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COMMITTEE REPORT

January 28, 2021

**H. 3585**

Introduced by Reps. Sandifer and Hardee

S. Printed 1/28/21--H. [SEC 2/2/21 10:28 AM]

Read the first time January 12, 2021.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3585) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑61‑80 so as to provide the procedure for an insurer to cancel, etc., respectfully

**REPORT:**

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

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑61‑80 SO AS TO PROVIDE THE PROCEDURE FOR AN INSURER TO CANCEL, NONRENEW, OR TERMINATE ALL OR SUBSTANTIALLY ALL OF AN ENTIRE LINE OR CLASS OF BUSINESS; BY ADDING SECTION 38‑77‑400 SO AS TO REQUIRE AN INSURER TO PROVIDE A LISTING OF UNDERWRITING RESTRICTIONS UPON THE REQUEST OF THE DIRECTOR; TO AMEND SECTION 38‑13‑30, RELATING TO ORDERS RESULTING FROM EXAMINATIONS, SO AS TO ALLOW THE DIRECTOR OR HIS DESIGNEE TO SERVE AN ORDER UPON THE INSURER BY ELECTRONIC MAIL; TO AMEND SECTION 38‑53‑110, RELATING TO FINANCIAL STATEMENT REQUIREMENTS, SO AS TO PROVIDE A DEADLINE FOR SUBMISSION; TO AMEND SECTION 38‑71‑340, RELATING TO REQUIRED POLICY PROVISIONS, SO AS TO ADD A TIME OF PAYMENT OF CLAIMS REQUIREMENT FOR HEALTH INSURANCE COVERAGE; TO AMEND SECTION 38‑75‑730, AS AMENDED, RELATING TO RESTRICTIONS ON THE CANCELLATION OF POLICIES, SO AS TO DISTINGUISH THE CANCELLATION PROVISIONS FOR WORKERS’ COMPENSATION INSURANCE POLICIES; TO AMEND SECTION 38‑75‑740, RELATING TO RESTRICTIONS ON THE NONRENEWAL OF POLICIES, SO AS TO REMOVE SPECIFIC DEADLINES; TO AMEND SECTION 38‑75‑1160, RELATING TO THE NOTICE REQUIREMENT PRIOR TO CANCELLATION OR REFUSAL TO RENEW, SO AS TO REMOVE SPECIFIC DEADLINES; AND TO AMEND SECTION 38‑75‑1240, RELATING TO THE PROVISIONS TO THE DIRECTOR OF UNDERWRITING RESTRICTIONS BASED UPON GEOGRAPHY, SO AS TO REQUIRE AN INSURER TO PROVIDE A LIST OF UNDERWRITING RESTRICTIONS ONLY UPON THE REQUEST OF THE DIRECTOR REGARDLESS OF GEOGRAPHY.

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

SECTION 1. Chapter 61, Title 38 of the 1976 Code is amended by adding:

“Section 38‑61‑80. (A) An insurer must not cancel, nonrenew, or otherwise terminate all or substantially all of an entire line or class of business for the purpose of withdrawing from the market in this State unless:

(1) The insurer notified the director, in writing, of the action, including the reasons for such action, and plans for the orderly cessation of business at least one year before the completion of the withdrawal. This item must not be construed to prevent an insurer from canceling, nonrenewing, or terminating policies in the ordinary course of business that are not part of a plan to withdraw from an entire line or class of business or where the insurer, by contract, statute, or otherwise, has the right to take such action; or

(2) The insurer filed a plan of action for the orderly cessation of the insurer’s business within a period of time shorter than one year and the plan of action is approved by the director or his designee.

(B) An insurer’s rates, rules, and forms filed with the department are considered no longer on file for use with any new business in the market affected by the insurer’s withdrawal plan on and after the date the withdrawal plan goes into effect.

(C) This section does not apply to health insurance issuers offering health insurance coverage as defined in Article 3 or Article 5, Title 38, Chapter 71. Health insurance issuers must comply with other applicable provisions of Title 38, Chapter 71 regarding the discontinuance of all or a significant block of business or withdrawal from the market in this State.”

SECTION 2. Article 3, Chapter 77, Title 38 of the 1976 Code is amended by adding:

“Section 38‑77‑400. Upon request of the director, an insurer must provide a listing of underwriting restrictions. These restrictions do not require approval of the director or his designee and are not public information.”

SECTION 3. Section 38‑13‑30(D)(1) of the 1976 Code is amended to read:

“(1) Orders entered pursuant to subsection (C)(1) must be accompanied by findings and conclusions resulting from the director’s or his designee’s consideration and review of the examination report, relevant examiner work papers, and written submissions or rebuttals. The order must be considered a final administrative decision and may be appealed to the Administrative Law Court as provided by law. The order ~~must~~ may be served upon the insurer by certified mail or electronic mail, with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.”

SECTION 4. Section 38‑53‑110 of the 1976 Code is amended to read:

“Section 38‑53‑110. In addition to the other requirements of this chapter, every year, by March first, an applicant for a professional bondsman’s license shall furnish ~~annually~~ a detailed financial statement under oath and in a form as the director or his designee may require. The statement is subject to the same examination as is prescribed by law for domestic insurance companies.”

SECTION 5. Section 38‑71‑340(8) of the 1976 Code is amended to read:

“(8) A provision as follows:

TIME OF PAYMENT OF CLAIMS:

After receiving written proof of loss, the Company will pay \_ [insert period for payment which may not be less frequently than monthly] all benefits then due for \_ [insert applicable term for type of benefits].

