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CHAPTER 57.

 TRADE PRACTICES

**SECTION 38‑57‑10.** Declaration of purpose.

The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945, (Public Law 15, 79th Congress), by defining, or providing for the determination of, all the practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

**SECTION 38‑57‑20.** “Person” defined.

When used in this chapter “person” means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, and adjusters.

**SECTION 38‑57‑30.** Unfair methods and deceptive acts prohibited.

No person may engage, in this State, in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

**SECTION 38‑57‑40.** Misrepresentation or false advertising of policies prohibited.

No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, proposal, circular, or statement misrepresenting the terms of a policy issued or to be issued or the benefits or advantages represented thereby or the dividends or share of the surplus to be received thereon, or make a false or misleading statement as to the dividend or share of surplus previously paid on similar policies or make a misrepresentation as to the financial condition of an insurer or as to the legal reserve system upon which an insurer operates or use any name or title of a policy or class of policies misrepresenting the true nature thereof.

**SECTION 38‑57‑45.** Use of state seal prohibited in advertising or promotion unless expressly approved; state endorsement disclaimer required on solicitation to state employees.

(A) No insurance agency, insurer, or health maintenance organization may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other solicitation material, an advertisement, representation, or statement with respect to the business of insurance which utilizes the Seal of South Carolina or any symbol which contains, includes, or is derivative of the Seal of South Carolina without the approval of the State Budget and Control Board.

(B) An insurance agency, an insurer, or a health maintenance organization must include in a prominent manner in solicitation material it utilizes specifically directed at and distributed to state employees a statement that the insurance program or health maintenance program is not officially endorsed by the State unless the program officially has been endorsed by the Budget and Control Board.

**SECTION 38‑57‑50.** False information or advertising as to insurance business prohibited.

No person may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, television, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive, or misleading.

**SECTION 38‑57‑60.** Fraudulently inducing insured to change, alter, or retain insurance prohibited.

No person may make a false, misleading, fraudulent, or incomplete representation or comparison of insurance policies or insurers for the purpose of inducing or intending to induce any person to lapse, forfeit, surrender, terminate, retain, or convert an insurance policy or to take out a policy in another insurer.

**SECTION 38‑57‑70.** Misrepresentations in adjustment of claims prohibited.

No person may, in connection with adjusting any claim, loss, or damage under a contract or policy of insurance, misrepresent to an insured, or any other person having an interest in the proceeds payable under the contract or policy the terms, coverage or effect of the contract or policy, for the purpose and with the intent of effecting settlement of the claim, loss, or damage under the contract or policy on less favorable terms than those provided in and contemplated by the contract or policy.

**SECTION 38‑57‑80.** False financial statements prohibited.

(1) No person may file with any supervisory or other public official, or make, publish, disseminate, circulate, or deliver to any person, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

(2) No person may make a false entry in a book, report, or statement of an insurer with intent to deceive an agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom the insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

**SECTION 38‑57‑90.** Defamation prohibited.

No person may make, publish, circulate, or disseminate, directly or indirectly, or aid, abet, or encourage the making, publishing, circulating, or disseminating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer or of an organization proposing to become an insurer and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

**SECTION 38‑57‑100.** Boycotts, intimidation, and coercion prohibited.

No person may enter into an agreement to commit, or by any concerted action commit, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

**SECTION 38‑57‑110.** Coercion of business by sellers or lenders prohibited.

(1) No lender, vendor, or person engaged in selling real or personal property or the financing thereof or the lending of money on the security thereof, and no trustee, agent, officer, or other employee of any such person, may require, as a condition precedent, concurrent, or subsequent to the sale or financing the purchase of such property or to lending money upon the security of a mortgage thereon or as a condition precedent, concurrent, or subsequent for the renewal or extension of the loan or mortgage, that the purchaser or borrower negotiate a policy of insurance or renewal thereof covering the property through a particular insurer or agent.

(2) This section does not prevent a mortgagee, real or chattel, of the right to designate reasonable financial requirements of the insurer and adequacy of the terms and provisions of the coverage with respect to the property pledged or mortgaged. A requirement that the insurer providing coverage be a particular type of insurer is not considered a reasonable financial requirement, if the insurer issues nonassessable policies and otherwise meets reasonable financial requirements.

**SECTION 38‑57‑120.** Unfair discrimination in life insurance, annuities, and disability insurance prohibited.

(1) No person may make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of the contract.

(2) No person may make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of the contract or in any other manner.

**SECTION 38‑57‑130.** Misrepresentations, special inducements, and rebates prohibited on all insurance contracts.

(1) No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular statement misrepresenting the terms of any policy issued or to be issued, the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon.

(2) No person may make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies.

