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CHAPTER 77.

AUTOMOBILE INSURANCE

ARTICLE 1.

PURPOSES AND DEFINITIONS

**SECTION 38‑77‑10.** Declaration of purpose.

In order to effect a complete reform of automobile insurance and insurance practices in South Carolina, the purposes of this chapter are to provide:

(1) that every automobile insurance risk which is insurable on the basis of the criteria established in this chapter is entitled to automobile insurance;

(2) for a residual market mechanism, known as the Associated Auto Insurers Plan, for every person who is legally entitled to automobile insurance but has not been able to obtain a motor vehicle liability policy to apply to the director of the Department of Insurance to have his risk assigned to an insurance carrier licensed to write and writing motor vehicle liability insurance in the State who shall issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility in this chapter;

(3) prohibitions and penalties in respect to unfairly discriminatory or unfairly competitive practices having as their purpose or effect evasion of the coverages as provided in this chapter; and

(4) medical, surgical, funeral, and disability insurance benefits without regard to fault to be offered under automobile insurance policies that provide bodily injury and property damage liability insurance, or other security, for motor vehicles registered in this State.

**SECTION 38‑77‑20.** Construction.

This chapter is to be liberally construed in order to achieve its purposes.

**SECTION 38‑77‑30.** Definitions.

As used in this chapter, unless the context requires otherwise:

(1) “Automobile insurance” means automobile bodily injury and property damage liability insurance, including medical payments and uninsured motorist coverage, and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical damage insurance and economic loss benefits as provided by this chapter written or offered by automobile insurers. An automobile insurance policy includes a motor vehicle liability policy as defined in item (7) of Section 56‑9‑20 and any nonowner automobile insurance policy which covers an individual private passenger automobile not owned by the insured, a family member of the insured, or a resident of the same household as the insured.

(2) “Automobile insurer” means an insurer licensed to do business in South Carolina and authorized to issue automobile insurance policies.

(3) “Bodily injury” includes death resulting therefrom.

(3.5) “Cancellation” or “to cancel” means a termination of a policy during the policy period.

(4) “Damages” includes both actual and punitive damages.

(4.5) “Facility physical damage rate” means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38‑77‑596 to the expense component developed under Section 38‑77‑596.

(5.2) “Facility physical damage rate” means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38‑73‑780 to the expense component developed under Section 38‑73‑1420.

(5.5)(a) “Individual private passenger automobile” means the following types of motor vehicles owned by or leased under a long‑term contract by an individual or individuals:

(i) motor vehicles of the private passenger type or station wagon type;

(ii) panel trucks, delivery sedans, vehicles with a pickup body, vans, or similar motor vehicles designed for use on streets and highways and so licensed;

(iii) motor homes, so long as the motor vehicles described in (ii) and (iii) are not used in the occupation, profession, or business of the insured other than farming and ranching; and

(iv) motorcycles.

(b) A motor vehicle is not considered “owned by or leased under a long‑term contract by an individual or individuals” if the motor vehicle is owned by a partnership or corporation, unless the motor vehicle is owned by a farm family copartnership or a farm family corporation and is garaged principally on a farm or ranch.

(c) A motor vehicle is not considered “used in the occupation, profession, or business of the insured”, because it is used in the course of driving to and from work.

(d) Individual private passenger automobile does not include:

(i) motor vehicles that are used for public or livery conveyance or rented to others without a driver;

(ii) fire department vehicles, police vehicles, ambulances, and rescue squad vehicles which are publicly owned;

(iii) motor‑driven cycles, motor scooters, and mopeds;

(iv) dune buggies, all‑terrain vehicles, go carts, and snowmobiles;

(v) golf carts; and

(vi) small commercial risks.

(6) “Institutional source” means any person or governmental entity that provides information about an individual to an agent, insurer, or insurance‑support organization other than:

(a) an agent;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than in a business or professional capacity.

(7) “Insured” means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above.

(8) “Insurance‑support organization” means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurer or agent for insurance transactions, including (i) the furnishing of consumer reports or investigative consumer reports to an insurer or agent for use in connection with an insurance transaction or (ii) the collection of personal information from insurers, agents, or other insurance‑support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity. However, the following persons shall not be considered insurance‑support organizations for purposes of this chapter: agents, governmental institutions, insurers, rating organizations, medical care institutions, and medical professionals.

(9) “Motor vehicle” means every self‑propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles but excepting traction engines, road rollers, farm trailers, tractor cranes, power shovels and well‑drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. For purposes of this chapter, the term automobile has the same meaning as motor vehicle.

(10) “Nonpayment of premium” means failure of the named insured to pay when due any of his obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if membership is a condition precedent to insurance coverage.

(10.5) “Policy of automobile insurance” or “policy” means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this State covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household, and under which the insured vehicle designated in the policy is either:

(a) a motor vehicle of a private passenger, station wagon, or motorcycle type that is not used commercially, rented to others, or used as a public or livery conveyance where the terms “public or livery conveyance” do not include car pools, or

(b) any other four‑wheel motor vehicle which is not used in the occupation, profession, or business, other than farming, of the insured, or as a public or livery conveyance, or rented to others. The term “policy of automobile insurance” or “policy” does not include:

(i) any policy issued through the Associated Auto Insurers Plan,

(ii) any policy covering the operation of a garage, sales agency, repair shop, service station, or public parking place,

(iii) any policy providing insurance on an excess basis such as an umbrella policy, or

(iv) any other contract providing insurance to the named insured even though the contract may incidentally provide insurance on motor vehicles.

(11) “Quota share reinsurance” means that form of reinsurance in which the reinsurer assumes a fixed percentage of the insured risk.

(12) “Renewal” or “to renew” means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, the renewal policy to provide types and limits of coverage at least equal to those contained in the policy being superseded, or the issuance and delivery of a certificate or notice extending the terms of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy being extended. However, any policy with a policy period or term of less than six months or any period with no fixed expiration date is considered as if written for successive policy periods or terms of six months.

(13) “Small commercial risk” means:

(a) Garage risks including nonmotor vehicle insurance when written in combination with automobile liability coverage.

(b) Ambulance risks.

(c) Commercial risks which have a manufacturer’s gross vehicular weight less than twenty thousand pounds and are not required to have a mandatory filing by a governmental authority other than an SR‑22.

(d) Church buses used by a church to transport adults or children to and from services and in activities incidental to church functions, so long as a mandatory filing by any governmental authority other than an SR‑22 is not required.

(e) Privately‑owned school buses used to carry school children and students, their parents or guardians, members of the faculty, school board members, nurses, doctors, and dentists, as well as guests in connection with any school activity and operations incidental thereto, including games, outings, and similar road trips, so long as a mandatory filing by any governmental authority other than an SR‑22 is not required.

“Small commercial risk” does not include pulpwood trucks or dump trucks.

(14) “Uninsured motor vehicle” means a motor vehicle as to which:

(a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38‑77‑140, or

(b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder, or

(c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment, and

(d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance.

(e) the owner of the motor vehicle has not qualified as a self‑insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.

Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

(15) “Underinsured motor vehicle” means a motor vehicle as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in Section 38‑77‑140 and the amount of the insurance or bond is less than the amount of the insureds’ damages.

ARTICLE 3.

MANDATE TO WRITE AND INSURANCE COVERAGE

**SECTION 38‑77‑112.** Automobile insurers not required to write coverage for automobile insurance for any applicants or existing policyholders; applicability of section

Notwithstanding Section 38‑77‑280, no automobile insurer is required to write coverage for automobile insurance as defined in Section 38‑77‑30 for any applicant or existing policyholder. An insurer or an agent shall retain, for a period of three years, the driver’s license numbers for all persons who have submitted an application for insurance but who were refused coverage and shall furnish such information upon the request of the director of the Department of Insurance or his designee. This section does not apply to an individual who is handicapped and who owns a vehicle in this State but who does not have a valid driver’s license. If an automobile is principally garaged and operated in this State, the owner of the vehicle can be offered coverage thereon regardless of whether or not he possesses a valid South Carolina driver’s license if he designates to the insurer who the principal operator of the vehicle will be and this person has a valid South Carolina driver’s license or otherwise meets the requirements of this section. This requirement does not apply to personnel of the Armed Forces of the United States on active duty and officially stationed in this State who possess a valid motor vehicle driver’s license issued by another state or territory of the United States or the District of Columbia. This requirement is waived ninety days for individuals who move into South Carolina with the intent of making South Carolina their place of residence if they possess a valid driver’s license issued by another state or territory of the United States or the District of Columbia.

**SECTION 38‑77‑113.** Conditions for waiver of license reinstatement fee.

If a driver’s license is suspended or revoked because the licensee is determined by the Department of Motor Vehicles to have no motor vehicle liability insurance, the Director of the Department of Motor Vehicles or his designee shall waive the reinstatement fee imposed pursuant to Section 56‑1‑390 if the licensee had motor vehicle liability coverage when his license was suspended or revoked and shall document the reasons for waiving the fee in the records of the Department of Motor Vehicles.

**SECTION 38‑77‑114.** Review and reports on impact of repeal of anti‑rebate laws concerning sale of automobile insurance.

