**South Carolina General Assembly**

125th Session, 2023-2024

**A180, R225, H4869**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Sandifer, Hardee, Ligon and Jefferson

Companion/Similar bill(s): 957

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Introduced in the House on January 17, 2024

Introduced in the Senate on February 7, 2024

Last Amended on May 9, 2024

Currently residing in the House

Governor's Action: May 20, 2024, Signed

Summary: Department of Insurance procedures

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/17/2024 House Introduced and read first time (House Journal‑page 14)

 1/17/2024 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 14)

 1/31/2024 House Member(s) request name added as sponsor: Ligon

 1/31/2024 House Committee report: Favorable with amendment **Labor, Commerce and Industry** (House Journal‑page 2)

 2/1/2024 House Member(s) request name added as sponsor: Jefferson

 2/6/2024 House Amended (House Journal‑page 22)

 2/6/2024 House Read second time (House Journal‑page 22)

 2/6/2024 House Roll call Yeas-114 Nays-0 (House Journal‑page 24)

 2/7/2024 House Read third time and sent to Senate (House Journal‑page 13)

 2/7/2024 Senate Introduced and read first time (Senate Journal‑page 8)

 2/7/2024 Senate Referred to Committee on **Banking and Insurance** (Senate Journal‑page 8)

 4/25/2024 Senate Committee report: Favorable **Banking and Insurance** (Senate Journal‑page 11)

 5/8/2024 Senate Amended (Senate Journal‑page 91)

 5/8/2024 Senate Read second time (Senate Journal‑page 91)

 5/8/2024 Senate Roll call Ayes-44 Nays-0 (Senate Journal‑page 91)

 5/9/2024 Senate Amendment Reconsidered (Senate Journal‑page 67)

 5/9/2024 Senate Amended (Senate Journal‑page 67)

 5/9/2024 Senate Read third time and returned to House with amendments (Senate Journal‑page 67)

 5/9/2024 Senate Roll call Ayes-43 Nays-0 (Senate Journal‑page 67)

 5/9/2024 House Concurred in Senate amendment and enrolled (House Journal‑page 124)

 5/9/2024 House Roll call Yeas-109 Nays-0 (House Journal‑page 125)

 5/15/2024 Ratified R 225

 5/20/2024 Signed By Governor

 5/29/2024 Effective date 05/20/24

 5/29/2024 Act No. 180

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=4869&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[01/17/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4869_20240117.docx)

[01/31/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4869_20240131.docx)

[02/06/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4869_20240206.docx)

[04/25/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4869_20240425.docx)

[05/08/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4869_20240508.docx)

[05/09/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4869_20240509.docx)

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

(A180, R225, H4869)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 38‑3‑150, RELATING TO THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF INSURANCE OR HIS DESIGNEES TO CONDUCT EXAMINATIONS, INVESTIGATIONS, AND HEARINGS, SO AS TO PROVIDE FOR THE CONFIDENTIALITY OF SUCH INVESTIGATIONS; BY AMENDING SECTION 38‑9‑200, RELATING TO CONDITIONS FOR ALLOWING REINSURANCE CREDITS, SO AS TO REVISE CERTAIN CONDITIONS; BY AMENDING SECTION 38‑13‑10, RELATING TO INSURER EXAMINATIONS, SO AS TO PROVIDE SUCH EXAMINATIONS ARE FINANCIAL EXAMINATIONS, TO APPLY THE PROVISIONS TO HEALTH MAINTENANCE ORGANIZATIONS AND OTHER LICENSEES OF THE DEPARTMENT, TO PROVIDE MARKET CONDUCT EXAMINATIONS, AND TO REMOVE OBSOLETE PROVISIONS, AMONG OTHER THINGS; BY AMENDING SECTION 38‑13‑70, RELATING TO INVESTIGATIONS OF ALLEGED VIOLATIONS, SO AS TO PROVIDE THE DIRECTOR OR HIS DESIGNEES MAY CONDUCT INVESTIGATIONS, TO PROVIDE FOR THE CONFIDENTIALITY OF INVESTIGATIONS, AND TO PROVIDE FINAL ORDERS DISCIPLINING LICENSEES ARE PUBLIC INFORMATION, AMONG OTHER THINGS; BY AMENDING SECTION 38‑57‑130, RELATING TO INSURANCE TRADE PRACTICES, SO AS TO PROVIDE REVISED EXEMPTIONS FROM PROVISIONS PROHIBITING MISREPRESENTATIONS, SPECIAL INDUCEMENTS, AND REBATES IN INSURANCE CONTRACTS; AND BY AMENDING SECTION 38-77-170, RELATING TO THE REQUIRED CONDITIONS TO SUE OR RECOVER UNDER UNINSURED MOTORIST PROVISION WHEN THE OPERATOR OF THE MOTOR VEHICLE CAUSING INJURY OR DAMAGE IS UNKNOWN, SO AS TO ALLOW FOR THE SUBMISSION OF A RECORDING OF THE ACCIDENT, AMONG OTHER THINGS.

