

## Session 110 - (1993-1994)

### **S 0244 General Bill, By Martin, Cork, Gregory, Leatherman and Peeler**

#### ***Similar (H 3246)***

A Bill to amend Title 38, Code of Laws of South Carolina, 1976, relating to insurance, by adding Chapter 78 so as to enact the "Consumer Freedom of Choice in Motor Vehicle Insurance Act"; to amend the 1976 Code by adding Section 38-73-1075 so as to prohibit an insurer from increasing the premium on an automobile liability insurance policy solely as a result of a claim for an automobile accident filed by an insured if the insured was not at fault nor contributorily negligent; to amend Section 38-77-30, as amended, relating to the definition of "automobile insurance", so as to provide for the inclusion of the personal protection policy as defined in Section 38-78-30(C); to amend Section 38-77-110, as amended, relating to the automobile insurance law, the requirement on insurers to insure, and exceptions, so as to expand the exceptions with respect to added personal protection coverage as defined in Section 38-78-30(B); to amend the 1976 Code by adding Section 38-77-355 so as to provide that, in a claim or action for personal injury or wrongful death arising out of the ownership, operation, use or maintenance of a motor vehicle, the court shall admit into evidence the total amount paid to the claimant from collateral sources and shall instruct the jury to deduct from its verdict the value of all benefits received by the claimant from collateral sources; to amend Section 38-77-280, as amended, relating to collision and comprehensive insurance coverage, so as to delete the provisions of that Section and provide that after a certain date automobile insurers may refuse to write or renew private passenger automobile physical damage insurance coverage, including comprehensive physical damage, collision, fire, theft, and combined additional coverage for an applicant or existing policyholder and that no private passenger automobile physical damage insurance coverage may be ceded to the Reinsurance Facility; to amend Section 38-77-30, as amended, relating to automobile insurance and the definition of "damages", so as to provide that the term includes actual damages only; to amend Section 38-77-140, relating to automobile insurance and bodily injury and property damage limits, so as to qualify "damages" as "actual damages" and require an insurer to offer an insured a rider or endorsement for an additional premium to cover liability for punitive damages; to amend Section 38-77-150, relating to automobile insurance, the uninsured motorist provision, and defense of an action by the insurer, so as to, among other things, delete certain language, require insurers to offer higher limits of uninsured motorist coverage, and provide that benefits paid pursuant to this Section are subject to subrogation and assignment; to amend Section 38-77-160, as amended relating to additional uninsured motorist coverage and underinsured motorist coverage, so as to, among other things, delete certain language, provide that if an insured is entitled to uninsured motorist or underinsured motorist coverage under more than one policy, the maximum amount the insured may recover may not exceed the highest limit of such coverage provided for any one vehicle under any one policy, and provide that underinsured motorist benefits paid pursuant to this Section are subject to subrogation and assignment; to amend Section 56-9-350, relating to security following motor vehicle accidents, verification of insurance coverage form to be issued following certain accidents, effect of failure to return the form, and uninvestigated accidents, so as to delete certain language and provide that the operator or owner of a motor vehicle involved in an accident resulting in property damage of four hundred dollars or more or in bodily injury or death within fifteen days after the accident shall forward a written report of the accident on a prescribed form; to amend Section 56-10-10, relating to vehicle financial security and other matters and security required on registered vehicles, so as to delete certain language and require that security be maintained on every motor vehicle required to be registered in South Carolina where the owners or other operators not excluded in accordance with Section 38-77-340 reside in the same household and are insureds under the same policy, if one of the owners or other operators does not qualify for the safe driver discount in Section 38-73-760; to amend Section 56-10-220, relating to the requirement that a vehicle sought to be registered be insured, so as to define persons applying for registration as persons required to provide security on a motor vehicle as provided in Section 56-10-10; to amend Section 56-10-240, relating to the requirement that, upon the loss of insurance, the insured obtain new insurance or surrender vehicle registration and plates, written notice by the insurer, suspension of registration and plates, appeal of suspension, enforcement, and penalties, so as to delete certain language, further describe and qualify a motor vehicle which is or becomes an uninsured motor vehicle, and define the resident for whom the laps or termination occurs after three months as one who does not qualify for the safe driver discount under Section 38-73-760; to amend Chapter 10 of Title 56, relating to motor vehicle registration, and financial security, by adding an Article 5 so as to enact provisions for the registration and licensing of uninsured motor vehicles; to amend Section 38-77-110, as amended, relating to automobile insurance, the requirement upon insurers to insure, and exceptions, so as to provide that insurers other than those designated and approved as specialized insurers by the Chief Insurance Commissioner may not refuse to write or renew automobile insurance policies for individual private passenger automobiles, if the risk qualifies for the safe driver discount in Section 38-73-760, or small commercial risks, provide that no insurer is required to write or renew private passenger automobile insurance if the risk does not qualify for the safe driver discount, delete certain language, provide that no insurer may refuse to write or renew a policy, coverage, or endorsement of automobile insurance because of

