~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 13, 2018

**H. 4657**

Introduced by Reps. Sandifer and Spires

S. Printed 2/13/18--H.

Read the first time January 23, 2018.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4657) to amend Section 38‑2‑10, Code of Laws of South Carolina, 1976, relating to administrative penalties for the violation of the insurance laws of South Carolina, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 38‑2‑10 of the 1976 Code is amended to read:

“Section 38‑2‑10. (A) Unless otherwise specifically provided by law, the following administrative penalties apply for each violation of the insurance laws of this State or federal insurance laws subject to enforcement by the Department of Insurance:

(1) If the violator is an insurer or a health maintenance organization licensed in this State, the director or his designee shall ~~(a)~~ fine the violator in an amount not to exceed fifteen thousand dollars, ~~or (b)~~ suspend or revoke the violator’s authority to do business in this State, or both. If the violation is wilful, the director or his designee shall ~~(a)~~ fine the violator in an amount not to exceed thirty thousand dollars, ~~or (b)~~ suspend or revoke the violator’s authority to do business in this State, or both.

(2) If the violator is a person, other than an insurer or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall ~~(a)~~ fine the person in an amount not to exceed two thousand five hundred dollars, ~~or (b)~~ suspend or revoke the license of the person, or both. If the violation is wilful, the director or his designee shall ~~(a)~~ fine the person in an amount not to exceed five thousand dollars, ~~or (b)~~ suspend or revoke the license of the person, or both.

(B) The penalties in ~~items (1) and (2)~~ subsection (A) are in addition to any criminal penalties provided by law or any other remedies provided by law. The administrative proceedings in ~~items (1) and (2)~~ subsection (A) do not preclude civil or criminal proceedings from taking place before, during, or after the administrative proceeding.”

SECTION 2. Section 38‑13‑70 of the 1976 Code is amended to read:

“Section 38‑13‑70. 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 ~~against an insurer~~ 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.”

SECTION 3. Section 38‑33‑170(A) and (B) of the 1976 Code is amended to read:

“(A) The director or his designee may make an examination of the affairs of a health maintenance organization and providers with whom the organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this State but not less frequently than once every ~~three~~ five years. The director or his designee may accept the report of an examination made by the state where the health maintenance organization is domiciled.

(B) The director or his designee may make an examination concerning the quality of health care service of a health maintenance organization and providers with whom the organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this State but not less frequently than once every ~~three~~ five years.”

SECTION 4. Section 38‑33‑230(A) of the 1976 Code is amended to read:

“(A) The director or his designee ~~may~~, in lieu of revocation or suspension of a certificate of authority under Section 38‑33‑180, may levy an administrative penalty of not more than fifteen thousand dollars for each violation of state or federal laws the Department of Insurance is authorized to enforce or ground as prescribed therein. A series of acts by an organization which merely implement a basic violation and are not separate and distinct violations of an independent nature are considered to be part of the basic violation and only one penalty may be imposed. A monetary penalty may be imposed under this paragraph only after notice and an opportunity to be heard have been afforded in accordance with Section 38‑33‑210.”

SECTION 5. Section 38‑61‑20(A) and (C) of the 1976 Code is amended to read:

“(A) It is unlawful for an insurer doing business in this State to issue or sell in this State a policy, contract, or certificate until it has been filed with and approved by the director or his designee. The director or his designee may disapprove the form if it:

(1) does not meet the requirements of applicable state or federal law the Department of Insurance is authorized to enforce;

(2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

(3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

However, this subsection does not apply to surety contracts or fidelity bonds, except as required in Section 38‑15‑10, or to insurance contracts, riders, or endorsements prepared to meet special, unusual, peculiar, or extraordinary conditions applying to an individual risk or exempt commercial policies.

(C) At any time after having given written approval, and after an opportunity for a hearing for which at least thirty days’ written notice has been given, the director or his designee may withdraw approval, impose the penalties pursuant to Section 38‑2‑10 if the insurer continues use of the form after it has been ordered withdrawn, or both, if he finds that the form:

(1) does not meet the requirements of applicable state or federal law the Department of Insurance is authorized to enforce;

(2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

(3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.”

