CHAPTER 57

Trade Practices

**SECTION 38‑57‑10.** Declaration of purpose.

 The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945, (Public Law 15, 79th Congress), by defining, or providing for the determination of, all the practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

HISTORY: Former 1976 Code Section 38‑57‑10 [1947 (45) 322; 1952 Code Section 37‑1151; 1962 Code Section 37‑1151; 1978 Act No. 585 Section 3] recodified as Section 23‑9‑310 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑10 [1947 (45) 322; 1952 Code Section 37‑1223; 1962 Code Section 37‑1202; 1964 (53) 2293] recodified as Section 38‑57‑10 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Application of this chapter to health maintenance organizations, see Section 38‑33‑140.

Annuity disclosure regulation, see S.C. Code of Regulations R. 69‑39.

Standards for marketing, Medicare supplement insurance, see S.C. Code of Regulations R. 69‑46 Section 20.

Life insurance disclosure regulation, see S.C. Code of Regulations R. 69‑30.

Regulation pertaining to military sales practices, see S.C. Code of Regulations R. 69‑65.

Requirement that every risk retention group comply with all laws regarding deceptive, false, or fraudulent acts or practices, see Section 38‑87‑40.

Library References

Insurance 1560 to 1578, 3335, 3416.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 70, 144 to 145, 659 to 662, 1872, 2138 to 2139.

LAW REVIEW AND JOURNAL COMMENTARIES

Insurance [Fraud]. 25 S.C. L. Rev. 393.

NOTES OF DECISIONS

In general 1

1. In general

Under South Carolina law, appropriate channel for insured’s claims against underinsured motorist (UIM) insurer for alleged violations of Insurance Trade Practices Act or Claims Practices Act was administrative complaint through Department of Insurance. Snyder v. State Farm Mut. Auto. Ins. Co., 2008, 586 F.Supp.2d 453. Insurance 3141; Insurance 3541

All unfair trade practices regarding the insurance business are regulated by the Insurance Trade Practices Act. Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co., 1994, 868 F.Supp. 128. Antitrust And Trade Regulation 152

Principal could not sue surety in tort for bad faith refusal to pay obligee under performance bond, even though the Insurance Code regulates sureties and the surety’s liability was limited to the penal amount of the bond and had an incentive to delay payment; the bond was not insurance, and the surety was not an insurer. Masterclean, Inc. v. Star Ins. Co. (S.C. 2001) 347 S.C. 405, 556 S.E.2d 371. Insurance 1001; Insurance 1002; Principal And Surety 65

The Insurance Trade Practices Act and the Claims Practices Act do not create private causes of action. Masterclean, Inc. v. Star Ins. Co. (S.C. 2001) 347 S.C. 405, 556 S.E.2d 371.

**SECTION 38‑57‑20.** “Person” defined.

 When used in this chapter “person” means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, and adjusters.

HISTORY: Former 1976 Code Section 38‑57‑20 [1947 (45) 322; 1952 Code Section 37‑1152; 1962 Code Section 37‑1152] recodified as Section 23‑9‑320 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑20 [1947 (45) 322; 1952 Code Section 37‑1201; 1962 Code Section 37‑1201; 1964 (53) 2293] recodified as Section 38‑57‑20 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Workmen’s compensation, dividends to policyholders, see S.C. Code of Regulations R. 69‑24.

Requirement that every risk retention group comply with all laws regarding deceptive, false, or fraudulent acts or practices, see Section 38‑87‑40.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Action Section 14, Determination of Private Rights.

**SECTION 38‑57‑30.** Unfair methods and deceptive acts prohibited.

 No person may engage, in this State, in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

HISTORY: Former 1976 Code Section 38‑57‑30 [1947 (45) 322; 1952 Code Section 37‑1153; 1962 Code Section 37‑1153] recodified as Section 23‑9‑330 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑30 [1947 (45) 322; 1952 Code Section 37‑1204; 1962 Code Section 37‑1203; 1964 (53) 2293] recodified as Section 38‑57‑30 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Requirement that every risk retention group comply with all laws regarding deceptive, false, or fraudulent acts or practices, see Section 38‑87‑40.

Library References

Insurance 1560 to 1578, 3335, 3416.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 70, 144 to 145, 659 to 662, 1872, 2138 to 2139.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Insurance Law; Tortious breach of duty of good faith and fair dealing. 34 S.C. L. Rev. 28 (August 1982).