the race, color, creed, national origin, ancestry, or income of anyone who seeks to become insured, and provide that an applicant denied coverage must be provided in writing by the denying insurer the reason or reasons for which the applicant has been refused insurance by that insurer, at the time of the denial; to amend Chapter 77 of Title 38, relating to automobile insurance, by adding an Article 13 so as to provide for a joint underwriting association and provide, among other things, for the abolition of the Reinsurance Facility upon a certain date, that the administration of the phase out of the Facility is transferred to the Association, and that, as of a certain date, the Facility recoupment charge must not be included in the rate or premium charged by the insurers of private passenger automobile insurance to drivers who qualify for the safe driver discount; to amend Section 38-73-455, as amended, relating to automobile insurance rates, so as to, among other things, delete certain language, require an automobile insurer to offer four, rather than two, different rates for automobile insurance, and provide that, no later than ninety days after the passage of this Act, insurers of automobile insurance must file with the Chief Insurance Commissioner rates for personal protection policies as defined by Section 38-78-30 and revise rates for all other private passenger automobile insurance policies written by them; to amend Section 38-73-760, as amended, relating to the state rating and statistical division and uniform statistical plans, so as to provide that no surcharge may be assessed for the first conviction of speeding less than twenty miles per hour if the person convicted has maintained the safe driver discount for the previous three years, and provide that no surcharge may be assessed for certain convictions occurring on or after January 1, 1995; to amend Section 56-10-270, relating to the operation of an uninsured vehicle and penalties, so as to, among other things, increase the penalties, including provisions for the performance of public service hours; to amend the 1976 Code by adding Section 38-77-116 so as to provide that, upon issuance of a new private passenger automobile insurance policy, the insurance company or agent must review with the new applicant a list of driving offenses and the related fine and punishment, among other things; to provide that, after September 30, 1994, the governing board of the Joint Underwriting Association shall contract with one or more insurers or business entities to serve as the designated carrier and shall establish a procedure for the selection of the designated carrier, and provide that commissions paid to agents for policies ceded to or placed in the Association shall be set by the Association's Board of Directors; to amend the 1976 Code by adding Sections 38-77-175 and 56-7-12 so as to provide, among other things, that when the operator or owner of a motor vehicle is issued a traffic ticket for a moving violation by a law enforcement officer, he must be furnished a written request form to complete to verify liability insurance coverage and that the form must be as prescribed by regulation of the Department of Highways and Public Transportation; to repeal Article 5 of Chapter 77 of Title 38, relating to the Reinsurance Facility and designated producers, Section 38-73-1420, relating to the requirement upon the Board of Governors of the Reinsurance Facility to file and expense component and use of the component after approval, Section 38-73-1425, relating to the final rate or premium charge for private passenger automobile insurance risk ceded to the Reinsurance Facility, Section 38-77-285, relating to the requirement that all automobile insurance coverages written by an insurer for an insured's automobile must be written in the same policy, with exceptions and qualifications, Section 38-77-920, relating to the provision that insurers and agents may not refuse the acceptance of automobile insurance, property rights of certain agents, and restriction of mailings to certain areas, Section 38-77-940, relating to automobile insurance, avoiding certain classes or types or risks, exceptions, and canceling an agent's representation, Section 38-77-950, relating to unreasonable or excessive use of the Reinsurance Facility by an insurer and notice to a policyholder that his policy is in the Facility, and Section 38-77-960, relating to automobile insurance agent's business; to amend Section 38-77-111, relating to the coverages of an automobile insurance policy which may be ceded to the Reinsurance Facility, so as to substitute the Joint Underwriting Association for the Reinsurance Facility and provide that an insurer may not cede coverages under a policy that it is not mandated by law to write except for tort liability and personal protection coverages and uninsured motorist coverage for those risks that do not qualify for the safe driver discount; and to provide for a severability clause, including, among other things, a provision that if Section 38-78-110 is found to be unconstitutional or invalid, personal protection insurers have no obligation to pay personal protection benefits with respect to accidents occurring on or after the date of the finding of such unconstitutionality or invalidity and, in addition, are subrogated to all of the rights of personal protection insureds for all previous such benefits paid.

**01/20/93 Senate Introduced and read first time SJ-4**

**01/20/93 Senate Referred to Committee on Banking and Insurance SJ-10**