SECTION 6. Section 38‑71‑90 of the 1976 Code is amended to read:

“Section 38‑71‑90. An insurer, health maintenance organization, or its officer or agent that issues or delivers to any person in this State any policy in wilful violation of any of the provisions of this chapter or any other applicable state or federal law governing the transaction of business of insurance the Department of Insurance is authorized to enforce is subject to the provisions of Section 38‑2‑10 for each offense.”

SECTION 7. Sections 38‑51‑20 and 38‑51‑30 of the 1976 Code is amended to read:

“Section 38‑51‑20. No person may act as an administrator in this State without first being licensed by the director or his designee.

Any person who acts as an administrator without a license is guilty of a misdemeanor and upon conviction must be fined not more than ten thousand dollars or imprisoned for not more than two years, or both, and is subject to revocation of any insurance licenses issued by the director or his designee.

Application for a license must be upon forms prescribed by the director or his designee and must be accompanied by an initial license fee of one hundred dollars, annual financial statements or reports for the two preceding calendar years, and any other documents that the director or his designee may require to ensure that the administrator meets the requirements for licensure set forth in this section. Thereafter, the administrator shall pay to the department a license renewal fee of one hundred dollars by March first of each year.

Before granting any license, the director or his designee must be satisfied that the administrator is competent, trustworthy, financially responsible, has a good personal and business reputation, has not had an insurance license revoked, suspended, or denied in any jurisdiction within the preceding five years, and has not been convicted of a crime involving fraud, dishonesty, or moral turpitude in any jurisdiction. For purposes of this section, ‘convicted’ includes a plea of guilty or a plea of nolo contendere.

The director or his designee may revoke or suspend any license issued to an administrator when he finds that any condition exists which would have prohibited issuance of the original license, that the administrator has violated any provision of this chapter, or that the administrator has deceived or dealt unjustly with the citizens of this State. In lieu of revocation or suspension of license, the director or his designee may impose an administrative monetary penalty not to exceed one thousand dollars for each offense.

Section 38‑51‑30. Every administrator shall file and maintain with the department a surety bond in favor of the state executed by a surety company authorized to transact business in this State. In lieu of bond, the administrator may file with the department letters of credit, certificates of deposit of building and loan associations or federal savings and loan associations located within the state in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed the amount of insurance, or of banks located within the state in which deposits are guaranteed by the Federal Deposit Insurance Corporation, not to exceed the amount covered by insurance or any other financial instrument that the director or his designee deems appropriate. The director or his designee may also in his sole discretion accept in lieu of a bond or certificates of deposit or letter of credit a corporate guaranty by an insurer licensed to transact business in this State. The corporate guaranty must meet any requirements the director or his designee requires. The director or his designee may withdraw his acceptance of a corporate guaranty in lieu of bonds or certificates of deposit at any time. The amount of the bond, certificates of deposit, corporate guaranty letter of credit, or any other instrument the director or his designee deems appropriate, filed with the department must be in the amount of seventy‑five thousand dollars for initial applicants. Upon renewal, the applicant shall submit a surety bond in an amount that represents ten percent of the total premiums handled or managed in South Carolina for the previous calendar year. The amount of the surety bond for renewal applications must not be less than seventy‑five thousand dollars and may not exceed five hundred thousand dollars. All bonds must include a provision requiring a thirty day advance notification of cancellation to the department. The bond must be on a form approved by the director or his designee. Any of the above‑described financial instruments must be conditioned to pay any person who sustains a loss as a result of: (a) the administrator’s violation of or failure to comply with any requirement of this chapter; (b) the administrator’s failure to transmit properly any payment received by it for transmission to an insurer or other person; (c) the administrator’s misapplication or misappropriation of funds received by it; or (d) any act of fraud or dishonesty committed by the administrator in the administration of an insurance benefit plan. Any aggrieved person may institute an action in the county of his residence against the administrator or his surety, or both, to recover on the bond or to recover from the certificates of deposit or corporate guaranty or letters of credit. Nothing in this section may be construed to prohibit agreements between administrators and insurers providing for additional bonds. The director or his designee may waive the bonding requirements of this section in whole or in part to the extent that funds handled by the administrator are handled on behalf of a licensed insurance company, if the administrator has furnished a bond or other security to the insurance company which meets the purposes of this section. Under no circumstances may the director or his designee waive the bonding requirements of this section with respect to funds handled by the administrator on behalf of self‑insured persons, groups, or entities.”