Beginning on March 1, 2000 the director of the Department of Insurance shall review annually the impact of the repeal of the anti‑rebate statutes concerning the sale of automobile insurance in South Carolina pursuant to this act and shall report annually to the General Assembly his findings and recommendations, if any, along with the data and supporting information which the director utilized. In his review, the director shall evaluate the following, but is not limited to: the impact on automobile insurance premiums; any pattern of an insurance carrier, agent, broker, and others concerning the practice of rebating; any pattern of discrimination regarding the insured or policyholder, agent, broker, insurance carrier, or others; the impact on the automobile insurance industry, such as additional market entrants, number of insurance carriers, agents, or others who engage in this practice, or any change in the number of companies writing automobile insurance or of agents selling automobile insurance; and any complaints received by or made to the Department of Insurance concerning rebates in the sale of automobile insurance or regarding the repeal of the anti‑rebate statutes concerning the sale of automobile insurance in South Carolina. The initial report by the director of the Department of Insurance shall be submitted to the General Assembly by May 1, 2000 and notwithstanding any other provision of law, the director shall begin collecting data, material, and any information needed for this initial report on March 1, 1999. All subsequent reports shall be submitted to the General Assembly no later than March first of each year. Notwithstanding any other provision of law, the director of the Department of Insurance shall make his final report on this matter to the General Assembly as provided herein on March 1, 2003 unless otherwise directed by the General Assembly; however, the director may at his discretion continue to submit a report to the General Assembly regarding this matter at any time after March 1, 2003 and shall continue to monitor the impact of the repeal of the anti‑rebate statutes concerning the sale of automobile insurance in South Carolina pursuant to this act. The director may promulgate regulations in order to carry out the requirements of this section.

**SECTION 38‑77‑120.** Requirements for notice of cancellation of or refusal to renew policy.

(a) No cancellation or refusal to renew by an insurer of a policy of automobile insurance is 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:

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

(2) must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;

(3) must state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by subsection (B) of Section 38‑77‑390. However, those notification requirements must not apply when the policy is being canceled or not renewed for the reason set forth in Section 38‑77‑123(B),

(4) must inform the insured of his right to request in writing within fifteen 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 to inform the insured of such right:

“IMPORTANT NOTICE

Within fifteen 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.”

(5) must inform the insured of the possible availability of other insurance which may be obtained through his agent, through another insurer, or through the Associated Auto Insurers Plan. It must also state that the Department of Insurance has available an automobile insurance buyer’s guide regarding automobile 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.

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. The insurer must disclose in writing whether the insured is ceded to the facility.

(b) Subsection (a) of this section does not apply if the:

(1) insurer has manifested to the insured its willingness to renew by actually issuing or offering to the insured to issue a renewal policy, certificate, or other evidence of renewal, or has manifested such intention to the insured by any other means;

(2) named insured has demonstrated by some overt action to the insurer or its agent that he expressly intends that the policy be canceled or that it not be renewed.

**SECTION 38‑77‑121.** Application for original issuance of policy of insurance covering liability; cancellation notice; disclosure of previous cancellation or refusal to renew.

(A) Any application for the original issuance of a policy of insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle as defined in Section 38‑77‑30 must have the following statement printed on or attached to the first page of the application form, in boldface type: “THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER’S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.”

(B) Any application for the original issuance of a policy of insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle defined in Section 38‑77‑30 that requires the insured to disclose information as to any previous cancellation or refusal to renew must also permit the insured to offer or provide a full explanation of the reason for the cancellation or refusal to renew.

(C) The notice required by this section must accompany the initial declarations page in the event the applicant is not provided a written copy at the time of the application and the coverage has been bound by the insurer.

(D) The insurer may cancel without cause at any time in the first ninety days during which the policy is in effect subject to Section 38‑77‑122.

This section does not apply to the renewal of any policy of insurance.

**SECTION 38‑77‑122.** Insurers and agents prohibited from refusing to issue automobile insurance policies due to certain factors; prohibited factors for premium rates.

(A) No insurer or agent shall refuse to issue an automobile insurance policy as defined in Section 38‑77‑30 because of any one or more of the following factors: the age, sex, location of residence in this State, race, color, creed, national origin, ancestry, marital status, or income level. No insurer or agent shall refuse to issue an automobile insurance policy as defined in Section 38‑77‑30 solely because of any one of the following factors: the previous refusal of automobile insurance by another insurer, prior purchase of insurance through the Associated Auto Insurers Plan, or lawful occupation, including the military service, of the person seeking the coverage. Nothing in this section prohibits any insurer from limiting the issuance of motor vehicle insurance policies only to persons engaging in or who have engaged in a particular profession or occupation, or who are members of a particular religious sect.

Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

(B) In determining the premium rates to be charged for an automobile insurance policy as defined in Section 38‑77‑30, it is unlawful to consider race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. Nor may an insurer, agent, or broker refuse to write or renew an automobile insurance policy as defined in Section 38‑77‑30 based upon age, sex, race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director. Any insurer or agent who violates this section shall be subject to the penalties as provided in Section 38‑2‑10. If the director of the Department of Insurance or his designee finds that an insurer or agent is participating in a pattern of unfair discrimination, the director or his designee may impose a fine of up to two hundred thousand dollars. Provided, however, if the unfair discrimination is required by an insurer, only the insurer is subject to the penalty as long as the agent of the insurer has reported the pattern of unfair discrimination to the department. The director or his designee at any time may examine an insurer or agent to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

**SECTION 38‑77‑123.** Insurers and agents prohibited from refusing to renew automobile insurance policies due to certain factors; cancellation restrictions; penalties for violations.

(A)(1) No insurer shall refuse to renew an automobile insurance policy because of any one or more of the following factors:

(a) age;

(b) sex;

(c) location of residence in this State;

(d) race;

(e) color;

(f) creed;

(g) national origin;

(h) ancestry;

(i) marital status;

(j) income level.

(2) No insurer shall refuse to renew an automobile insurance policy solely because of any one of the following factors:

(a) lawful occupation, including the military service;

(b) lack of driving experience or number of years of driving experience;

(c) lack of supporting business or lack of the potential for acquiring such business;

(d) one or more accidents or violations that occurred more than thirty‑six months immediately preceding the upcoming anniversary date;

(e) one or more claims submitted under the uninsured motorists coverage of the policy where the uninsured motorist is known or there is physical evidence of contact;

(f) single claim by a single insured submitted under the medical payments coverage or medical expense coverage due to an accident for which the insured was neither wholly nor partially at fault;

(g) one or more claims submitted under the comprehensive or towing coverages. However, nothing in this section prohibits an insurer from modifying or refusing to renew the comprehensive or towing coverages at the time of renewal of the policy on the basis of one or more claims submitted by an insured under those coverages, provided that the insurer mails or delivers to the insured at the address shown in the policy, written notice of the change in coverage at least thirty days before the renewal;

(h) two or fewer motor vehicle accidents within a three‑year period unless the accident was caused either wholly or partially by the named insured, a resident of the same household, or other customary operator; or

(i) an insured who uses his personal automobile for volunteer emergency services and who provides a copy of the policy promulgated by the chief of his department to his insurer on request.

(3) Nothing contained in subsection (A)(1)(f), (g), and (h) of this subsection prohibits an insurer from refusing to renew a policy where a claim is false or fraudulent. Nothing in this section prohibits an insurer from setting rates in accordance with relevant actuarial data except that no insurer may set rates based in whole or in part on race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director.

(B) No insurer shall cancel a policy except for one or more of the following reasons:

(1) The named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has had his driver’s license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date.

(2) The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either, directly or indirectly under any premium finance plan or extension of credit.

(C) There shall be no liability on the part of and no cause of action of any nature shall arise against the director or his designees; any insurer, its authorized representatives, its agents, or its employees; or any person furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in complying with this section or for providing information pertaining to the cancellation or refusal to renew. For the purposes of this section, no insurer shall be required to furnish a notice of cancellation or refusal to renew to anyone other than the named insured, any person designated by the named insured, any other person to whom such notice is required to be given by the terms of the policy and the director.

(D) Within fifteen days of receipt of the notice of cancellation or refusal to renew, any insured or his attorney shall be entitled to request in writing to the director that he review the action of the insurer in canceling or refusing to renew the policy of the insured. Upon receipt of the request, the director shall promptly begin a review to determine whether the insurer’s cancellation or refusal to renew complies with the requirements of this section and of Section 38‑77‑120 if the notice was sent by mail. The policy must remain in full force and effect during the pendency of the review by the director except where the cancellation or refusal to renew is for the reason set forth in subitem (2) of subsection (B) of this section, in which case the policy terminates as of the effective date stated in the notice. Where the director finds from the review that the cancellation or refusal to renew has not complied with the requirements of this section or of Section 38‑77‑120, he shall immediately notify the insurer, the insured, and any other person to whom such notice was required to be given by the terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the director to substitute his judgment as to underwriting for that of the insurer.

(E) Each insurer shall maintain for at least three years, records of cancellation and refusal to renew and copies of every notice or statement referred to in Section 38‑77‑120 of this section that it sends to any of its insureds.

(F) The provisions of this section do not apply to any insurer that limits the issuance of policies of motor vehicle liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation, or business. Nothing in this section requires an insurer to renew a policy of automobile insurance if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization. No insurer is required to renew a policy if the insured becomes a nonresident of South Carolina.

(G) Any insurer who violates this section shall be subject to the penalties as provided in Section 38‑2‑10. If the director of the Department of Insurance or his designee finds that an insurer, agent, or broker is participating in a pattern of unfair discrimination, the director or his designee may impose a fine of up to two hundred thousand dollars. Provided, however, if the unfair discrimination is required by an insurer, only the insurer is subject to the penalty as long as the agent of the insurer has reported the pattern of unfair discrimination to the department. The director or his designee at any time may examine an insurer, agent, or broker to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

**SECTION 38‑77‑124.** Refusal to issue or renew automobile insurance policy on basis of location of residence.

(A) Notwithstanding the provisions of Sections 38‑77‑122 and 38‑77‑123, an insurer may refuse to issue or renew an automobile insurance policy as defined in Section 38‑77‑30 on the basis of location of residence where the insurer has filed with the director a territorial plan setting forth the precise geographic areas of the state in which it will issue or renew policies. This territorial plan may not limit issuances or renewals to areas at any level smaller than a county, except that an insurer may include in its territorial plan an area smaller than a county which is contiguous to a whole county contained within the territorial plan provided, that the inclusion in the territorial plan of any such area at a level smaller than a county does not have the effect of excluding populations based upon any factors set out in Section 38‑77‑122(A) or Section 38‑77‑123(A)(1). The director must reject any territorial plan which violates the provisions of this section.