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

Examinations, investigations, and hearings

SECTION 1. Section 38‑3‑150 of the S.C. Code is amended to read:

 Section 38‑3‑150. All examinations or investigations provided by this title, unless otherwise provided by any other insurance laws of this State, may be conducted by the director or by one or more of his duly authorized assistants or agents. Investigations conducted pursuant to this title are confidential as set forth in Section 38‑13‑70. All hearings must be held by the director or by one of his duly authorized assistants or agents when authorized to do so in writing by the director. However, in any hearing concerning the adjustment of insurance rates the director or his designee may conduct the hearing.

Reinsurance credits

SECTION 2. Section 38‑9‑200(G)(4)(a) of the S.C. Code is amended to read:

 (a) While an assuming insurer’s eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer’s obligations under the contract are secured in accordance with Section 38‑9‑210.

Examinations of insurers

SECTION 3. Section 38‑13‑10 of the S.C. Code is amended to read:

 Section 38‑13‑10. (A) The director or his examiners may conduct a financial examination under this chapter of an insurer or health maintenance organization (HMO) or other licensee as authorized by this title as often as the director or his designee consider appropriate but, at a minimum, shall conduct a financial examination of every insurer licensed in this State not less frequently than once every five years. When the director or his designee considers it prudent for the protection of policyholders in this State, he may examine or have examined an insurer applying for admission in this State. In scheduling and determining the nature, scope, and frequency of the examinations, the director or his designee shall consider compliance with relevant South Carolina laws and regulations, the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria set forth in the Financial Condition Examiners’ Handbook adopted by the National Association of Insurance Commissioners and in effect when the director or his designee exercises his authority under this subsection.

 (B) The director or his examiners may conduct a market conduct examination whenever the director considers it appropriate based on the market analysis or practices of the insurer or HMO or other licensee as authorized by this title. The director or his designee has the discretion to conduct full scope or targeted, on-site market conduct examinations in accordance with the NAIC Market Regulation Handbook and other market analysis tools. The director is authorized to determine the frequency, depth, and timing of market conduct examinations and may schedule and coordinate multiple examinations simultaneously or participate in multistate examinations.

 (C) For purposes of completing an examination of an insurer under this chapter, the director or his designee may examine or investigate a person or his business in a manner considered necessary or material by the director or his designee.

 (D) In lieu of an examination under this section of a foreign or an alien insurer licensed in this State, the director or his designee may accept an examination report on the insurer prepared by the insurance department for the insurer’s state of domicile or port‑of‑entry state if one or both of the following apply:

 (1) The insurance department at the time of the examination was accredited under the National Association of Insurance Commissioners’ Financial Regulation Standards and Accreditation Program;

 (2) The examination is performed with the participation of one or more examiners who are employed by the accredited insurance department, and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their department.