Notwithstanding the above, the time of payment of claims provision in health insurance coverage as defined in Section 38‑71‑670(6) must read as follows:

TIME OF PAYMENT OF CLAIMS:

After receiving written proof of loss, the Company will pay \_ [insert period for payment which may not be less prompt than those set forth in Section 38‑59‑230] all benefits then due for \_ [insert applicable term for type of benefits].”

SECTION 6. Section 38‑75‑730 of the 1976 Code, as amended by Act 6 of 2019, is further amended to read:

“(a) No insurance policy or renewal thereof may be canceled by the insurer prior to the expiration of the term stated in the policy, except for one of the following reasons:

(1) nonpayment of premium;

(2) material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy;

(3) substantial change in the risk assumed, except to the extent that the insurer had notice of the risk or should reasonably have foreseen the change or contemplated the risk in writing the policy;

(4) substantial breaches of contractual duties, conditions, or warranties;

(5) loss of the insurer’s reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil the insurer’s solvency or place that insurer in violation of the insurance laws of this State. Prior to cancellation for reasons permitted in this item, the insurer shall notify the director or his designee, in writing, at least sixty days prior to such cancellation and the director or his designee shall, within thirty days of such notification, approve or disapprove such action.

(b) Cancellation under subsection (a)(1) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation. Cancellation under subsection (a)(2) through (5) is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation. The notice must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Any notice of cancellation shall state the precise reason for cancellation. Proof of mailing is sufficient proof of notice.

(c) Subsections (a) and (b) do not apply to any insurance policy which has been in effect for less than one hundred twenty days and is not a renewal of a previously existing policy. The policy may be canceled for any reason by furnishing to the insured at least thirty days’ written notice of cancellation, except where the reason for cancellation is nonpayment of premium, in which case not less than ten days’ written notice must be furnished. Insurers may not cancel a policy outside of the one hundred twenty‑day period if they had notice of the change in risk prior to the expiration of the one hundred twenty‑day underwriting period.

(d) For purposes of subsection (a)(3), substantial change in the risk assumed, if based upon changes in climatic conditions, must be based on statistical data relative to South Carolina that has been approved by the director or his designee as a basis for substantial change in the risk assumed.

(e) Cancellation of a workers’ compensation insurance policy under this section is not effective unless written notice of cancellation is delivered or mailed to the South Carolina Workers’ Compensation Commission, and to the insured, not less than the time frame required for notice to the insured under this section.”

SECTION 7. Section 38‑75‑740 of the 1976 Code is amended to read:

“Section 38‑75‑740. (a) No insurance policy may be nonrenewed by an insurer except in accordance with the provisions of this section or Section 38‑75‑730, and any nonrenewal attempted which is not in compliance with this section or Section 38‑75‑730 is ineffective.

(b) A policy written for a term of one year or less may be nonrenewed by the insurer at its expiration date by giving or mailing written notice of nonrenewal to the insured and the agent of record, if any, not less than sixty days prior to the expiration date of the policy ~~for any nonrenewal that would be effective between November first and May thirty‑first and not less than ninety days for any nonrenewal that would be effective between June first and October thirty‑first~~.

(c) Subject to subsection (c) of Section 38‑75‑760, a policy written for a term of more than one year or for an indefinite term may be nonrenewed by the insurer at its anniversary date by giving or mailing written notice of nonrenewal to the insured and the agent of record, if any, not less than sixty days prior to the anniversary date of the policy ~~for any nonrenewal that is effective between November first and May thirty‑first and not less than ninety days prior to the anniversary date of the policy for any nonrenewal that is effective between June first and October thirty‑first~~.

(d) The notice required by this section must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Proof of mailing is sufficient proof of notice.

(e) Any notice of nonrenewal shall state the precise reason for nonrenewal.”

SECTION 8. Section 38‑75‑1160(A) of the 1976 Code is amended to read:

“(A)(1) Except for a cancellation pursuant to Section 38‑75‑730, a cancellation or refusal to renew by an insurer of a policy of insurance covered in this article is not effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice must:

(a) be approved as to form by the director or his designee before use;

(b) state the date not less than sixty days for any cancellation or refusal to renew ~~that is effective between November first and May thirty‑first and not less than ninety days for any cancellation or refusal to renew that is effective between June first and October thirty‑first~~ after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;

(c) state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by Section 38‑75‑1180(B);

(d) inform the insured of his right to request in writing within thirty days of the receipt of notice that the director review the action of the insurer. The notice of cancellation or refusal to renew must contain the following statement in bold print to inform the insured of this right:

‘IMPORTANT NOTICE: Within thirty days of receiving this notice, you or your attorney may request in writing that the director review this action to determine whether the insurer has complied with South Carolina laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the director may require that your policy be reinstated. However, the director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the director does not have the authority to overturn this action.’

(e) inform the insured of the possible availability of other insurance which may be obtained through his agent, or through another insurer; and

(f) state that the Department of Insurance has available a buyer’s guide regarding property insurance shopping and availability, and provide applicable mailing addresses and telephone numbers, including a toll‑free number, if available, for contacting the Department of Insurance.

(2) Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance.”

SECTION 9. Section 38‑75‑1240 of the 1976 Code is amended to read:

“Section 38‑75‑1240. An insurer shall provide upon the request of the director ~~each year~~ a listing of underwriting restrictions ~~based upon geography and also provide notice of new changes to current underwriting restrictions~~. These restrictions do not require approval of the director or his designee and are not public information.”

SECTION 10. This act takes effect upon approval of the Governor.

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