(3) No person may pay, allow, or give or offer to pay, allow, or give, directly or indirectly, as inducement to the purchase or the renewal of an insurance contract, any rebate of premiums payable on the contract, any special favor or advantage in any benefits payable thereon, or any valuable consideration or inducement that is not specified in the contract.

**SECTION 38‑57‑140.** Discrimination and rebating permitted in life insurance, annuities, and disability insurance.

Nothing in Sections 38‑57‑120 and 38‑57‑130 may be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance, life annuity, or disability insurance, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance. However, these bonuses or abatement of premiums must be fair and equitable to policyholders and for the best interests of the insurer and its policyholders.

(2) In the case of life insurance and disability policies issued on the debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year.

(4) Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, or payroll deduction plan or other similar plan at a reduced rate reasonably related to the savings made by the use of the plan.

**SECTION 38‑57‑150.** Inducements prohibited; exception.

(1) No policy or annuity contract may provide for, and no person may engage in any of the following, as an inducement to the purchaser or in connection with or as reference to the policy or annuity contract, directly or indirectly:

(a) Paying, allowing, giving, or offering any paid employment or contract for services of any kind.

(b) Giving, selling, or purchasing or offering or agreeing to give, sell, purchase, allow, or provide for any agreement promising returns and profits, or any stock, bonds, or other securities, including trading stamps or other properties or present or contingent interest therein of any insurer or other corporation, association, partnership, or person, or any dividends or profits accrued thereon.

(c) Giving, allowing, arranging for, or offering any advisory board contract, or similar contract, promising returns and profits.

(2) Subsection (1) does not prohibit a licensed agent who is registered under Chapter 1 of Title 35 from offering to sell shares of or interests in mutual funds in connection with or as reference to a policy or annuity contract if the agent, at the time of the offer, gives the prospective buyer a written prospectus which has been filed with and approved by the director or his designee and the Securities Commissioner.

**SECTION 38‑57‑160.** Advertising gifts permitted.

Sections 38‑57‑130, 38‑57‑140, and 38‑57‑150 do not prohibit a licensed agent from giving to insureds, prospective insureds, and to others, for the purpose of advertising, an article of merchandise having a value of not more than twenty‑five dollars and having an advertisement for the insurer or agent printed on it. Nothing within this section precludes a licensed agent from providing refreshments during a sales presentation which do not exceed ten dollars a person in cost.

**SECTION 38‑57‑170.** Free insurance or advertisement thereof prohibited; exceptions.

(1) No person in this State may advertise, offer, or provide free insurance as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with real or personal property.

(2) For the purposes of this section, “free” insurance is insurance for which no identifiable and additional charge is made to the purchaser of the real property or personal property or services or insurance for which an identifiable or additional charge is made in an amount less than the cost of the insurance as to the seller or other person, other than the insurer, providing the insurance.

(3) Subsections (1) and (2) do not apply to:

(a) Insurance against loss of or damage to the real or personal property involved in any sale or services under a policy covering the interest of the seller or vendor.

(b) Credit life or credit accident and health insurance.

(c) Title insurance.

(d) Obligations issued by insurers licensed in this State which shall indemnify against breaches of warranties made in connection with any sale or services.

(4) No person may use the word “free” to describe life or accident and health insurance in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.

**SECTION 38‑57‑180.** Insurance cost must be specified in sales and loans.

Where the premium or charge for insurance is included in the overall purchase price or financing of the purchase of merchandise or property, the vendor or lender shall separately state and identify the amount charged and to be paid for the insurance and the classifications if any, upon which based. The inclusion or exclusion of the cost of insurance in the purchase price or financing may not increase, reduce, or otherwise affect any other factor involved in the cost of the merchandise or property or financing as to the purchaser or borrower.

**SECTION 38‑57‑200.** Findings and order.

If, after a hearing, the director or his designee determines that a method of competition or an act or practice is unfair or deceptive as defined in this title and that the person complained of has engaged in the method of competition, act, or practice in violation of this title, he shall reduce his finding to writing and shall issue and cause to be served upon the person charged with the violation:

(1) an order requiring the person to cease and desist from engaging in the method of competition, act, or practice; and

(2) an order imposing penalties provided in Section 38‑2‑10.

**SECTION 38‑57‑210.** Intervenor at hearing; judicial review at instance of intervenor.

Upon good cause shown, the director or his designee shall permit any person to intervene, appear, and be heard at the hearing by counsel or in person. If the report of the director or his designee does not charge a violation of this chapter, then any intervenor in the proceedings may, within thirty days after the service of the report, cause a petition to be filed in the Circuit Court of Richland County for a review of the report. Upon review the court has authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding the report of the director or his designee, constitutes a violation of this chapter.