(B) No insurer or agent shall refuse to issue or fail to renew a policy of motor vehicle liability insurance solely because of the age of the motor vehicle to be insured, provided the motor vehicle is licensed.

**SECTION 38‑77‑125.** Name, address, and telephone number of insurance company must be stated or provided.

Every automobile insurance policy or other policy containing automobile insurance coverage on the face of the policy must state the complete name of the company issuing the policy, its address, and telephone number.

**SECTION 38‑77‑126.** Disclosure where rate level higher than lowest tier for that insurer or group.

Insurers must disclose to the insured if the rate level is higher than the lowest rate level tier for that insurer or the group to which the insurer is a member. The insurer must provide in writing the reason for the higher tier.

**SECTION 38‑77‑130.** Group automobile insurance; rate.

An automobile insurer may negotiate and contract for the sale of automobile insurance with any bona fide group of twenty or more persons who are employed by a common employer or who have been members for six months or more of a fraternal order, labor union, or employment association. The insurer may negotiate, enter a contractual relationship, and service the contract solely and directly with the bona fide representative of the group. An insurance contract sold on the basis of a group plan or contract shall have a rate not less than five percent less than the individual rate for which the insurer markets a substantially similar policy.

**SECTION 38‑77‑140.** Bodily injury and property damage limits; general requirements.

(A) An automobile insurance policy may not be issued or delivered in this State to the owner of a motor vehicle or may not be issued or delivered by an insurer licensed in this State upon a motor vehicle then principally garaged or principally used in this State, unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States or Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(1) twenty‑five thousand dollars because of bodily injury to one person in any one accident and, subject to the limit for one person;

(2) fifty thousand dollars because of bodily injury to two or more persons in any one accident; and

(3) twenty‑five thousand dollars because of injury to or destruction of property of others in any one accident.

(B) Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements.

**SECTION 38‑77‑141.** Required notice to be attached to new policy or original premium notice of insurance covering liability regarding insurance premiums.

No new policy or original premium notice of insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle may be issued or delivered unless it contains the following statement printed in boldface type, or unless the statement is attached to the front of or is enclosed with the policy or premium notice:

“IMPORTANT NOTICE

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST INSURANCE COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

(1) YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND

(2) YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;

(3) IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.”

After twenty days, the insurer is relieved of the obligation imposed by this subsection to attach or imprint the foregoing statement to any subsequently delivered renewal policy, extension certificate, other written statement of coverage continuance, or to any subsequently mailed premium notice.

**SECTION 38‑77‑142.** Policies or contracts of bodily injury or property damage liability insurance covering liability; required provisions.

(A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle that is principally garaged, docked, or used in this State unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, docked, or used in this State, that has as the named insured an individual or husband and wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy, contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply.

(B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle principally garaged or used in this State without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. If an insurer has actual notice of a motion for judgment or complaint having been served on an insured, the mere failure of the insured to turn the motion or complaint over to the insurer may not be a defense to the insurer, nor void the endorsement or provision, nor in any way relieve the insurer of its obligations to the insured, provided the insured otherwise cooperates and in no way prejudices the insurer.

Where the insurer has elected to provide a defense to its insured under such circumstances and files responsive pleadings in the name of its insured, the insured is not subject to sanctions for failure to comply with discovery pursuant to the South Carolina Rules of Civil Procedure unless it can be shown that the suit papers actually reached the insured, and that the insurer has failed after exercising due diligence to locate its insured, and as long as the insurer provides such information in response to discovery as it can without the assistance of the insured.

(C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

**SECTION 38‑77‑143.** Maintenance, selling, etc. policies and contracts to be primary.

A policy or contract of insurance relating to the maintenance, selling, repairing, servicing, storing, or parking of motor vehicles shall be primary.

**SECTION 38‑77‑144.** Personal injury protection (PIP) coverage not mandated.

There is no personal injury protection (PIP) coverage mandated under the automobile insurance laws of this State. Any reference to personal injury protection in Title 38 or 56 or elsewhere is deleted. If an insurer sells no‑fault insurance coverage which provides personal injury protection, medical payment coverage, or economic loss coverage, the coverage shall not be assigned or subrogated and is not subject to a setoff.

**SECTION 38‑77‑150.** Uninsured motorist provision; defense of action by insurer; subrogation and assignment of benefits.

(A) No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38‑77‑140. The uninsured motorist provision must also provide for no less than ten thousand dollars’ coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used.

(B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

(C) Benefits paid pursuant to this section are subject to subrogation and assignment if an uninsured motorist has selected the option to be uninsured by paying the fee pursuant to Section 56‑10‑510.

**SECTION 38‑77‑151.** Collected funds to be placed in Uninsured Motorists Fund; use of funds.

All funds collected by the director of the Department of Motor Vehicles under the provisions of Chapter 10 of Title 56 must be placed on deposit with the State Treasurer and held in a special fund to be known as the “Uninsured Motorists Fund” to be disbursed as provided by law. Interest earned by the “Uninsured Motorists Fund” must be retained by that fund. The director of the Department of Insurance, as provided in Sections 38‑77‑154 and 38‑77‑155, may expend such funds for the administration of this chapter; provided, however, that the Department of Insurance shall retain ten percent of the Uninsured Motorists Fund to be used by the Department of Insurance to enforce the provisions of Title 38 including Sections 38‑77‑112, 38‑77‑122, and 38‑77‑123, to publish for consumers an automobile insurance buyer’s guide, a brochure comparing automobile insurance premiums, and to provide for a public awareness campaign.

**SECTION 38‑77‑154.** Department of Insurance to supervise and control Uninsured Motorists Fund; purpose of fund.

The Uninsured Motorists Fund shall be under the supervision and control of the Department of Insurance. Payments from the Uninsured Motorists Fund shall be made on warrants of the Comptroller General issued on vouchers signed by a person designated by the director. The purpose of the Uninsured Motorists Fund is to reduce the cost of the insurance required by Section 38‑77‑150 and to protect and educate consumers as provided by Section 38‑77‑151.

**SECTION 38‑77‑155.** Distribution of funds; obtaining premium information.

The director shall distribute monies annually from the Uninsured Motorists Fund among the several insurers writing motor vehicle bodily injury and property damage liability insurance on motor vehicles registered in this State. Monies must be distributed in the proportion that each insurer’s premium income for the auto liability coverage bears to the total premium income for auto liability coverage written in this State during the preceding year. Premium income must be gross premiums less cancellation and return premiums for coverage required by Section 38‑77‑150. The director shall obtain premium information from the annual statement filed by each insurer.

**SECTION 38‑77‑160.** Additional uninsured motorist coverage; underinsured motorist coverage.

Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured’s liability coverage in addition to the mandatory coverage prescribed by Section 38‑77‑150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at‑fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured’s or named insured’s vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment.

No action may be brought under the underinsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the underinsured motorist provision. The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record. In the event the automobile insurance insurer for the putative at‑fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured, the underinsured motorist insurer may assume control of the defense of action for its own benefit. No underinsured motorist policy may contain a clause requiring the insurer’s consent to settlement with the at‑fault party.

**SECTION 38‑77‑161.** Uninsured or underinsured coverage not required in excess or umbrella policy.

No uninsured or underinsured motorist coverage need be provided in this State by any excess or umbrella policy of insurance.

**SECTION 38‑77‑170.** Conditions to sue or recover under uninsured motorist provision when owner or operator of motor vehicle causing injury or damage is unknown.

If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, there is no right of action or recovery under the uninsured motorist provision, unless:

(1) the insured or someone in his behalf has reported the accident to some appropriate police authority within a reasonable time, under all the circumstances, after its occurrence;

(2) the injury or damage was caused by physical contact with the unknown vehicle, or the accident must have been witnessed by someone other than the owner or operator of the insured vehicle; provided however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit;

(3) the insured was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

The following statement must be prominently displayed on the face of the affidavit provided in subitem (2) above: A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.

**SECTION 38‑77‑180.** “John Doe” actions against unknown defendant; service of process and defense by insurer; action against or joinder of identified owner or operator.

If the owner or operator of any vehicle causing injury or damages by physical contact is unknown, an action may be instituted against the unknown defendant as “John Doe” and service of process may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought. The insurer has the right to defend in the name of John Doe. However, the bringing of an action against the unknown owner or operator as John Doe or the conclusion of that action does not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of becomes known, from bringing an action against the owner or operator previously proceeded against as John Doe. Notwithstanding the uninsured motorist provision nor any other provision of law, the joinder of any other person causing the injury as a party defendant, in an action against John Doe, is allowed.

**SECTION 38‑77‑190.** Subrogation of insurer who pays claim under uninsured motorist provision to rights of insured.

An insurer paying a claim under the uninsured motorist provision required by Section 38‑77‑150 is subrogated to the rights of the insured to whom the claim was paid against any and every person causing the injury, death, or damage to the extent that payment was made. However, the insurer shall pay its proportionate part of any reasonable costs and expenses incurred in connection with any recovery, including reasonable attorneys’ fees.

**SECTION 38‑77‑200.** Arbitration clause prohibited in uninsured motorist provision; requirements on insured; action and employment of counsel by insured.