NOTES OF DECISIONS

In general 1

Construction with other laws 2

Employment contracts 3

1. In general

South Carolina’s Insurance Trade Practices Act clearly manifests legislative intent to create an administrative remedy and not a private right of action. Lewis v. Omni Indem. Co., 2013, 970 F.Supp.2d 437. Action 3; Insurance 3541

Any claim by insured alleging that automobile insurer engaged in deceptive practices was not actionable under South Carolina’s Insurance Trade Practices Act, which did not provide private right of action. Lewis v. Omni Indem. Co., 2013, 970 F.Supp.2d 437. Action 3; Insurance 3543

To succeed on a claim under South Carolina’s Unfair Trade Practices Act, plaintiff must show that the defendant’s actions adversely affected the public interest, which can be shown if the acts or practices have the potential for repetition. Lewis v. Omni Indem. Co., 2013, 970 F.Supp.2d 437. Antitrust And Trade Regulation 151

2. Construction with other laws

South Carolina’s Unfair Trade Practices Act does not apply to unfair trade practices covered and regulated under the South Carolina’s Insurance Trade Practices Act. Lewis v. Omni Indem. Co., 2013, 970 F.Supp.2d 437. Antitrust and Trade Regulation 152

3. Employment contracts

Covenant in employment contract providing that employee was not to induce or attempt to induce any policyholder of employer to terminate his or her insurance with employer did not deny employee right to compete in insurance field, and such covenant did not contravene any rule of law or public morals and it was enforceable. Oxman v. Profitt (S.C. 1962) 241 S.C. 28, 126 S.E.2d 852. Contracts 116(1)

**SECTION 38‑57‑40.** Misrepresentation or false advertising of policies prohibited.

 No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, proposal, circular, or statement misrepresenting the terms of a policy issued or to be issued or the benefits or advantages represented thereby or the dividends or share of the surplus to be received thereon, or make a false or misleading statement as to the dividend or share of surplus previously paid on similar policies or make a misrepresentation as to the financial condition of an insurer or as to the legal reserve system upon which an insurer operates or use any name or title of a policy or class of policies misrepresenting the true nature thereof.

HISTORY: Former 1976 Code Section 38‑57‑40 [1947 (45) 322; 1952 Code Section 37‑1154; 1962 Code Section 37‑1154; 1978 Act No. 585, Section 4] recodified as Section 23‑9‑340 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑40 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1204; 1964 (53) 2293] recodified as Section 38‑57‑40 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Annuity disclosure regulation, see S.C. Code of Regulations R. 69‑39.

Library References

Insurance 1562.

Westlaw Topic No. 217.

**SECTION 38‑57‑45.** Use of state seal prohibited in advertising or promotion unless expressly approved; state endorsement disclaimer required on solicitation to state employees.

 (A) No insurance agency, insurer, or health maintenance organization may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other solicitation material, an advertisement, representation, or statement with respect to the business of insurance which utilizes the Seal of South Carolina or any symbol which contains, includes, or is derivative of the Seal of South Carolina without the approval of the State Budget and Control Board.

 (B) An insurance agency, an insurer, or a health maintenance organization must include in a prominent manner in solicitation material it utilizes specifically directed at and distributed to state employees a statement that the insurance program or health maintenance program is not officially endorsed by the State unless the program officially has been endorsed by the Budget and Control Board.

HISTORY: 1991 Act No. 131, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

Library References

Insurance 1563.

Westlaw Topic No. 217.

**SECTION 38‑57‑50.** False information or advertising as to insurance business prohibited.

 No person may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, television, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive, or misleading.

HISTORY: Former 1976 Code Section 38‑57‑50 [1947 (45) 322; 1952 Code Section 37‑1155; 1962 Code Section 37‑1155; 1978 Act No. 585 Section 5] recodified as Section 23‑9‑350 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑50 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1205; 1964 (53) 2293] recodified as Section 38‑57‑50 by 1987 Act No. 155, Section 1.

Library References

Insurance 1562.

Westlaw Topic No. 217.

NOTES OF DECISIONS

In general 1

1. In general

The authority of the Insurance Commissioner to investigate the matters enumerated in former Code 1962 Section 37‑1205 was limited to such as were related to the business activities of the insurance company. Nowhere did the statutes, either expressly or by implication, show an intent on the part of the legislature to extend the regulatory or investigative powers of the Commissioner to other than commercial or business activities of an insurance company or its agents (decided under former law). Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849.

There is nothing in the statutes to indicate any purpose on the part of the General Assembly to regulate political activities on the part of insurance companies (decided under former law). Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849.

