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**S. 220**

**STATUS INFORMATION**

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Summary: Insurance Holding Company Regulatory Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/15/2025 Senate Introduced and read first time ([Senate Journal‑page 9](h:\sj\20250115.docx))

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**VERSIONS OF THIS BILL**

[01/15/2025](https://www.scstatehouse.gov/sess126_2025-2026/prever/220_20250115.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 38‑21‑10, RELATING TO DEFINITIONS, SO AS TO DEFINE TERMS; BY AMENDING SECTION 38‑21‑30, RELATING TO THE AUTHORITY OF INSURERS TO INVEST IN SECURITIES OF SUBSIDIARIES, SO AS TO INCLUDE HEALTH MAINTENANCE ORGANIZATIONS; BY AMENDING SECTION 38‑21‑70, RELATING TO CONTENTS OF STATEMENTS, SO AS TO FURTHER EXPLAIN THE REQUIREMENTS OF REPORTING THE DESCRIPTION OF TRANSACTIONS; BY AMENDING SECTION 38‑21‑90, RELATING TO APPROVAL OF COMMISSIONER OF ACQUISITION OF CONTROL, SO AS TO REQUIRE THE PERSON ACQUIRING CONTROL OF A DOMESTIC INSURER TO MAINTAIN OR RESTORE CAPITAL; BY AMENDING SECTION 38‑21‑160, RELATING TO INFORMATION WHICH NEED NOT BE DISCLOSED IN REGISTRATION STATEMENTs, SO AS TO DESIGNATE THAT THE DEFINITION DOES NOT APPLY FOR OTHER PURPOSES; BY AMENDING SECTION 38‑21‑225, RELATING TO THE ANNUAL ENTERPRISE RISK REPORT, SO AS TO IDENTIFY EXEMPTIONS FOR FILING THE GROUP CAPITAL CALCULATION AND TO REQUIRE FILING RESULTS OF THE LIQUIDITY STRESS TEST FOR SOME INSURERS; BY AMENDING SECTION 38‑21‑250, RELATING TO STANDARDS FOR TRANSACTIONS WITHIN INSURANCE SYSTEMS, SO AS TO OUTLINE RESPONSIBILITIES OF THE DIRECTOR, AMONG OTHER THINGS; AND BY AMENDING SECTION 38‑21‑290, RELATING TO CONFIDENTIAL INFORMATION, SO AS TO REQUIRE THE DIRECTOR TO KEEP GROUP CAPITAL CALCULATIONS, GROUP CAPITAL RATIO AND LIQUIDITY STRESS TEST RESULTS, AND SUPPORTING DISCLOSURES CONFIDENTIAL, AND TO ADD REFERENCES TO THIRD‑PARTY CONSULTANTS.

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

SECTION 1. Section 38‑21‑10 of the S.C. Code is amended to read:

Section 38‑21‑10. In this chapter, unless the context otherwise requires:

(1) An “affiliate” of, or person “affiliated” with, a specific person means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(2) The term “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 or his designee 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.

(3) The term “director” means the Director of the South Carolina Department of Insurance or his designee.

(4) The term “group‑wide supervisor” means the regulatory official authorized to engage in conducting or coordinating group‑wide supervision activities who is determined or acknowledged by the director pursuant to Section 38‑21‑295 to have sufficient significant contacts with the internationally active insurance group.

(5) “Group Capital Calculation instructions” means the Group Capital Calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(5)(6) An “insurance holding company system” consists of two or more affiliated persons, one or more of which is an insurer.

(6)(7) The term “insurer” has the same meaning as set forth in Section 38‑1‑20 except that it does not include (a) agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state or (b) nonprofit medical and hospital service associations.

(7)(8) The term “internationally active insurance group” means an insurance holding company system that includes an insurer registered pursuant to Sections 38‑21‑143 through 38‑21‑240 and meets the following criteria:

(a) premiums written in at least three countries;

(b) the percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system’s total gross written premiums; and

(c) based on a three‑year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company systems are at least ten billion dollars.

(9) “NAIC” means the National Association of Insurance Commissioners.

(10) “NAIC Liquidity Stress Test Framework” is a separate NAIC publication which includes a history of the NAIC’s development of regulatory liquidity stress testing, the Scope Criteria applicable for a specific data year, and the Liquidity Stress Test instructions and reporting templates for a specific data year, such Scope Criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(8)(11) A “person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(12) “Scope Criteria,” as detailed in the NAIC Liquidity Stress Test Framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

(9)(13) A “securityholder” of a specified person is one who owns any security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(10)(14) A “subsidiary” of a specified person is an affiliate controlled by that person directly, or indirectly through one or more intermediaries.

(11)(15) The term “voting security” includes any security convertible into or evidencing a right to acquire a voting security.