Investigations of charges

SECTION 4. Section 38‑13‑70 of the S.C. Code is amended to read:

 Section 38‑13‑70. (A) Upon his own motion or upon written complaint filed by a citizen of this State that an insurer, health maintenance organization, or other person licensed or authorized to transact business in this State has violated this title, the director or his designee shall investigate the matter and, if necessary, examine under oath the president and other officers or agents of the insurer, health maintenance organization, or other person and all books, records, and papers of the insurer, health maintenance organization, or other person. The insurer, health maintenance organization, or other person and its representatives shall respond to the department’s inquiries, requests for information, or investigations within seven calendar days or within a larger timeframe granted by the director or his designee. If the director or his designee finds upon substantial evidence that a complaint is justified, the insurer, health maintenance organization, or other person, in addition to the penalties imposed for violation of this title, is liable for the expenses of the investigation, and the director or his designee shall promptly present the insurer with a statement of the expenses. If the insurer, health maintenance organization, or other person refuses or neglects to pay, the director or his designee is authorized to revoke its license and to bring civil action for the collection of the expenses.

 (B) The director or any of his duly authorized assistants or employees may investigate allegations that the insurance laws have been violated. Investigations conducted pursuant to this title are confidential and all work papers and regulatory communications are privileged and confidential. Nothing in this article may be construed as prohibiting the respondent from normal access to the charges and evidence filed against the respondent once the investigation is complete. The final order disciplining a licensee is public information as provided under applicable South Carolina law.

Exceptions to prohibitions in insurance contracts

SECTION 5. Section 38‑57‑130 of the S.C. Code is amended by adding:

 (5) Nothing in this section may be construed to prohibit an insurer or producer, by or through employees, affiliates or third‑party representatives of value‑added products or services at no or reduced cost when such products or services are not specified in the policy of insurance if the product or service:

 (a) relates to the insurance coverage; and

 (b) is primarily designed to satisfy one or more of the following:

 (i) provide loss mitigation or loss control;

 (ii) reduce claim costs or claim settlement costs;

 (iii) provide education about liability risks or risk of loss to persons or property;

 (iv) monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

 (v) enhance health;

 (vi) enhance financial wellness through items such as education or financial planning services;

 (vii) provide post‑loss services;

 (viii) incentivize behavioral changes to improve the health or reduce the risk of death or disability of a customer (defined for purposes of this subsection as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant); or

 (ix) assist in the administration of the employee or retiree benefit insurance coverage.

 (c) The cost to the insurer or producer offering the product or service to any given customer must be reasonable in comparison to that customer’s premiums or insurance coverage for the policy class.

 (d) If the insurer or producer is providing the product or service offered, the insurer or producer must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

 (e) The director may adopt regulations when implementing the permitted practices set forth in this statute to ensure consumer protection. Such regulation, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

 (f) The availability of the value‑added product or service must be based on documented objective criteria and offered in a manner that is not unfairly discriminatory. The documented criteria must be maintained by the insurer or producer and produced upon request by the department.

 (g) If an insurer or producer does not have sufficient evidence but has a good faith belief that the product or service meets the criteria in this subitem, the insurer or producer may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for no more than one year. An insurer or producer must notify the department of such a pilot or testing program offered to consumers in this State prior to launching and may proceed with the program unless the department objects within twenty‑one days of notice.

 (h) Information derived from the product or service offered under this subsection may not be used in underwriting the risk or to discriminate against any insured or potential insured.

Interpretation

SECTION 6. Section 38‑57‑130(4) of the S.C. Code is amended to read:

 (4) Nothing in this section may be construed to permit an unfair method of competition or an unfair or deceptive act or practice.

Required conditions to sue or recover under uninsured motorist provision

SECTION 7. Section 38-77-170 of the S.C. Code is amended to read:

 Section 38-77-170. (A) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, there is no right of action or recovery under the uninsured motorist provision, unless:

 (1) the insured or someone in his behalf reports the accident to some appropriate police authority within a reasonable time, under all the circumstances, after its occurrence; and

 (2) one of the following conditions is met:

 (a) the injury or damage was caused by physical contact with the unknown vehicle;

 (b) the accident was witnessed by someone other than the owner or operator of the insured vehicle; provided, however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit or upon failing to obtain the affidavit, the insured may seek a court order for a presuit deposition of the witness under the procedures set forth in Rule 27, South Carolina Rules of Civil Procedure; or

 (c) the insured can provide a recording of the accident, obtained electronically or otherwise, showing that the damage or injury was caused by the unknown vehicle; and

 (3) the insured was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

 (B) The following statement must be prominently displayed on the face of the affidavit provided in item (2)(b): A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2024.

Approved the 20th day of May, 2024.

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