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

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑2‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ADMINISTRATIVE PENALTIES FOR THE VIOLATION OF THE INSURANCE LAWS OF SOUTH CAROLINA, SO AS TO ALLOW THE DEPARTMENT OF INSURANCE TO ENFORCE THESE PENALTIES FOR VIOLATIONS OF FEDERAL INSURANCE LAWS SUBJECT TO ENFORCEMENT BY THE DEPARTMENT; TO AMEND SECTION 38‑3‑150, RELATING TO THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO CONDUCT EXAMINATIONS AND INVESTIGATIONS, SO AS TO REQUIRE THAT INFORMATION RELATED TO AN EXAMINATION OR INVESTIGATION TO BE TREATED AS PRIVILEGED AND CONFIDENTIAL; TO AMEND SECTION 38‑13‑70, RELATING TO INVESTIGATIONS CONDUCTED BY THE DEPARTMENT OF INSURANCE, SO AS TO AUTHORIZE THE DEPARTMENT TO RESPOND TO MOTIONS AND COMPLAINTS AGAINST HEALTH MAINTENANCE ORGANIZATIONS AND PERSONS LICENSED TO TRANSACT THE BUSINESS OF INSURANCE IN THIS STATE AND TO ESTABLISH A DEADLINE FOR RESPONSES TO THE DEPARTMENT’S INQUIRIES; TO AMEND SECTION 38‑21‑290, AS AMENDED, RELATING TO CONFIDENTIAL INFORMATION, SO AS TO PROVIDE DOCUMENTS, MATERIALS, OR OTHER INFORMATION SUBMITTED IN SUPPORT OF AN APPLICATION MUST BE TREATED AS CONFIDENTIAL; TO AMEND SECTION 38‑33‑170, RELATING TO THE EXAMINATIONS OF THE AFFAIRS OF A HEALTH MAINTENANCE ORGANIZATION, SO AS TO REQUIRE AN EXAMINATION NO LESS THAN EVERY FIVE YEARS; TO AMEND SECTION 38‑33‑230, RELATING TO LEVY OF ADMINISTRATIVE PENALTY IN LIEU OF OTHER PENALTIES, SO AS TO ALLOW THE LEVY OF AN ADMINISTRATIVE PENALTY FOR VIOLATIONS OF STATE AND FEDERAL INSURANCE LAWS SUBJECT TO ENFORCEMENT BY THE DEPARTMENT OF INSURANCE; TO AMEND SECTION 38‑61‑20, RELATING TO THE APPROVAL OF INSURANCE POLICIES, CONTRACTS, OR POLICIES BY THE DEPARTMENT OF INSURANCE, SO AS TO REQUIRE THAT ALL FORMS FILED WITH THE DEPARTMENT SATISFY ALL APPLICABLE STATE AND FEDERAL LAWS AND TO AUTHORIZE THE DIRECTOR TO IMPOSE A PENALTY IN CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 38‑71‑90, RELATING TO THE PENALTIES FOR ISSUING OR DELIVERING A POLICY THAT VIOLATES CHAPTER 71, SO AS TO EXTEND THE PENALTIES TO ANY INSURER OR HEALTH MAINTENANCE ORGANIZATION WHO VIOLATES APPLICABLE STATE OR FEDERAL LAWS GOVERNING THE TRANSACTION OF THE BUSINESS OF INSURANCE SUBJECT TO ENFORCEMENT BY THE DEPARTMENT OF INSURANCE.

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

SECTION 1. Section 38‑2‑10 of the 1976 Code is amended to read:

“Section 38‑2‑10. (A) Unless otherwise specifically provided by law, the following administrative penalties apply for each violation of the insurance laws of this State or federal insurance laws subject to enforcement by the Department of Insurance:

(1) If the violator is an insurer or a health maintenance organization licensed in this State, the director or his designee shall

~~(a)~~ fine the violator in an amount not to exceed fifteen thousand dollars, ~~or (b)~~ suspend or revoke the violator’s authority to do business in this State, or both. If the violation is wilful, the director or his designee shall ~~(a)~~ fine the violator in an amount not to exceed thirty thousand dollars, ~~or (b)~~ suspend or revoke the violator’s authority to do business in this State, or both.