(12)(16) “Enterprise risk” means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, likely is to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk‑based capital to fall into company action level as provided in Section 38‑9‑330 or would cause the insurer to be in hazardous financial condition as provided in Section 38‑5‑120.

(13)(17) A “supervisory college” is a meeting or joint meeting of insurance regulators or supervisors with company officials where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions. It may involve detailed discussions about financial data, corporate governance, and enterprise risk management functions. Supervisory colleges are intended to facilitate the oversight of internationally active insurance companies at the group level.

(18) “Voting security” includes any security convertible into or evidencing a right to acquire a voting security.

SECTION 2. Section 38‑21‑30 of the S.C. Code is amended to read:

Section 38‑21‑30. In addition to investment in common stock, preferred stock, debt obligations, and other securities permitted under this title, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer’s assets or fifty percent of the insurer’s surplus as regards policyholders if, after these investments, the insurer’s surplus as regards policyholders must be reasonable in relation to the insurer’s outstanding liabilities and adequate to meet its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations must be excluded, and there must be included (a) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and (b) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary after its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if each subsidiary agrees to limit its investments in any asset so that the investments will not cause the total investment of the insurer to exceed any of the investment limitations specified in item (1) or in the investment laws or regulations of this State. For the purpose of this item, “the total investment of the insurer” includes (a) any direct investment by the insurer in an asset, and (b) the insurer’s proportionate share of any investment in an asset by a subsidiary of the insurer, which must be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the ownership of the subsidiary;

(3) With the approval of the director or his designee, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries if after such investment the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

SECTION 3. Section 38‑21‑70(A)(2) of the S.C. Code is amended to read:

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for this purpose, (including pledge of the insurer’s stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing the consideration. Where a source of the consideration is a loan made in the lender’s ordinary course of business, the identity of the lender must remain confidential, if the person filing the statement so requests.

SECTION 4. Section 38‑21‑90(C) of the S.C. Code is amended to read:

(C)(1) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing provided in subsections (A) and (B) may be held on a consolidated basis upon request of the person filing the statement referred to in Section 38‑21‑60 if he files the statement with the National Association of Insurance Commissioners (NAIC) within five days after making the request for a public hearing. The director or his designee may opt out of a consolidated hearing, but shall provide notice of its decision of the opt out to the applicant within ten days after receipt of the statement. A hearing conducted on a consolidated basis must be public and held within the United States before the commissioners of the states in which the insurers are domiciled. These commissioners shall hear and receive evidence. The director or his designee may attend the hearing in person or by means of telecommunication.

(2) In connection with a change of control of a domestic insurer, any determination by the director or his designee that the person acquiring control of the insurer is required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this State must be made no later than sixty days after the date of notification of the change in control submitted pursuant to Section 38‑21‑60.

(2)(3) For purposes of this subsection, “commissioner” means the:

(a) insurance commissioner, director, or other chief insurance official of a state, territory, or the District of Columbia;

(b) deputy of a commissioner; and

(c) Insurance Department of a state, territory, or District of Columbia, as appropriate.

SECTION 5. Section 38‑21‑160 of the S.C. Code is amended to read:

Section 38‑21‑160. No information need be disclosed on the registration statement filed pursuant to Section 38‑21‑140 if the information is not material for the purposes of this chapter. Unless the department by regulation or by order of the director or his designee provides otherwise, sales, purchases, exchanges, loans or extension of credit, or investments, or guarantees involving one‑half of one percent or less of an insurer’s admitted assets as of the previous December thirty‑first are not considered material for purposes of Sections 38‑21‑140 through 38‑21‑240. The definition of materiality provided in this section does not apply for purposes of the Group Capital Calculation or the Liquidity Test Framework.

SECTION 6. Section 38‑21‑225 of the S.C. Code is amended to read:

Section 38‑21‑225. (A) The ultimate controlling person of an insurer subject to registration also shall file an annual enterprise risk report. The report must, to the best of the ultimate controlling person’s knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(B) Except as provided below, the ultimate controlling person of every insurer subject to registration must file concurrently with the registration an annual group capital calculation as directed by the lead state commissioner. The report must be completed in accordance with NAIC Group Capital Calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the director in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. The following insurance holding company systems are exempt from filing the group capital calculation:

(1) An insurance holding company system that has only one insurer within its holding company structure, that only writes business in its domestic state, and assumes no business from any other insurer;

(2) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner must request the calculation from the Federal Reserve Board under the terms of information-sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(3) An insurance holding company system whose non‑U.S. group‑wide supervisor is located within a reciprocal jurisdiction as described in Section 38‑9‑200 that recognizes the U.S. state regulatory approach to group supervision and group capital;

(4) An insurance holding company system:

(a) that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group‑wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and

(b) whose non‑U.S. group‑wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the director in regulation, the group capital calculation as the world‑wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

(5) Notwithstanding the provisions of this subsection, a lead state commissioner must require the group capital calculation for U.S. operations of any non‑U.S.-based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(6) Notwithstanding the exemptions from filing the group capital calculation stated in this section, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the director in regulation.