The uninsured motorist provision may not require arbitration of any claim arising under it, nor may anything not otherwise herein provided for or as may be provided in the form prescribed by the director or his designee be required of the insured except the establishment of legal liability of the uninsured motorist, nor may the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

**SECTION 38‑77‑210.** Uninsured motorist provision not required to cover property damages paid to insured.

The uninsured motorist provision need not insure any liability for property damages for which loss a policyholder has been compensated by insurance or otherwise.

**SECTION 38‑77‑220.** Additional liability which automobile insurance policy need not cover.

The automobile policy need not insure any liability under the Workers’ Compensation Law nor any liability on account of bodily injury to an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

**SECTION 38‑77‑230.** Certain payments under automobile insurance policy are not to be construed as admission or recognition of liability.

No payment made under an automobile insurance policy of a claim against any insured thereunder arising from any accident or other event insured against for damage to or destruction of property owned by another person is to be construed as an admission of liability by the insured, or the insurer’s recognition of liability, with respect to any other claim arising from the same accident or event.

**SECTION 38‑77‑260.** General release, assignment of claims, and like documents.

(a) No person making payment or settlement of benefits for which the person is obligated under Sections 38‑77‑240 to 38‑77‑340 and no insurer may in connection with the payment or settlement of a claim for these first‑party benefits or for any first‑party benefits arising under an automobile insurer’s coverage including, but not limited to, medical payments and uninsured motorist coverage, obtain or attempt to obtain from the claimant receiving the benefits any general release, covenant not to sue, assignment, article of subrogation, or any other instrument or document which purports to assign to that person or insurer all or any portion of any claim which the claimant may have against any other party or his insurer arising out of legal liability or which purports to constitute an agreement by the claimant that any amount received as first party benefits must be deducted from any settlement or judgment recoverable from any other party or his insurer arising out of legal liability. Every such purported general release, covenant not to sue, or similar instrument is null and void unless (1) the insurer or other person has delivered to the person entitled to the first‑party benefits, or his legal representative, a disclosure statement, on a form approved by the director or his designee, fully and fairly disclosing the fact that the first‑party benefits payable under Sections 38‑77‑240 to 38‑77‑340 are contractual obligations of the insurer or other person and are entirely separate and distinct from any obligation which the insurer or other person may have because of the legal liability of any person and that the person receiving the first‑party benefits is not required and may not be required to release or relinquish any rights which he may have arising out of the legal liability of any person in order to receive payment or settlement of the first‑party benefits arising under Sections 38‑77‑240 to 38‑77‑340 and (2) an interval of not less than three days has elapsed between the later of (i) the delivery of the disclosure statement or (ii) the payment or settlement of the first‑party benefits and the execution of the general release, covenant not to sue, or similar instrument.

(b) [Repealed]

(c) [Repealed]

**SECTION 38‑77‑270.** Christian Science or any licensed healing art care and treatment.

Nothing in this title prohibits an insurer from providing Christian Science or any licensed healing art care and treatment. Any Christian Science or any licensed healing art care and treatment constitutes economic loss.

**SECTION 38‑77‑280.** Collision coverage; comprehensive coverage.

(A) Any automobile insurer may, at its own election, make collision coverage and either comprehensive or fire, theft, and combined additional coverage available to an insured or qualified applicant who requests the coverage at such rates and under such rules as have been approved by the director. Automobile insurers contracted pursuant to Section 38‑77‑590 for risks written by them through producers assigned by the facility governing board pursuant to that section may make available collision coverage and either comprehensive or fire, theft, and combined additional coverage available to an insured or qualified applicant who requests the coverage. Notwithstanding Section 38‑77‑590(g), a designated producer may have one or more voluntary outlets for automobile physical damage.

(B) Any automobile physical damage insurance coverage deductible or policy deductible does not apply to automobile safety glass.

(C) Notwithstanding Section 38‑77‑111, automobile physical damage insurance coverage may be ceded to the facility. However, automobile physical damage coverages ceded to the facility by an insurer or servicing carrier must be at the facility physical damage rate as defined in Section 38‑77‑30.

(D) In determining the premium rates to be charged on physical damage coverage or single interest collision coverage, it is unlawful to consider race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. Nor may an insurer, agent, or broker refuse to write or renew physical damage insurance coverage or single interest collision coverage based upon race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director. If the director of the Department of Insurance or the director’s designee finds that an insurer, agent, or broker is participating in a pattern of unfair discrimination, the director or the director’s designee may impose a fine of up to two hundred thousand dollars. The director or the director’s designee at any time may examine an insurer, agent, or broker to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

**SECTION 38‑77‑320.** Enforcement of article; promulgation of regulations.

The department has the authority to issue and promulgate all necessary regulations not inconsistent with the provisions of this article to enforce, carry out, and make effective this article and to review all policies of insurance issued, renewed, sold, or delivered in this State to determine whether they are in compliance with law and the regulations promulgated under the law.

**SECTION 38‑77‑330.** Denial of claim or of delay of payment; payments due immediately; consequences of unnecessary delay.

No claim for damage to property resulting from a motor vehicle accident may be denied or payment delayed because the person who is entitled to payment or any other person has a claim pending for bodily injury which may have arisen from the same or any other accident. Whenever an insurer has the appropriate motor vehicle coverage for the party liable and there is no dispute as to either the liability for the payment of the full property damages or the amount of monetary equivalent of these damages, then the amount payable is immediately due and owing and must be paid promptly. If the director or his designee determines that the payment of the amount was unnecessarily delayed, he may assess interest on the amount at the rate of eight percent per annum.

**SECTION 38‑77‑340.** Agreement to exclude designated natural person from coverage.

Notwithstanding the definition of “ insured” in Section 38‑77‑30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver’s license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

**SECTION 38‑77‑341.** Unfair trade practices.

It is an unfair trade practice as defined in Section 39‑5‑20 to:

(1) knowingly and wilfully make or cause to be made any false statement or representation of a material fact for use in an application for payment or for use in determining the right to payment under this chapter;

(2) submit or cause to be submitted bills or requests for payment containing charges for services rendered which are substantially in excess of the person’s customary charges or in applicable cases substantially in excess of the person’s costs for such services, unless there is good cause for the bills or requests containing the charges or costs;

(3) submit bills or requests for payment for work covered by insurance which are in excess of those submitted for similar work not covered by insurance;

(4) submit bills or requests for payment which are inflated for the purpose of relieving the insured of the obligation for making a payment for such goods and services as a result of a deductible or copayment clause; or

(5) in the case of a health care facility, as defined in Section 44‑7‑130, and a health care provider licensed pursuant to Title 40, charge a fee for:

(a) the search for and duplication of a medical record, in excess of sixty‑five cents per page for the first thirty pages and fifty cents per page for all other pages;

(b) searching and handling a medical record in excess of fifteen dollars per request plus actual postage and applicable sales tax;

(c) records copied at the request of a health care provider or for records sent to a health care provider at the request of a patient for the purpose of continuing medical care;

(d) more than the actual cost of reproduction of an X‑ray. Actual cost means the cost of materials and supplies used to duplicate the X‑ray and the labor and overhead costs associated with the duplication.

**SECTION 38‑77‑350.** Form to be used when optional coverages are offered.

(A) The director or his designee shall approve a form that automobile insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies. This form must be used by insurers for all new applicants. The form, at a minimum, must provide for each optional coverage required to be offered:

(1) a brief and concise explanation of the coverage;

(2) a list of available limits and the range of premiums for the limits;

(3) a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;

(4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages;

(5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

(B) If this form is signed by the named insured, 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.

(C) An automobile insurer is not required to make a new offer of coverage on any automobile insurance policy which renews, extends, changes, supersedes, or replaces an existing policy.

(D) Compliance with this section satisfies the insurer and agent’s duty to explain and offer optional coverages and higher limits and no person, including, but not limited to, an insurer and insurance agent is liable in an action for damages on account of the selection or rejection made by the named insured.

(E) If the insured fails or refuses to return an executed offer form within thirty days to the insurer, the insurer shall add on uninsured motorist and underinsured motorist coverages with the same policy limits as the insured’s liability limits.

**SECTION 38‑77‑370.** Obligations of insurance‑support organizations; access to personal information.

(A) If an individual, after proper identification, submits a written request to an insurance‑support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably able to be located and retrieved by the insurance‑support organization, the insurance‑support organization, within thirty business days from the date the request is received shall:

(1) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance‑support organization prefers;

(2) permit the individual to see and obtain a copy of the recorded personal information pertaining to him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers, unless the recorded personal information is in coded form, in which case an accurate translation in plain language must be provided in writing;

(3) disclose to the individual the identity, if recorded, of those persons to whom the insurance‑support organization has disclosed the personal information within two years before the request, and if the identity is not recorded, the names of those insurance‑support organizations or other persons to whom the information is disclosed normally; and

(4) provide the individual with a summary of the procedures by which he may request correction, amendment, or deletion of recorded personal information.

(B) Any personal information provided pursuant to subsection (A) of this section must identify the source of the information if it is an institutional source.

(C) Medical record information supplied by a medical care institution or medical professional and requested under subsection (A) of this section, together with the identity of the medical professional or medical care institution that provided the information, must be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurer, agent, or insurance‑support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurer, agent, or insurance‑support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.

(D) Except for personal information provided under this section, an insurer, agent, or insurance‑support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(E) The obligations imposed by this section upon an insurer or agent may be satisfied by another insurer or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (A) of this section, an insurer, agent, or insurance‑support organization may make arrangements with an insurance‑support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(F) The rights granted to individuals in this section must extend to all natural persons to the extent information about them is collected and maintained by an insurer, agent, or insurance‑support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection must not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(G) For purposes of this section, “insurance‑support organization” does not include “consumer reporting agency”.

