitution of this State or of the United States. The bylaws must define the manner of electing directors, trustees or managers, and officers of the SPRV, together with their qualifications and duties and fixing the term of office.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1130, 3590.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 166, 177, 2051, 2351.

**SECTION 38‑14‑80.** Relationship to ceding insurer.

Notwithstanding the provisions of Chapter 21 of this title, the SPRV, the SPRV organizer, or subsequent debt or equity investors in SPRV securities must not be deemed affiliates of the ceding insurer by virtue of the SPRV contract between the ceding insurer and the SPRV, the securities of the SPRV or related agreements necessary to implement the SPRV insurance securitization. The SPRV may not be controlled by, may not control, or may not be under common control with any ceding insurer that is a party to a SPRV contract.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

**SECTION 38‑14‑90.** Capital requirements.

A SPRV must have minimum initial capital of not less than five thousand dollars. All of the initial capital must be received by the SPRV in cash. The minimum initial capital required and all other funds of the SPRV in excess of its minimum initial capital, including funds held in trust to secure the obligations of the SPRV pursuant to its obligations under the SPRV contracts, must be invested as provided in Section 38‑14‑170.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1138.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 157 to 158, 167, 170, 181.

**SECTION 38‑14‑100.** Declaration and payment of dividends.

The SPRV may not declare or pay dividends in any form to its owners unless the dividends do not decrease the capital of the SPRV below five thousand dollars and, after giving effect to the dividends, the assets of the SPRV, including assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to meet its obligations. The dividends may be declared by the board of directors of the SPRV if the dividends would not violate the provisions of this chapter or jeopardize the fulfillment of the obligations of the SPRV or the trustee pursuant to the SPRV insurance securitization, the SPRV contract, or any related transaction. The provisions of Chapter 21 pertaining to dividends do not apply to such dividends.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1153.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 170, 181 to 184.

**SECTION 38‑14‑110.** Records and filing requirements.

(A) The records of the SPRV must be maintained in this State and must be available for examination by the director, or his designee, at any time. No later than five months after the fiscal year end of the SPRV, the SPRV must file with the director, or his designee, an audit by a certified public accounting firm of the financial statements of the SPRV and the trust accounts.

(B) Each SPRV organized under this chapter must file with the director, or his designee, by March first a statement of operations, to include a statement of income, a balance sheet, and a detailed listing of invested assets, including identification of assets held in trust to secure the SPRV’s obligations under the SPRV contract, for the year ending the prior December thirty‑first. The statements must be prepared in accordance with Section 38‑13‑80 on forms required by the director, or his designee.

(C) The SPRV must keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that its financial statements filed with the director, or his designee, can be readily verified and its compliance with the provisions of this chapter determined. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

(D) All original books, records, documents, accounts, and vouchers must be preserved and kept available in this State for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the director, or his designee. The original records, however, may be kept and maintained outside this State if, according to a plan adopted by the SPRV’s board of directors and approved by the director, or his designee, it maintains suitable records in lieu of it.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1154, 1156.

Westlaw Topic No. 217.

C.J.S. Insurance Section 41.

**SECTION 38‑14‑120.** Election and removal of officers; loans.

The directors of a SPRV must elect officers that they consider necessary to carry out the purposes of the SPRV pursuant to this chapter. The provisions of Title 33 relating to the indemnification of officers and directors apply to and govern SPRVs organized under this chapter.

(A) Each SPRV authorized to do business in this State must notify the director, or his designee, within thirty days of the appointment or election of any new officers or directors.

(B) In cases where the director, or his designee, deems that an officer or director does not meet the standards set forth in this section, he must, after notice and hearing afforded to the officer or director, and after a finding that the officer or director is incompetent or untrustworthy or of known bad character, order the removal of the person. If the SPRV does not comply with a removal order within thirty days, the director, or his designee, may suspend that SPRV’s limited certificate of authority until such time as the SPRV complies with the order.

(C) The SPRV must make no loans to any SPRV organizer, owner, director, officer, manager, or affiliate of the SPRV.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1132.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 162 to 165, 176.

**SECTION 38‑14‑130.** Reimbursement of formation and operation expenses and costs.

The director, or his designee, may charge fees to reimburse the director, or his designee, for expenses and costs incurred by the Department of Insurance incident to the examination of financial statements, review of the plan of operation, and to reimburse other such activities of the director, or his designee, related to the formation and ongoing operation of the SPRV. The SPRV must not be subject to state premium or other state taxes incidental to the operation of its business as long as the business remains within the limitations of this chapter.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1049.

Westlaw Topic No. 217.

**SECTION 38‑14‑140.** Dissolution procedure.

A SPRV operating under this chapter may be dissolved at any time by a vote of its board of directors, and after the action has been approved by the director, or his designee. A voluntary dissolution must not be effected or allowed until and unless all of the obligations of the SPRV pursuant to the insurance securitization have been fully and finally satisfied pursuant to their terms. In the case of voluntary dissolution, the disposition of the affairs of the SPRV, including the settlement of all outstanding obligations, must be made by the officers or directors of the SPRV and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved, or deemed approved, by the director, or his designee, the provisions for voluntary dissolution under Title 33 must be followed to dissolve the SPRV.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

**SECTION 38‑14‑150.** Rehabilitation and liquidation.

(A) The provisions of Chapter 27 of this title apply to a SPRV, except to the extent modified below.

