**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑57‑190 SO AS TO PROHIBIT AN INSURER FROM IMPOSING A SURCHARGE ON A PREMIUM BASED UPON A MOTOR VEHICLE RECORD OR INSURANCE SCORE DURING THE FIRST THIRTY DAYS OF THE POLICY PERIOD UNDER CERTAIN CONDITIONS; BY ADDING SECTION 38‑57‑330 SO AS TO PROHIBIT INSURERS WHO USE INSURANCE SCORING FROM USING CERTAIN CREDIT ACTIVITIES IN THE SCORING PROCESS; TO AMEND SECTION 38‑43‑20, AS AMENDED, RELATING TO EXCEPTIONS FOR REQUIRING A LICENSE TO ACT AS AN AGENT FOR AN INSURER OR FOR A FRATERNAL BENEFIT ASSOCIATION, SO AS TO CLARIFY THAT THE EXCEPTION FOR AN EMPLOYEE OF A LICENSED PRODUCER DOES NOT INCLUDE CLERICAL DUTIES TO INCLUDE EXPLANATION OR ADVICE CONCERNING INSURANCE COVERAGE; TO AMEND SECTION 38‑59‑20, RELATING TO THOSE BUSINESS PRACTICES WHICH CONSTITUTES IMPROPER CLAIM PRACTICES, SO AS TO ADD INVOKING OR THREATENING POLICY DEFENSES UNDER CERTAIN CONDITIONS; AND TO AMEND SECTION 38‑77‑350, AS AMENDED, RELATING TO THE FORM WHICH MUST BE USED WHEN OPTIONAL COVERAGES ARE OFFERED, SO AS TO REQUIRE THE FORM TO BE WITNESSED BY A PRODUCER OR A REPRESENTATIVE OF AN INSURER.

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

SECTION 1. Chapter 57, Title 38 of the 1976 Code is amended by adding:

“Section 38‑57‑190. The insurer may not surcharge the premium based upon a motor vehicle record or insurance score during the first thirty days of the policy period if the insurer did not access information that was available concerning the motor vehicle record or insurance score when the policy was bound.”

SECTION 2. Chapter 57, Title 38 of the 1976 Code is amended by adding:

“Section 38‑57‑330. An insurer who uses insurance scoring when rating automobile policies may not use the following credit activities in the scoring process:

(1) credit actions that occur when the person is in the military or national guard;

(2) credit actions due to medical bills that are due to a diagnosis of cancer, pregnancy, muscular dystrophy, or where the person has not received child support payments;

(3) credit actions that occur when a person has a child with a disability due to birth defect or serious illness.”

SECTION 3. Section 38‑43‑20(D)(1)(d) of the 1976 Code, as last amended by Act 326 of 2008, is further amended to read:

“(d) an employee of a licensed producer who is under the producer’s direct supervision or an employee of a licensed insurer, who performs only clerical duties, and who is paid on an hourly or salary basis and not on a commission basis; or an agency office employee acting within the confines of the producer’s office, under the direction and supervision of the licensed producer and within the scope of the producer’s license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties. Clerical duties do not include explanation or advice concerning insurance coverage.”

SECTION 4. Section 38‑59‑20 of the 1976 Code is amended to read:

“Section 38‑59‑20. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices:

(1) Knowingly misrepresenting to insureds or third‑party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, including third‑party claims arising under liability insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third‑party liability claims, arising under its policies.

(4) Not attempting in good faith to effect prompt, fair, and equitable settlement of claims, including third‑party liability claims, submitted to it in which liability has become reasonably clear.

(5) Compelling policyholders or claimants, including third‑party claimants under liability policies, to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through suits brought by the claimants or through settlements with their attorneys employed as the result of the inability of the claimants to effect reasonable settlements with the insurers.

(6) Offering to settle claims, including third‑party liability claims, for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys’ fees to recover the amount reasonably due or payable.

(7) Invoking or threatening to invoke policy defenses or to rescind the policy as of its inception, not in good faith and with a reasonable expectation of prevailing with respect to the policy defense or attempted rescission, but for the primary purpose of discouraging or reducing a claim, including a third‑party liability claim.

(8) Invoking or threatening to invoke policy defenses when the insurer of automobiles does not conduct physical inspections of the vehicles before the policy being bound, but for the primary purpose of discouraging or reducing a claim.

(9) ~~Any other~~ Another practice which constitutes an unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third‑party liability claims, arising under coverages provided by its policies.”

SECTION 5. Section 38‑77‑350(B) of the 1976 Code, as last amended by Act 395 of 2006, is further amended to read:

“(B) If this form is signed by the named insured and witnessed by a producer or a representative of an insurer, after it has been completed by an insurance producer or a representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor an insurance agent is liable to the named insured or another insured under the policy for the insured’s failure to purchase optional coverage or higher limits.”

SECTION 6. This act takes effect upon approval by the Governor.

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