**SECTION 38‑77‑390.** Written notice of cancellation or nonrenewal; request for reasons for cancellation or nonrenewal.

(A) In the event of a cancellation or nonrenewal, including those that involve policies referred to in Section 38‑77‑120, the insurer or agent responsible for the cancellation or nonrenewal shall give a written notice in a form approved by the director that:

(1) either provides the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the cancellation or nonrenewal in writing or advises the person that upon written request he may receive the specific reason or reasons in writing; and

(2) provides the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection (B) of this section and Section 38‑77‑380.

(B) Upon receipt of a written request within ninety business days from the date of the mailing of notice or other communication of a cancellation or nonrenewal to an applicant, policyholder, or individual proposed for coverage, the insurer or agent shall furnish to the person within twenty‑one business days from the date of receipt of the written request:

(1) the specific reason or reasons for the cancellation or nonrenewal in writing, if that information was not furnished initially in writing pursuant to subsection (A)(1);

(2) the specific items of personal and privileged information that support those reasons; however:

(a) the insurer or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the director, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(b) specific items of medical‑record information supplied by a medical‑care institution or medical professional must be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurer or agent prefers; and

(3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (B)(2) of this section. However, the identity of any medical professional or medical‑care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurer or agent prefers.

(C) The obligations imposed by this section upon an insurer or agent may be satisfied by another insurer or agent authorized to act on its behalf. However, the insurer or agent making the cancellation or nonrenewal shall remain responsible for compliance with the obligations imposed by this section.

(D) When a cancellation or nonrenewal results solely from an insured’s oral request or inquiry, the explanation of reasons and summary of rights required by subsection (A) of this section may be given orally.

**SECTION 38‑77‑395.** Absence of liability or cause of action in certain situations; exceptions.

There is no liability on the part of and no cause of action of any nature may arise against the director or his designees, any insurer, or the authorized representatives, agents, and employees of either or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or refusal to write or renew, for any statement made by any of them in complying with this article, or for the providing of information pertaining thereto, unless the person asserting the cause of action establishes that the person against whom the cause of action is asserted was motivated by express malice or gross negligence.

ARTICLE 5.

REINSURANCE FACILITY AND DESIGNATED PRODUCERS [REPEALED EFF JANUARY 1, 2010]

**SECTION 38‑77‑510.** 143)[Repealed effective January 1, 2010] Reinsurance Facility created; duties generally.

There is created a nonprofit, unincorporated legal entity known as the South Carolina Reinsurance Facility which is subject to regulations and orders promulgated by the director or his designee which are not inconsistent with the purposes of this chapter.

The facility shall reinsure, at the option of the ceding automobile insurer and subject to the provisions of this chapter, the risk covered under any policy of automobile insurance. However, these cessions must be confined to quota share reinsurance of either a one hundred percent quota share of the risk or to any other percentage of quota share reinsurance the department may permit by regulations promulgated by it.

The facility is considered to be a “using agency” as defined by Section 11‑35‑310.

**SECTION 38‑77‑520.** 143)[Repealed effective January 1, 2010] Insurers must become members of Facility.

No automobile insurer may be licensed to transact automobile insurance in this State unless it becomes a participating member of the facility with respect to automobile insurance and thereafter continues participation so long as it transacts automobile insurance in this State. Every member is bound by the plan of operation of the facility as approved or promulgated by the director or his designee and by any rules the governing board of the facility lawfully prescribes.

If the authority of an insurer to transact automobile insurance in this State terminates for any reason its obligations as a member of the facility nevertheless continue until all obligations have been fulfilled and the director or his designee has so found and certified to the governing board of the facility.

If an insurer merges into or consolidates with another insurer authorized to transact automobile insurance in this State, or another insurer authorized to transact automobile insurance in this State has reinsured the insurer’s entire automobile insurance business in this State, both the insurer and its successor or the assuming reinsurer, as the case may be, are liable for the insurer’s obligations in respect to the facility.

Any unsatisfied net liability to the facility of an insolvent insurer which is a member of the facility must be assumed by and apportioned among the remaining members in the same manner in which assessments or gain and loss are apportioned. The facility thereupon acquires and has all rights and remedies allowed by law in behalf of the remaining members against the estate or funds of the insolvent insurer for sums due the facility.

**SECTION 38‑77‑530.** 143)[Repealed effective January 1, 2010] Plan of operation of Facility; approval by director or designee.

The plan of operation of the facility is subject to the approval of the director or his designee which may be granted only if the plan provides for equitable apportionment of the operating expenses and profits or losses among the members. The plan may, if the director or his designee considers it feasible and equitable, make provision for separate apportionments between private passenger automobile insurance business and commercial automobile insurance business or, alternatively or in addition to that division, the plan may make provision for separate apportionments between automobile liability insurance business, including medical payments and uninsured motorist insurance, and automobile physical damage insurance business. Any such apportionments must give consideration to a comparison between the writings or car‑year exposures of each insurer of automobile insurance and the total writings or car‑year exposures of all automobile insurers or, in the case of any separate apportionments approved by the director or his designee, a comparison between the writings or car‑year exposures of each insurer within the applicable category of automobile insurance and the writings or car‑year exposures of all insurers within that category.

In connection with his approval of the plan, the director or his designee may require that the plan make provision for such comparisons for a one‑year period or for a longer period not to exceed five years and may provide for weighing the experience so as to attach a greater weight to the more recent experience.

In connection with the approval of the plan’s provisions respecting equitable apportionment of the operating expenses or gains or losses of the facility, the director or his designee may require that the plan make provision for a comparison between each insurer’s percentage of the aggregate written premiums or car‑year exposures respecting automobile insurance or any such category thereof and the insurer’s percentage of total cessions to the facility of such insurance or category thereof so as to provide that the insurer’s portion of the operating expenses or gains or losses must be the average of the two percentages; or the director or his designee may approve or require any other similar or comparable provision for the apportionment of the expenses or gains or losses of the facility which relates insurers’ shares to their respective utilization of the facility.

The plan of operation, provided that insurers writing liability and physical damage coverages, including nonowners coverage, in the State of South Carolina, must commence recoupment of facility assessments by way of a surcharge on liability insurance coverage on private passenger and commercial automobile business issued by a member or through the facility. Such surcharge must be a percentage of the premium adopted by the governing board of the facility; however, for the period beginning on March 1, 1999 and ending on February 28, 2002 the amount of the percentage of premium surcharge for the recoupment of facility assessments adopted by such board cannot exceed ten percent of the liability insurance coverage premium per insured motor vehicle or risk annually for all insureds or policyholders. Beginning on March 1, 2002 and continuing thereafter, every insured or policyholder who does not have any insurance merit rating points pursuant to the Uniform Merit Rating Plan in effect upon the effective date of this act must not be surcharged for the recoupment of any facility assessments or losses; therefore, a clean or nonpointed risk shall no longer pay any form of recoupment seeking to recoup facility losses. Any surcharge as provided above during the period of March 1, 1999 through February 28, 2002 must be displayed as a part of the applicable premium charge for liability insurance coverage. However, beginning on March 1, 2002 every insured or policyholder who does have insurance merit rating points pursuant to the Uniform Merit Rating Plan in effect upon the effective date of this act shall be surcharged for the recoupment of any facility assessments or losses; therefore, these pointed risks shall be the only persons in the State of South Carolina who shall pay any recoupment fee for facility losses or assessments remaining in the facility on March 1, 2002 or any losses accruing in the facility after March 1, 2002. Furthermore, the director of the Department of Insurance shall promulgate a plan by regulation to recoup any losses remaining in the facility on March 1, 2002 or any losses accruing after March 1, 2002 only from those insureds or policyholders having insurance merit rating points as provided above. This plan shall include, but is not limited to, a schedule of recoupment and method of surcharge method whether a fixed fee, a percentage basis, or otherwise consider appropriate by the director.

No insurer may include directly or indirectly in premiums any charges or surcharges for the recoupment of facility assessments or losses other than as authorized herein. If the director of the Department of Insurance, or his designee, determines that an insurer has violated this prohibition, the director or his designee may impose the penalties against the insurer as provided by law. Upon the final recoupment of facility losses when the South Carolina Reinsurance Facility ceases to exist, no insurance carrier offering automobile insurance coverage in the State shall include any surcharge for the recoupment of facility assessments or losses as any portion of the premium charged for automobile insurance coverage and these insurance carriers must remove this surcharge at the next policy renewal, thereby reducing automobile insurance premiums in the amount of the surcharge percentage of premium.

(1) Any recoupment charge paid by policyholders must be considered premium for the purpose of calculating premium taxes and commissions and is subject to normal policy cancellation procedures.

(2) Any net operating gains resulting from the operation of the facility must be retained by the facility, and the gains and any investment income derived from the gains must be used to offset future operating losses.

(3) The total funds recouped by all insurers less commission and premium tax expenses and time value of money considerations must be paid to the Reinsurance Facility in accordance with the plan of operation. The governing board shall redistribute the funds to the insurers based upon each insurer’s share of the Reinsurance Facility losses. Recoupment must be used solely for the purpose of recovering past facility operating deficits. The plan of operation must provide that the amount ultimately received by an individual company is not more than the company’s share of the Reinsurance Facility losses, plus the time value of money.

(4) The Reinsurance Facility shall convert to the percentage‑of‑premium basis of recoupment by March 1, 1999.

(5) Servicing carrier contracts for business written by designated producers may, at the carrier’s option, be extended to March 1, 2002 upon the same terms and conditions as their current contracts.