(B)(1) Notwithstanding the provisions of Chapter 27, the director, or his designee, may apply by petition to the circuit court for an order authorizing the director, or his designee, to conserve, rehabilitate, or liquidate a SPRV domiciled in this State on one or more of the following grounds:

(a) there has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPRV intended to be used to pay amounts owed to the ceding insurer or the holders of SPRV securities; or

(b) the SPRV is insolvent and the holders of a majority in outstanding principal amount of each class of SPRV securities request or consent to conservation, rehabilitation, or liquidation under this chapter.

(2) The court must not grant relief under item (1)(a) unless, after notice and a hearing, the director, or his designee, who must have the burden of proof, establishes by clear and convincing evidence that relief must be granted.

(C) Notwithstanding any contrary provision in this title, the regulations promulgated under this title, or any other applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of the SPRV, the receiver must be bound to deal with the SPRV’s assets and liabilities in accordance with the requirements set forth in this chapter.

(D) With respect to amounts recoverable under a SPRV contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the ceding insurer, notwithstanding any provisions to the contrary in the contracts or other documentation governing the SPRV insurance securitization.

(1) Notwithstanding the provisions of Chapter 27, an application or petition, or any temporary restraining order or injunction issued under Chapter 27, with respect to a ceding insurer must not prohibit the transaction of any business by a SPRV, including any payment by a SPRV made pursuant to a SPRV security, or any action or proceeding against a SPRV or its assets.

(2) Notwithstanding the provisions of Chapter 27, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a SPRV, and any order issued by the court must not prohibit the payment by a SPRV made pursuant to a SPRV security or SPRV contract or the SPRV from taking any action required to make the payment.

(E) Notwithstanding any other provision of Chapter 27 or other state law:

(1) a receiver of a ceding insurer may not avoid a nonfraudulent transfer by a ceding insurer to a SPRV of money or other property made pursuant to a SPRV contract; and

(2) a receiver of a SPRV may not void a nonfraudulent transfer by the SPRV of money or other property made to a ceding insurer pursuant to a SPRV contract or made to or for the benefit of any holder of a SPRV security on account of the SPRV security.

(F) With the exception of the fulfillment of the obligations under a SPRV contract, and notwithstanding any other provisions of this chapter or other law of this State to the contrary, the assets of a SPRV, including assets held in trust, must not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer under this chapter for any purpose including, without limitation, distribution to creditors of the ceding insurer.

(G) Notwithstanding any other provision of this chapter:

(1) the domiciliary receiver of a SPRV domiciled in another state must be vested by operation of law with the title to all assets, property, contracts, and rights of action, and all books, accounts, and other records of the SPRV located in this State. The domiciliary receiver must have the immediate right to recover all vested property, assets, and causes of action of the SPRV located in this State;

(2) an ancillary proceeding may not be commenced or prosecuted in this State against a SPRV domiciled in another state.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1357.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 189 to 192, 195, 249, 2356.

**SECTION 38‑14‑160.** Exemption from guaranty fund contributions or guaranty associations.

(A) The SPRV or the activities, assets, and obligations relating to the SPRV are not subject to the provisions of Chapters 29 and 31, and a SPRV must not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this State with respect to the activities, assets, or obligations of a SPRV or the ceding insurer.

(B) The SPRV must not be required to participate in residual market, FAIR plan, or other similar plans to provide insurance coverage, take out policies, assume risks, make capital contributions, pay, or be otherwise obligated for assessments, surcharges or fees, or otherwise support or participate in such plans or arrangements.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1484.

Westlaw Topic No. 217.

**SECTION 38‑14‑170.** Trust asset requirements; swap agreements.

(A) Assets of the SPRV held in trust to secure obligations under the SPRV contract must at all times be held in:

(1) cash and cash equivalents;

(2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets under statutory accounting convention in its state of domicile; or

(3) any other form of security acceptable to the director, or his designee.

(B) In addition, the SPRV may enter into swap agreements or other transactions that have the objective of leveling timing differences in funding of up‑front or ongoing transaction expenses or managing credit or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities (and related interest or principal payments) issued pursuant to a SPRV insurance securitization transaction or the SPRV’s obligations under the SPRV contract.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1140.

Westlaw Topic No. 217.

C.J.S. Insurance Section 167.

**SECTION 38‑14‑180.** Reinsurance credit.

A SPRV contract meeting the requirements under this chapter must be granted credit for reinsurance treatment or must otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer under Section 38‑9‑210 for the benefit of the ceding insurer, provided and only to the extent that:

(A) the fair value of the assets held in trust for the benefit of the ceding insurer equal or exceed the obligations due and payable to the ceding insurer by the SPRV under the SPRV contract;

(B) the assets are held in trust in accordance with the requirements set forth in this chapter;

(C) the assets are administered in the manner and pursuant to arrangements as set forth in this chapter; and

(D) the assets are held or invested in one or more of the forms allowed in Section 38‑14‑170.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1140.

Westlaw Topic No. 217.

C.J.S. Insurance Section 167.

**SECTION 38‑14‑190.** Purchase of SPRV securities as transacting insurance business.

The securities issued by the SPRV pursuant to a SPRV insurance securitization must not be deemed to be insurance or reinsurance contracts. An investor in such securities issued pursuant to a SPRV insurance securitization or any holder of such securities must not, by sole means of this investment or holding, be deemed to be transacting an insurance business in this State. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a SPRV insurance securitization must not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection therewith.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.

Library References

Insurance 1001.

Westlaw Topic No. 217.

**SECTION 38‑14‑200.** Promulgation of regulations.

The director, or his designee, may promulgate regulations necessary to effectuate the purposes of this chapter. Regulations promulgated pursuant to this section do not affect a SPRV insurance securitization in effect at the time of the promulgation.

HISTORY: 2002 Act No. 259, Section 1, eff May 20, 2002.