**SECTION 38‑57‑220.** Immunity from prosecution.

If any person asks to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty or forfeiture and is, notwithstanding, directed to give the testimony or produce the evidence, he shall comply with the direction, but he may not thereafter be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence pursuant thereto. No testimony so given or evidence produced may be received against him upon any criminal action, investigation, or proceeding. The individual so testifying is not exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence so given or produced is admissible against him upon any criminal action, investigation, or proceeding concerning the perjury, nor is he exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred or to be conferred pursuant to this title. The individual may execute, acknowledge, and file in the office of the department a statement expressly waiving his immunity or privilege in respect to any transaction, matter, or thing specified in the statement and thereupon the testimony of the person or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and, if so received or produced, the individual is not entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

**SECTION 38‑57‑230.** Violation of cease and desist order.

Any person who contemptuously violates a cease and desist order of any practice issued by the director or his designee shall, upon due notice, receive a hearing before the director or his designee. Upon the determination of the director or his designee that the contemptuous violation has been committed, the director or his designee shall issue his order to the effect that the person is in contempt of his order to cease and desist. Any person who contemptuously violates a cease and desist order of the director or his designee shall pay a fine set by the director or his designee but not to exceed fifty dollars for each day of violation. However, if the violation is wilful, the fine may be assessed in an amount not to exceed one hundred dollars per day of violation.

**SECTION 38‑57‑240.** Notice of levy and proceedings for collection.

If upon completion of the hearing the director or his designee has elected to levy a fine on the person involved, that person must be so notified in writing by certified mail and of the amount of the fine. The notice shall state that, if the fine is not paid within thirty days from the date of receipt of the notice, further action to effect collection under this chapter will be initiated, together with revocation of the person’s license or certificate of authority.

**SECTION 38‑57‑250.** Filing order with clerk of court.

When the time for appeal has expired and no appeal has been perfected by the person fined, the director or his designee shall file with the clerk of court of the county in which the person fined resides and for any other county in which he may own personal or real property, or an interest therein, a copy of the order. The clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the person fined and in appropriate columns the amount of the fine and costs for which the order calls and the date when the copy was filed and shall index the order upon the judgment roll index. The order has the full effect of a civil judgment including rights of the judgment creditor to issue execution and accrue interest at the legal rate until the time as it is satisfied.

**SECTION 38‑57‑260.** Levy of execution; sheriff’s fees.

If the fine remains unpaid after filing the order, the director or his designee shall levy on the real or personal property or any interest he may have therein, by issuing execution to the sheriff of the county of residence of the person fined. The sheriff shall proceed upon the execution with like effect and in the same manner prescribed by law with respect to executions issued against property upon judgments of a court of record. The sheriff is entitled to a fee equivalent to five percent of the total amount of the warrant for service in executing the order and the clerk of court is entitled to the same fees for recording the order as one prescribed by law in respect to executions issued against property upon judgments of a court of record. These fees are to be added to and collected with the total amount of the order.

**SECTION 38‑57‑270.** Remedies when fine not satisfied in full.

If an order is returned not satisfied in full, the director or his designee has the same remedies to enforce the claim for the fine and costs against the person fined as if the people of the state had recovered judgment against the person fined for the amount of the fine and costs.

**SECTION 38‑57‑280.** Payment of fine under protest.

When the director or his designee levies a fine against a person and takes action to effect collection of the fine under this chapter, that person may pay the fine under written protest if he considers the fine to be unjust or illegal. Upon the protested payment being made, the director or his designee shall pay the fine into the state treasury, giving the State Treasurer notice at that time that the payment was made under protest.

**SECTION 38‑57‑290.** Action for recovery of fine paid under protest.

Any person paying a fine levied by the director or his designee, under protest, may at any time within thirty days after payment, but not afterwards, bring an action against the director or his designee for the recovery thereof in the court of common pleas of the county in which the fine was payable. If it is determined in that action that the fine was wrongfully or illegally levied and collected, for any reason going to the merits, the court before whom the case is tried shall certify of record that the fine was wrongfully collected and should be refunded and thereupon the Comptroller General shall issue his warrant for the refunding of the fine so paid.

**SECTION 38‑57‑300.** Attorney General to defend actions against director for recovery of fines; how judgment against director to be paid.

The Attorney General shall defend any suit or proceeding against the director or his designee for the recovery of fines allegedly illegally or unjustly paid under this title. Any judgment against the director or his designee must be paid in the manner prescribed in Section 38‑57‑290.

**SECTION 38‑57‑310.** Limit of recovery against director or designee.

In any action or proceeding against the director or his designee for the purpose of recovering a fine allegedly illegally or unjustly collected, the amount received in the suit may not exceed the amount of the fine paid under protest, together with costs arising from the service of process and procuring the attendance of witnesses.

**SECTION 38‑57‑320.** Revocation or suspension of license or certificate of authority to effect collection of fine.

In all cases when it is necessary to file an order with a clerk of court to effect collection of a fine, the license or certificate of authority of the person fined may be summarily revoked or suspended.