**SECTION 38‑77‑540.** 143)[Repealed effective January 1, 2010] Duties of ceding insurer.

The ceding insurer shall transfer or credit to the Facility on any policy of automobile insurance reinsured by the Facility the pure loss component of its rate or premium charge together with the profit and contingency component of the rate or premium charge as determined under its rating plan or system as filed with the Department. The ceding insurer shall retain as and for its ceding commission the allocated loss adjustment expense component as well as the underwriting and administrative expense components of the rate or premium charge under ceding insurer’s rating plan or system as filed with the Department. However, no ceding insurer may include in the agents’ commissions component of its underwriting expenses any amount greater than it has actually paid its agent as commission on the reinsured risk.

**SECTION 38‑77‑550.** 143)[Repealed effective January 1, 2010] Legal rights of insured and insurer not affected by reinsurance.

Reinsurance of a policy of automobile insurance with the Facility does not create a privity of contract or any other direct relationship between the policyholder of the reinsured policy and the Facility. The contractual or other legal rights of the insured and insurer are not affected by the reinsurance.

**SECTION 38‑77‑560.** 143)[Repealed effective January 1, 2010] Deductions to insurer.

An insurer ceding reinsurance to the Facility on automobile insurance policies shall receive credit by way of deduction from its unearned premium liability as calculated in accordance with Section 38‑9‑170. However, reinsurance with the Facility may not be deducted for purposes of the limitations‑of‑risk provisions of Section 38‑55‑30.

**SECTION 38‑77‑570.** 143)[Repealed effective January 1, 2010] Investment and distribution of funds.

The funds and reserves of the facility must be invested in lawful investments permitted to property and casualty insurers under the laws and regulations governing investments of property and casualty insurers. In determining the net profit or loss resulting from the operations of the facility, all investment income and profits must be taken into consideration. No distribution of the funds, assets, property, or profits of the facility may be made except pursuant to the written order of the director or his designee.

**SECTION 38‑77‑580.** 143)[Repealed effective January 1, 2010] Governing board of Facility.

(A) The operations and affairs of the facility are under the direction and control of a governing board of five persons. The director shall appoint three persons to represent the insurance industry. In making these appointments, the director may accept nominations for qualified individuals from any individual, group, or trade or professional association. Three persons must be either residents of South Carolina or must have job responsibilities that include the supervision over South Carolina operations. The state independent agents’ association, the South Carolina Professional Auto Insurance Agents’ Association, the state professional insurance agents’ association, and any other individual, group, or insurance agent, trade, or professional association may nominate qualified candidates for appointment.

(B) In addition, the Consumer Advocate is an ex officio member of the governing board of the Reinsurance Facility. A person who is associated with a business within the meaning of Section 8‑13‑20, which is either subject to regulation by the Department of Insurance or which provides goods or services to the facility for compensation, is not eligible for appointment to the board to represent consumers, except that a person serving on the board representing consumers on the effective date of this provision who would otherwise be disqualified from serving based on this provision may continue to serve for the remainder of his current term.

(C) The director is chairman of the board, ex officio, but has no vote except in the case of a tie. The director, or his designated representative, shall preside over all meetings which must be held not less than quarterly in South Carolina at the times and places the director designates. However, upon the filing with the director of a request for a meeting signed by not fewer than three members of the board and specifying the subjects to be discussed at the proposed meeting, the director shall call a special meeting of the board to be held not less than fifteen nor more than thirty days after receipt of the request. Notice, in writing, of the special meeting must be provided to members of the board.

(D) Members of the board shall serve two years or until their successors are appointed and have qualified. A vacancy must be filled for the unexpired term only. The director may receive nominations from any individual, group, or insurance agent trade or professional association for a vacancy.

(E) Amendment of the plan of operation may be made only at the annual meeting of the board or at a special meeting called by the director for that purpose and so specified in the notice of meeting. Amendments of the plan require the affirmative vote of two‑thirds of all the board members and are subject to the approval of the director or his designee. The director or his designee may approve amendments only if they are consistent with the purposes of this chapter. If the consumer‑representative members of the board unanimously dissent from a proposed amendment and specify their reasons for dissent in writing, the director or his designee may not approve the amendment until after a public hearing addressed to the reasons for the dissent. The director may make provision for voting by proxy at meetings.

(F) The director or his designee, through the department, may propose to the board any amendment to or modification of the plan that the director or his designee considers to be necessary to render the plan reasonable or consistent with the purposes of this chapter, specifying in writing the reasons for any proposed amendment or modification. If the board fails to adopt his proposed amendment or modification, the director or his designee, after notice and public hearing addressed to the reasons for the proposed amendment or modification, may promulgate the amendment or modification considered necessary to render the plan reasonable or consistent with the purposes of this chapter.

**SECTION 38‑77‑590.** 143)[Repealed effective January 1, 2010] Designated producers.

(a) Not more than six months after July 9, 1974, or at an earlier time as the director or his designee considers necessary by reason of complaints regarding want of access to automobile insurance in particular areas or want of outlets for producers, the director or his designee shall survey the various areas of the State to ascertain if sufficient marketing outlets exist in all areas or are available to all producers. Upon a finding by the director or his designee that insufficient marketing outlets exist in particular areas or that certain producers have been deprived of a market for risks previously serviced by them, the director or his designee may, after consultation with the facility, designate one or more insurers to service the areas through agents appointed by them or may designate the producers as the agents of any insurer. The arrangements must include provision for one hundred percent quota share reinsurance through the facility of any automobile insurance policy marketed through the arrangements, at the option of the insurer, and the reinsurance is not subject to the statutory provisions or regulations regarding excessive utilization of the facility.

(b) After the effective date of this section, those producers previously designated by the director or his designee may continue to serve in that capacity under the jurisdiction and control of the governing board of the facility, except that any change in the rate of commissions allowed designated producers is subject to the approval of the director or his designee.

(c) A producer may be designated by the governing board of the facility upon application for designation and is eligible for designation upon a finding by the governing board that the applicant meets the following qualifications:

(1) The applicant has been, for ten continuous years, a licensed resident property and casualty insurance agent and agency owner or principal with authority from one or more licensed insurers to write liability and physical damage insurance on private passenger automobiles;

(2) At the time of application the applicant is servicing and owns the renewals on private passenger and commercial automobile insurance business, the net premiums on which exceeded seventy‑five thousand dollars of potential cedeable automobile insurance during any one of the previous five calendar years preceding the application;

(3) Neither the applicant, nor any employee of the applicant or the applicant’s corporate agency, nor any partner or shareholder in any related insurance agency, related premium service company, or related other business, has any direct or indirect connection with any voluntary market outlet for the purpose of writing any type of automobile insurance in this State except for motorcycle insurance and types not cedeable to the facility;

(4) The applicant has not contributed to his termination as agent by any insurer because of any illegal breach of agency agreement or other related, improper, or unethical conduct; and

(5) The books, records, and accounts of the insurance business of the applicant have been audited at the expense of the applicant and found by the governing board to be indicative of a financially sound operation.

(d) Before designation as a producer, the applicant shall furnish at his expense a bond in an amount of not less than fifty thousand dollars for the faithful performance of the duties as a producer, executed by the applicant as principal and a corporate surety licensed to do business in this State as surety, and shall also have effective errors and omissions insurance by an insurer licensed to do business in this State, with the bond and errors and omissions insurance being subject to approval by the governing board.

(e) The governing board shall assign a specific location to each producer designated. The governing board shall determine from the director or his designee the locations assigned by him to those producers whom the director or his designee has designated. Designated producers may not open or maintain any other locations without the written authorization of the governing board; provided, however, that an applicant maintaining multiple offices on June 4, 1987, is entitled to maintain two locations as a designated agent which he owned and operated at that time and through which premiums in at least the amount of seventy‑five thousand dollars were written. The governing board shall terminate the designation, and the director or his designee shall revoke all agents’ licenses of any producer who does not comply with this requirement upon demand by the governing board. Upon termination, the producer’s expirations on designated business become the property of the facility.

(f) The designation of a producer by the director or his designee or the governing board is transferable to a spouse, child, parent, brother, or sister of the producer upon the designated producer’s retirement, incapacity, or death. The duties of a designated producer may be performed by one or more qualified employees of the producer or the producer’s corporate agency.

(g) A designated carrier who fails a claims audit shall have no new designated producer assignments until the time it passes a re‑audit within a reasonable time prescribed by the governing board. If this carrier fails two claims audits, including a re‑audit, within any three‑year period, that carrier is disqualified for renewal of its contract with the facility upon expiration of its existing contract.

A producer designated under this section may not write new private passenger and commercial automobile insurance business to be placed in the facility after March 1, 1999. A policy with an effective date after March 1, 2002 shall not be accepted by the facility.

**SECTION 38‑77‑595.** 143)[Repealed effective January 1, 2010] Conditions for designation of otherwise ineligible applicant.

The governing board may designate an applicant who otherwise would be ineligible for designation because of a direct or indirect connection with a voluntary market outlet for automobile insurance, if that connection is due to the ability to write “small commercial risks”, as defined in Section 38‑77‑30(11). The governing board may designate the applicant for the limited purpose of servicing risks of “individual private passenger automobile” insurance, as defined in Section 38‑77‑30(5.5), when it determines that insufficient market outlets exist in a particular area previously served by the applicant for “individual private passenger automobile” insurance.

A producer designated under this section may not write new private passenger and commercial automobile insurance business to be placed in the facility after March 1, 1999. A policy with an effective date after March 1, 2002 shall not be accepted by the facility.

**SECTION 38‑77‑596.** 143)[Repealed effective January 1, 2010] Reinsurance Facility to develop and file private passenger automobile loss components and expense components; facility rate increases capped.