(2) If the violator is a person, other than an insurer or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall ~~(a)~~ fine the person in an amount not to exceed two thousand five hundred dollars, ~~or (b)~~ suspend or revoke the license of the person, or both. If the violation is wilful, the director or his designee shall ~~(a)~~ fine the person in an amount not to exceed five thousand dollars, ~~or (b)~~ suspend or revoke the license of the person, or both.

(B) The penalties in ~~items~~ subsection (A)(1) and (2) are in addition to any criminal penalties provided by law or any other remedies provided by law. The administrative proceedings in ~~items~~ subsection (A)(1) and (2) do not preclude civil or criminal proceedings from taking place before, during, or after the administrative proceeding.”

SECTION 2. Section 38‑3‑150 of the 1976 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. All information related to this investigation must be treated as privileged and confidential until the investigation has been completed. Upon completion of the investigation, documents subject to the Freedom of Information Act or other applicable law may be disclosed. 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.”

SECTION 3. Section 38‑13‑70 of the 1976 Code is amended to read:

“Section 38‑13‑70. 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 other timeframe established by the director or his designee. If the director or his designee finds upon substantial evidence that a complaint ~~against an insurer~~ 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.”

SECTION 4. Section 38‑21‑290(A) of the 1976 Code, as last amended by Act 2 of 2015, is further amended to read:

“(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 a review, 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 or submitted in support of an application submitted for review in accordance with Sections 38‑21‑60 and 38‑21‑70 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.”

SECTION 5. Section 38‑33‑170(A) and (B) of the 1976 Code is amended to read:

“(A) The director or his designee may make an examination of the affairs of a health maintenance organization and providers with whom the organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this State but not less frequently than once every ~~three~~ five years. The director or his designee may accept the report of an examination made by the state where the health maintenance organization is domiciled.

(B) The director or his designee may make an examination concerning the quality of health care service of a health maintenance organization and providers with whom the organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this State but not less frequently than once every ~~three~~ five years.”

SECTION 6. Section 38‑33‑230(A) of the 1976 Code is amended to read:

“(A) The director or his designee may, in lieu of revocation or suspension of a certificate of authority under Section 38‑33‑180, levy an administrative penalty of not more than fifteen thousand dollars for each violation of state or federal insurance laws subject to enforcement by the department or ground as prescribed therein. A series of acts by an organization which merely implement a basic violation and are not separate and distinct violations of an independent nature are considered to be part of the basic violation and only one penalty may be imposed. A monetary penalty may be imposed under this paragraph only after notice and an opportunity to be heard have been afforded in accordance with Section 38‑33‑210.”

SECTION 7. Section 38‑61‑20(A) and (C) of the 1976 Code is amended to read:

“(A) It is unlawful for an insurer doing business in this State to issue or sell in this State a policy, contract, or certificate until it has been filed with and approved by the director or his designee. The director or his designee may disapprove the form if it:

(1) does not meet the requirements of applicable state or federal law;

(2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

(3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

However, this subsection does not apply to surety contracts or fidelity bonds, except as required in Section 38‑15‑10, or to insurance contracts, riders, or endorsements prepared to meet special, unusual, peculiar, or extraordinary conditions applying to an individual risk or exempt commercial policies.

(C) At any time after having given written approval, and after an opportunity for a hearing for which at least thirty days’ written notice has been given, the director or his designee may withdraw approval, impose the penalties pursuant to Section 38‑2‑10, or both, if he finds that the form:

(1) does not meet the requirements of applicable state or federal law;

(2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

(3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.”

SECTION 8. Section 38‑71‑90 of the 1976 Code is amended to read:

“Section 38‑71‑90. An insurer, health maintenance organization, or its officer or agent that issues or delivers to any person in this State any policy in wilful violation of any of the provisions of this chapter or any other applicable state or federal law governing the transaction of business of insurance subject to enforcement by the Department of Insurance is subject to the provisions of Section 38‑2‑10 for each offense.”

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

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