(7) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system must file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(C) The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework must file the results of a specific year’s Liquidity Stress Test. The filing must be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners. The NAIC Liquidity Stress Test Framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured must be effective on January first of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the framework for that data year.

(1) The lead state commissioner, in consultation with the Financial Stability Task Force or its successor, and as part of the annual determination for an insurer, will consider the insurer’s recent status to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis.

(2) The performance of, and filing of the results from, a specific year’s Liquidity Stress Test must comply with the NAIC Liquidity Stress Test Framework’s instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the Financial Stability Task Force or its successor, provided within the framework.

SECTION 7. Section 38‑21‑250 of the S.C. Code is amended to read:

Section 38‑21‑250. (A) Transactions within an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:

(1) The terms must be fair and reasonable.

(2) Agreements for cost‑sharing services and management must include provisions required by regulation promulgated by the department.

(3) Charges or fees for services performed must be reasonable.

(4) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(5) The books, accounts, and records of each party to all transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(6) The insurer’s surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

(7) If an insurer subject to this act is deemed by the director to be in a hazardous financial condition as defined by Sections 38‑5‑120 and 38‑9‑330 or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the director may require the insurer to secure and maintain either a deposit, held by the director, or a bond, as determined by the insurer at the insurer’s discretion, for the protection of the insurer for the duration of the contracts or agreements, or the existence of the condition for which the director required the deposit or the bond. In determining whether a deposit or a bond is required, the director should consider whether concerns exist with respect to the affiliated person’s ability to fulfill the contracts or agreements if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the director has discretion to determine the amount of the deposit or bond, not to exceed the value of the contracts or agreements in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person.

(8) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons’ records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate. At the request of the insurer, the affiliate must provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer’s business; obtain access to the operating systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer’s business. The affiliate must provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate’s default under a lease or other agreement.

(9) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership must be subject to Chapter 27, Title 38.

(B) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in items (1) through (7) may not be entered into unless the insurer has notified the department in writing of its intention to enter into the transaction at least thirty days prior, or such shorter period as the director or his designee may permit, and the director or his designee has not disapproved it within such period. The notice for amendments or modifications must include the reasons for the charge and the financial impact on the domestic insurer. Informal notice must be reported within thirty days after termination of a previously filed agreement to the director or his designee for determination of the type of filing required, if any.

(1) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments if the transactions are equal to or exceed:

(a) with respect to nonlife insurers, the lesser of three percent of the insurer’s admitted assets or twenty‑five percent of surplus as regards policyholders as of the thirty‑first day of December next preceding;

(b) with respect to life insurers, three percent of the insurer’s admitted assets, each as of the thirty‑first day of December next preceding.

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to purchase assets of, or make investments in, any affiliate of the insurer making the loans or extensions of credit as long as such transactions are equal to or exceed:

(a) with respect to nonlife insurers, the lesser of three percent of the insurer’s admitted assets or twenty‑five percent of surplus as regards policyholders;

(b) with respect to life insurers, three percent of the insurer’s admitted assets, each as of the thirty‑first day of December next preceding.

(3) Reinsurance agreements or modifications, including:

(a) all reinsurance pooling agreements; and

(b) agreements in which the reinsurance premium or a change in the insurer’s liabilities, or the projected reinsurance premium or a change to the insurer’s liabilities in any of the next three years, equals or exceeds five percent of the insurer’s surplus as regards policyholders, as of the thirty‑first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

(4) All management agreements, service contracts, tax allocation agreements, and all cost‑sharing arrangements.

(5) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this item unless it exceeds the lesser of one‑half of one percent of the insurer’s admitted assets or ten percent of surplus as regards policyholders as of the thirty‑first day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this item.

(6) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one‑half percent of the insurer’s surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Sections 38‑21‑20 through 38‑21‑50, or authorized under any other section of this chapter, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement.

(7) Any material transactions, specified by regulation of the department, which the director or his designee determines may adversely affect the interests of the insurer’s policyholders. Nothing herein authorizes or permits any transactions which, in the case of an insurer, not a member of the same insurance holding company system, would be otherwise contrary to law.

(C) A domestic insurer may not enter into transactions, which are part of a plan or series of like transactions with persons within the insurance holding company system, if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director or his designee determines that such separate transactions were entered into over any twelve‑month period for such purpose, he may exercise his authority under Section 38‑21‑340.