(A) The governing board of the South Carolina Reinsurance Facility annually shall develop and file private passenger automobile loss components and expense components which include provisions for profits and contingencies, which would combine for the final rate for automobile insurance coverages based on the total experience of all risks ceded to the facility which are actuarially sound and supported by statistical evidence. The governing board shall contract with independent actuarial services to develop the loss component. Due consideration must be given to actual loss experience within the facility for the most recent three‑year period for which such information is available.

(B) The loss component developed under this section is applicable to the risk and territorial classification plan adopted by the facility. Nothing in this section precludes the governing board of the facility from filing for approval, or the director of the Department of Insurance from requiring the governing board to file for approval, variations in loss components and rates which are based upon differences in risk characteristics including, but not limited to, difference in driving records.

(C) The governing board of the facility annually shall review the private passenger automobile loss components to determine if they are actuarially sound and supported by the statistical evidence. If rate changes are required, the governing board shall submit appropriate filings for approval with the director. Facility rate increases on or after March 1, 1999, must be capped at an overall ten percent increase each year. This cap does not apply on an individual insured basis. These rate filings are subject to public hearing pursuant to applicable provisions of the Administrative Procedures Act.

**SECTION 38‑77‑630.** 143)[Repealed effective January 1, 2010] Policies ceded in reinsurance facility.

(A) A policy, other than a renewal policy, may be ceded to the South Carolina Reinsurance Facility only when the application is accompanied by either a renewal notice from another insurer or a motor vehicle report (MVR), issued at the point of sale, together with the full premium correctly reflecting the facts shown on the MVR or consistent with the premium quoted in the renewal notice.

(B) To facilitate compliance with this requirement, a carrier shall require an applicant other than a renewal applicant, to obtain the MVR or a renewal notice from the insurance carrier who provided the insurance coverage then in effect and present it to the agent upon making an application. In those cases, the applicant must be credited for the amount paid for the MVR.

(C) In the case of an applicant who holds a valid driver’s license from another state but is not yet licensed in this State, a copy of this out‑of‑state driver’s license may be submitted with the application in lieu of the MVR or renewal notice above required in this section. The MVR, renewal notice, or copy of the applicant’s driver’s license, as applicable, must be kept with the application by the carrier in the manner the facility requires.

**SECTION 38‑77‑640.** 143)[Repealed effective January 1, 2010] Exemption from surcharge for recoupment.

Pursuant to the plan of operation related to the South Carolina Reinsurance Facility outlined in Section 38‑77‑530, beginning on March 1, 2002, and continuing after that, an insured or a policyholder without insurance merit rating points on March 1, 1999, pursuant to the Uniform Merit Rating Plan in effect on March 1, 1999, is exempt from a surcharge for the recoupment of facility assessments or losses. A clean or nonpointed risk must not have any form of recoupment imposed to recoup facility losses; provided that, beginning on March 1, 2002, and continuing until the Department of Insurance determines it is unnecessary, a premium surcharge on liability premiums must be imposed pursuant to a plan promulgated by regulation by the director using driving records as of March 1, 1999.

ARTICLE 7.

ARBITRATION OF PROPERTY DAMAGE LIABILITY CLAIMS

**SECTION 38‑77‑710.** Appointment of attorneys as arbitrators to hear and determine property damage liability claims; process and procedure.

The court of common pleas, or any inferior courts having concurrent jurisdiction, in and for each county, shall by order of reference appoint an attorney or attorneys to hear and determine, by arbitration, property damage liability claims arising out of motor vehicle collisions or accidents and to award actual and punitive damages. This order must be consistent with the provisions of this chapter and may not be inconsistent with the Rules of the Supreme Court of South Carolina. Process and procedure must be as summary and simple as may be reasonable and may provide for the taking of evidence in the form of reports, statements, or itemized bills or in any other manner without the procedural and evidentiary limitations which pertain in jury trials. The court may provide for the taking of depositions of a witness within or without the State.

**SECTION 38‑77‑720.** Number, qualifications, and compensation of arbitrators; fee paid by claimant.

(a) The order of reference shall establish a panel of arbitrators each of whom must be a member of the bar and the members must be selected for service in particular cases on some fair rotation basis. Three arbitrators shall hear and determine each case and the decision of two of the three arbitrators shall determine the issue. However, the parties to the dispute may, by agreement, provide for determination of the disputed claim by one arbitrator.

(b) Each arbitrator assigned to determine the claim may be compensated, not to exceed thirty‑five dollars for his services and time, payable out of the funds of the court and which may not be taxable as costs to either party.

(c) The claimant who is the moving party in seeking arbitration shall pay to the clerk of court a fee of ten dollars. Five dollars must be retained by the clerk as the cost of filing the claim and final judgment and five dollars must be used to pay the cost of service on the other party or parties.

**SECTION 38‑77‑730.** Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.

(a) Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.

(b) The claim must be filed with the clerk of court in the county in which the cause of action arose or where the plaintiff or defendant resides. The claim must be filed in triplicate with the clerk of court on forms to be provided by him. The forms shall set forth the names of the parties, the date and place of the accident, and the amount of property damage claimed. The clerk shall file one copy in his office, and one copy must be served upon the defendant as provided by law for service of summons and complaints. The sheriff, or such other person, shall promptly serve the claim upon the defendant and shall receive the sum of five dollars to defray the cost of securing this service. The sheriff, or such other person, serving the process shall promptly file an affidavit of personal service with the clerk of court on forms to be provided by the clerk.

(c) There must be attached to, or made part of, the form a summons to the defendant named notifying him that he should file a response with the clerk of court within thirty days from the date of service and that failure to file a response within thirty days entitles the plaintiff to a default judgment. The form must be signed by the party filing it or his attorney, if any, and shall by order of reference show the address of the person signing it.

**SECTION 38‑77‑740.** Hearing; notice to parties; damages to be awarded; securing attendance of witnesses.

(a) The court, or the clerk acting for the court, shall assign the arbitrators to hear the matter at the courthouse, or other designated place in the county where the claim is filed, within sixty days after the date of filing, or as soon thereafter as is feasible. The clerk of court shall, on a form provided by him, advise the parties or their attorneys of record, if any, by mail as to the place, date, and time of hearing and shall advise the parties to bring all records which may pertain to the claim, including, but not limited to, the following:

(1) Two estimates of damage to the motor vehicle or its contents signed by the estimator.

(2) Signed receipts for car repairs.

(3) Bills or receipts for other property damages claimed.

The forms shall also contain notice to the parties that, if they cannot attend because of illness or otherwise, the clerk of court must be notified as soon as possible with the request that another date be set for the hearing.

(b) Property damages must be awarded as provided by law, including, but not limited to, actual damages, loss of use, depreciation, and any other property damages which are the direct and proximate result of the accident.

(c) The parties may secure the attendance of witnesses by their voluntary appearance or may secure their attendance by subpoenas prepared and issued in accordance with the laws of this State.

**SECTION 38‑77‑750.** Enforcement of subpoenas; warrant to produce witnesses; certification of records.

(a) The court of common pleas shall, on application of the arbitrators, or any one of them, or any party or his attorney, enforce by proper proceedings the attendance and testimony of witnesses and the production of records and may punish for contempt of court, by fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce records required by any subpoena issued. The court may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who has ignored or failed to comply with any subpoena issued and served upon the witness pursuant to this article and the warrant shall authorize and empower the sheriff to arrest and produce at the hearing the witness. It is the duty of the sheriff to do so, but the failure of a witness to appear may be excused on the same grounds as provided by law in the courts of this State.

(b) All records introduced in evidence which are not identified by their preparer must be certified under oath as a correct statement of the facts contained therein.

**SECTION 38‑77‑760.** Decision of arbitrators.

After receiving the evidence, the arbitrators, or a majority of them, or the single arbitrator if the parties have agreed upon a single arbitrator, shall enter the decision on the back of the original claim and file it with the clerk of court, who shall enter it as a judgment on the records of his office. The arbitrator first appointed shall, on the day the decision is filed with the clerk of court, serve a copy of the decision signed by each arbitrator on each party to the arbitration, either personally or by registered mail, or as provided by agreement.

**SECTION 38‑77‑770.** Right to appeal decision; procedures.

If any party is dissatisfied with the decision of the arbitrators, or the single arbitrator, he may appeal within twenty days of the decision to the court in which the claim is filed by service upon the other parties of a notice of appeal. Every notice of appeal shall include a statement under oath that the appeal is taken in good faith and not merely for the purpose of delay. The trial on appeal must be a trial de novo.

ARTICLE 8.

ASSIGNMENT OF RISKS

**SECTION 38‑77‑810.** Promulgation of standards for assignment of risks to insurance carriers and servicing carriers; establishment of Associated Auto Insurers Plan.

Beginning on March 1, 2003 and continuing thereafter, the director may promulgate reasonable standards for the assignment of risks to insurance carriers and servicing carriers, and an assigned risk plan, hereinafter referred to as the Associated Auto Insurers Plan, must be established by March 1, 2003. More than one assigned risk plan may be established. The director may make reasonable regulations for the assignment of risks to insurance carriers. He shall establish rate classifications, rating schedules, rates, and regulations to be used by insurance carriers issuing assigned risk, policies of motor vehicle liability, physical damage, and underinsured and uninsured motorist insurance in accordance with this chapter as appear to it to be proper in the establishment of rate classifications, rating schedules, rates, and regulations, it shall be guided by the principles and practices which have been established under its statutory authority to regulate motor vehicle liability, physical damage, and medical payments insurance rates, and it may act in conformity with its statutory discretionary authority in such matters.

The servicing carriers for the Associated Auto Insurers Plan may be competitively bid as provided for in this section. If the Associated Auto Insurers Plan is competitively bid, then the director or his designee shall appoint a committee or committees of individuals as he considers qualified to establish standards and procedures for the consideration and evaluation of bids. Insurers or other vendors, in conjunction with a licensed automobile insurer, may submit bids. The committee or committees shall evaluate and award contracts pursuant to the bidding process established by the committee or committees, subject to the final approval of the director or his designee. The director may require a bid fee to cover the expenses of implementing this section.

The plan for the Associated Auto Insurers Plan must contain a provision for which licensed agents and/or brokers may be certified such as to bind insurance policies. The manager of the plan shall establish and maintain an electronic means to bind policies immediately. The electronic effective date procedure shall be available only to producers of record who are certified by the plan.

**SECTION 38‑77‑820.** Application to have risk assigned to insurance carrier licenses to write motor vehicle liability insurance.

Every person who has been unable to obtain a motor vehicle liability policy shall have the right to apply to the director to have his risk assigned to an insurance carrier licensed to write and writing motor vehicle liability insurance in the State and the insurance carrier, whether a stock or mutual company, reciprocal, or interinsurance exchange, or other type or form of insurance organization, as provided in this chapter shall issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility as provided in this chapter, and in addition shall provide, at the option of the insured, reasonable motor vehicle physical damage and medical payments coverages, (both as defined in Chapter 77, Title 38) in the same policy. Every person who has otherwise obtained a motor vehicle liability insurance policy, or who has been afforded motor vehicle liability insurance under the laws of this State, but who was not afforded motor vehicle medical payments insurance or motor vehicle physical damage insurance in the same policy, or who was not afforded such coverages under the provisions of that section, shall have the right to apply to the director to have his risk assigned to an insurance carrier, as provided above, licensed to write and writing either or both coverages, and the insurance carrier shall issue a policy providing the coverage or coverages applied for.

**SECTION 38‑77‑830.** Assigned Risk Pool.

Insurance carriers may satisfy their Associated Auto Insurers Plan obligations by joining with other insurers to establish an Assigned Risk Pool whereby one or more insurers accepts the assignments of other insurers and in return, the other insurers agree to be responsible for any assessment necessary to pay losses associated with the servicing carrier’s pool policies. These agreements are subject to approval by the director.

**SECTION 38‑77‑840.** Powers of director.

The director may in its discretion, after reviewing all information pertaining to the applicant or policyholder available from its records, the records of the department, or from other sources:

(1) refuse to assign an application;

(2) approve the rejection of an application by an insurance carrier;

(3) approve the cancellation of a policy of motor vehicle liability, physical damage, and medical payments insurance by an insurance carrier; or

(4) refuse to approve the renewal or the reassignment of an expiring policy.

**SECTION 38‑77‑841.** Information to be supplied by Associated Auto Insurers Plan producers.

The producer of each Associated Auto Insurers Plan must provide on a form promulgated by the director of the Department of Insurance the information as follows:

(1) the name of one other insurance agent and/or insurer representative who has rejected the applicant for automobile insurance;

(2) if the producer has at least one voluntary market for automobile insurance, the producer must provide the application to at least one voluntary market used by that producer and the application must be rejected;

(3) the reason why the applicant is submitting an application to the Associated Auto Insurers Plan. Such reason shall include data on traffic violations, accidents and/or reasons as to why the voluntary market has not provided coverage.

**SECTION 38‑77‑845.** Review of applications.

(A) The director or his designee, or the plan manager, may review each application. Applications which are not complete or accurate, or both, shall be considered in violation of Section 38‑57‑30 and are subject to penalty. The department shall promulgate regulations to enforce this section. Penalties may include suspension of binding authority, fines up to five thousand dollars, and revocation of license.

(B) The director or his designee may review each application and provide such application to other qualified insurers upon request who may provide the insurance in the voluntary market at a rate less than the Associated Auto Insurers Plan rate. In such a case, the producer shall not receive commission on the sale of such policy.

(C) In his review of the agent’s or broker’s residual market business, the director or his designee may consider whether the insurer, agent, or broker is participating in a pattern of unfair discrimination as provided in Section 38‑77‑122 and Section 38‑77‑123.

**SECTION 38‑77‑850.** Confidentiality of information filed with director.

Any information filed with the director by an insurance carrier in connection with an assigned risk must be confidential and solely for the information of the director and its staff and must not be disclosed to any person, including an applicant, policyholder, and any other insurance carrier.

**SECTION 38‑77‑860.** Disclosure of reasons for director’s decisions not required; liability.

(A) The director is not required to disclose to any person, including the applicant or policyholder, its reasons for:

(1) refusing to assign an application;

(2) approving the rejection of an application by an insurance carrier;

(3) approving the cancellation of a policy of motor vehicle liability, physical damage, and medical payments insurance by an insurance carrier; or

(4) refusing to approve the renewal or the reassignment of an expiring policy.

(B) The director or anyone acting for him is not held liable for any act or omission in connection with the administration of the duties imposed upon it by the provisions of this chapter, except upon proof of actual malfeasance.

**SECTION 38‑77‑870.** Availability of assignment of risks provisions to nonresidents and personnel of the Armed Forces.

The provisions of this chapter relevant to the assignment of risks must be available to nonresidents who are unable to obtain a policy of motor vehicle liability, physical damage, and medical payments insurance with respect only to motor vehicles registered and used in the State. Provided, however, that assignment through the South Carolina Automobile Insurance Plan also must be available to personnel of the Armed Forces of the United States who are on active duty and who officially are stationed in this State if they possess a valid motor vehicle driver’s license issued by another state or territory of the United States or by the District of Columbia, regardless of the state of registration of their motor vehicle, if their motor vehicle is garaged principally in this State.

**SECTION 38‑77‑880.** Availability of assignment of risks provisions to carriers legally required to carry public liability and property damage insurance.

Notwithstanding any other provision of law, the provisions of this chapter relating to assignment of risks must be available to carriers by motor vehicle who are required by law to carry public liability and property damage insurance for the protection of the public.

ARTICLE 11.

MOTOR VEHICLE THEFT AND MOTOR VEHICLE INSURANCE FRAUD REPORTING‑IMMUNITY ACT

**SECTION 38‑77‑1110.** Short title.

This article may be cited as the “Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting‑Immunity Act”.

**SECTION 38‑77‑1120.** Definitions.

As used in this article:

(a) “Authorized agency” means:

(1) the South Carolina State Law Enforcement Division, the Department of Public Safety, the sheriff’s department of any county of this State, and any duly constituted criminal investigative department or agency of another state of the United States;

(2) the Attorney General of this State, any circuit solicitor of this State, any prosecuting attorney for a county, circuit, or district of another state or of the United States;

(3) the South Carolina Department of Insurance and the South Carolina Department of Consumer Affairs of the Attorney General’s Office; and

(4) the United States Department of Justice and its Federal Bureau of Investigation.

(b) “Relevant” means having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

(c) “Action” means affirmative acts and the failure to take action.

(d) “Immune” means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this article unless actual malice on the part of the insurance company or authorized agency against the insured or gross negligence or reckless disregard for his rights is present.

**SECTION 38‑77‑1130.** Provision to authorized agencies, by insurance companies, of information regarding motor vehicle theft or motor vehicle insurance fraud; release of information by authorized agencies; immunity from liability.

(a) Any authorized agency may require, in writing, the insurance company at interest to release to the requesting agency any or all relevant information or evidence considered important to the authorized agency which the company may have in its possession, relating to any specific motor vehicle theft or motor vehicle insurance fraud. Relevant information includes:

(1) pertinent insurance policy information relevant to theft or fraud under investigation and any application for a policy;

(2) policy premium payment records which are available;

(3) history of previous claims made by the insured;

(4) material relating to the investigation of the loss including statements of any person, proof of loss, and any other evidence relevant to the investigation.

(b) When an insurance company has reason to believe that a motor vehicle loss in which it has an interest may involve theft or a fraudulent claim, the company may notify, in writing, an authorized agency and provide it with any or all material developed from the company’s inquiry into the loss; however, when this information includes possible evidence of motor vehicle theft or motor vehicle insurance fraud involving specifically named persons, the information in all cases may be furnished to the solicitor in the circuit where the loss occurred and he shall furnish the information to other authorized agencies if he considers the action appropriate. When an insurance company provides any one of the authorized agencies with notice of a theft or fraud, it is sufficient notice for the purpose of this article.

(c) The authorized agency provided with information may release or provide the information to any agency asked to participate in the investigation.

(d) Any insurance company providing information to an authorized agency has the right to be informed, upon written request, as to the status of the case by the agency within a reasonable time, as determined by the authorized agency.

(e) Any insurance company or authorized agency which releases information, whether oral or written, and any person acting in their behalf, pursuant to this article, is immune from any liability arising out of the release.

**SECTION 38‑77‑1140.** Requirement that information be held in confidence until release is required; obligation of authorized agency, and its agents and employees, to testify.

(a) Any authorized agency or insurance company which receives any information furnished pursuant to this article shall hold the information in confidence until its release is required pursuant to a criminal or civil action or proceeding.

(b) Any authorized agency, its agents, or employees, may be required to testify in any litigation in which the insurance company at interest is named as a party.

**SECTION 38‑77‑1150.** Prohibitions relative to disclosure or nondisclosure of information.

(a) No person may intentionally or knowingly refuse to release any information requested pursuant to this article.

(b) No person may fail to hold in confidence information required to be held in confidence by this article.

**SECTION 38‑77‑1160.** Violations and penalties.

Any person who violates the provisions of this article is guilty of a misdemeanor and upon conviction must be fined not more than three thousand dollars or imprisoned for not more than two years, or both.