(D) The director or his designee, in reviewing transactions pursuant to subsection (B), shall consider whether the transactions comply with the standards set forth in subsection (A) and whether they may adversely affect the interests of policyholders.

(E) The department must be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation’s voting securities.

(F) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to item (B)(4) is subject to the jurisdiction of any supervision, seizure, conservatorship or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to Chapters 26 and 27, Title 38 for the purpose of interpreting, enforcing, and overseeing the affiliate’s obligations under the agreement or contract to perform services for the insurer that:

(1) are an integral part of the insurer’s operations including, but not limited to, management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or

(2) are essential to the insurer’s ability to fulfill its obligations under insurance policies.

(G) The director may require that an agreement or contract pursuant to subsection (B)(4) for the provision of services described in subsection (F)(1) and (2) specify that the affiliate consents to the jurisdiction as set forth in subsection (F).

SECTION 8. Section 38‑21‑290 of the S.C. Code is amended to read:

Section 38‑21‑290. (A) Documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the director or his designee or any other person in the course of an examination or investigation made pursuant to Section 38‑21‑280 and all information reported pursuant to Section 38‑21‑70(A)(13) and (14) and Sections 38‑21‑130 through 38‑21‑270 are recognized by the state as being proprietary and must be confidential by law and privileged, shall not be subject to disclosure, may not be subject to subpoena, and may not be disclosed under the Freedom of Information Act and may not be subject to discovery or admissible in evidence in any private civil action. However, the director or his designee may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of his official duties. The director or his designee otherwise shall not make the documents, materials, or other information public without obtaining the prior written consent of the insurer to which it pertains unless the director or his designee, after giving the insurer and its affiliates who would be affected by it, notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication of it, in which event the director or his designee may publish all or any part.

(1) For purposes of the information reported and provided to the department pursuant to Section 38‑21‑225(C), the director must maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group-wide supervisor.

(2) For purposes of the information reported and provided to the department pursuant to Section 38‑21‑225(C) the director must maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non‑U.S. group-wide supervisors.

(B) Neither the director or his designee nor a person who received documents, materials, or other information while acting under the authority of the director or his designee or with whom such documents, materials, or other information are shared pursuant to this chapter may be permitted or required to testify in a private civil action concerning any confidential documents, materials, or information subject to subsection (A).

(C) In order to assist in the performance of the director or his designee’s duties, the director or his designee:

(1) may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (A), including proprietary and trade secret documents and materials with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiariesany third-party consultants designated by the director or his designee, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 38‑21‑285, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) only may share confidential and privileged documents, material, or information reported pursuant to Section 38‑21‑225 with commissioners of states having statutes or regulations substantially similar to subsection (A) and who have agreed in writing not to disclose such information;

(3) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, orproprietary and trade secret information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(4) shallmust enter into written agreements with the NAIC and any third‑party consultant designated by the director or his designee governing sharing and use of information provided pursuant to this chapter consistent with this subsection that shall:

(a) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiariesor a third‑party consultant designated by the director or his designee pursuant to this chapter, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality;

(b) specify that ownership of information shared with the NAIC and its affiliates and subsidiariesor third‑party consultant pursuant to this chapter remains with the director or his designee and the NAIC’s use of the information is subject to the direction of the director or his designee;

(c) excluding documents, materials, or information reported pursuant to Section 38‑21‑225(C) prohibit the NAIC or third‑party consultant designated by the commissioner from storing the information shared pursuant to this act in a permanent database after the underlying analysis is completed;

(c)(d) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or third‑party consultant designated by the director or his designee pursuant to this chapter is subject to a request or subpoena to the NAIC or a third‑party consultant designated by the director or his designee for disclosure or production; and

(d)(e) require the NAIC and its affiliates and subsidiariesor third‑party consultant designated by the director or his designee to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter; and

(f) for documents, materials, or information reporting pursuant to Section 38‑21‑255(C), in the case of an agreement involving a third‑party consultant, provide for notification of the identity of the consultant to the applicable insurers.

(D) The sharing of information by the director or his designee pursuant to this chapter may not constitute a delegation of regulatory authority or rulemaking, and the director or his designee is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

(E) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director or his designee under this section or as a result of sharing as authorized in subsection (C).

(F) Documents, materials, or other information in the possession or control of the NAIC pursuant to this chapter shall be confidential by law and privileged, may not be disclosed under the Freedom of Information Act, may not be subject to subpoena, and may not be subject to discovery or admissible in evidence in a private civil action.

(G) The group capital calculation and resulting group capital ratio required pursuant to Section 38‑21‑225(B) and the liquidity stress test along with its results and supporting disclosures required pursuant to Section 38‑12‑225(C) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this act, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer’s or insurance group’s group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer’s or insurance group’s liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the director with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 9. This act takes effect upon approval by the Governor.

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