Actions of insurance companies in opposing legislation considered by them to be against their best interests were not activities “with respect to the business of insurance,” within the meaning of former Code 1962 Section 37‑1205 which the Insurance Commissioner was authorized to regulate or investigate (decided under former law). Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849. Insurance 1052; Insurance 1563

**SECTION 38‑57‑60.** Fraudulently inducing insured to change, alter, or retain insurance prohibited.

 No person may make a false, misleading, fraudulent, or incomplete representation or comparison of insurance policies or insurers for the purpose of inducing or intending to induce any person to lapse, forfeit, surrender, terminate, retain, or convert an insurance policy or to take out a policy in another insurer.

HISTORY: Former 1976 Code Section 38‑57‑60 [1947 (45) 322; 1952 Code Section 37‑1156; 1962 Code Section 37‑1156; 1978 Act No. 585 Section 6] recodified as Section 23‑9‑360 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑60 [1962 Code Section 37‑1206; 1964 (53) 2293] recodified as Section 38‑57‑60 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Replacement of life insurance and annuities, see S.C. Code of Regulations R. 69‑12.1.

Library References

Insurance 1562, 1569.

Westlaw Topic No. 217.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Insurance Law; Tortious breach of duty of good faith and fair dealing. 34 S.C. L. Rev. 28 (August 1982).

**SECTION 38‑57‑70.** Misrepresentations in adjustment of claims prohibited.

 No person may, in connection with adjusting any claim, loss, or damage under a contract or policy of insurance, misrepresent to an insured, or any other person having an interest in the proceeds payable under the contract or policy the terms, coverage or effect of the contract or policy, for the purpose and with the intent of effecting settlement of the claim, loss, or damage under the contract or policy on less favorable terms than those provided in and contemplated by the contract or policy.

HISTORY: Former 1976 Code Section 38‑57‑70 [1947 (45) 322; 1952 Code Section 37‑1157; 1962 Code Section 37‑1157] recodified as Section 23‑9‑370 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑70 [1962 Code Section 37‑1207; 1964 (53) 2293] recodified as Section 38‑57‑70 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Requirement that every risk retention group, its agents and its representatives comply with the claims settlement practices laws, see Section 38‑87‑40.

Library References

Insurance 3354, 3362.

Westlaw Topic No. 217.

NOTES OF DECISIONS

In general 1

Punitive damages 2

1. In general

Release procured through fraud and deceit. In an action for fraud and deceit that arose out of the procurement of a release from plaintiff in settlement of his claim against his insurer for disability benefits, the trial court erred in granting a nonsuit where, accepting plaintiff’s testimony as true, the elements of actual fraud were sufficiently established to require submission of the issues to the jury (decided under former Section 38‑55‑70). Brown v. All American Life & Cas. Co. (S.C. 1978) 271 S.C. 442, 247 S.E.2d 812.

Trial judge erred by refusing motion for directed verdict in favor of insurance company in action brought by plaintiff alleging fraudulent misrepresentation in settlement of insurance claim, where plaintiff failed to read insurance release before signing, and record showed due diligence on plaintiff’s part would have revealed true contents of release (decided under former Section 38‑55‑70). Evans v. State Farm Mut. Auto. Ins. Co. (S.C. 1977) 269 S.C. 584, 239 S.E.2d 76.

2. Punitive damages

In an action for recovery of insurance benefits under a theft provision of a homeowner’s policy, plaintiff could recover punitive damages for the wilful or reckless failure to settle or investigate his claim where the evidence indicated that there was virtually no effort on the part of the insurer to investigate plaintiff’s claim; further, plaintiff would be entitled to attorney fees, under former Section 38‑9‑320, since defendant’s failure to adequately investigate plaintiff’s claim supported a determination that the subsequent refusal to pay was without reasonable cause (decided under former Section 38‑55‑70). Trimper v. Nationwide Ins. Co. (D.C.S.C. 1982) 540 F.Supp. 1188.

**SECTION 38‑57‑75.** Vehicle glass repair procedures.

 (A) When an insured has suffered damage to the glass of a motor vehicle, “vehicle glass”, both the insurer providing glass coverage and the third party administrator that administers glass coverage for that insurer must not require that repairs be made to the insured’s vehicle by a particular provider of glass repair work.

 (B) In processing a vehicle glass claim, a third party administrator must immediately disclose to the insured that the third party administrator is acting on behalf of the insurer.

 (C) Immediately after verification of coverage and evaluation of the damage, an insurer or third party administrator must ascertain whether an insured has a provider of choice.

 (D) When an insured requests to have covered glass repair work performed by a specific provider of choice, the insurer or third party administrator must determine whether the selected shop is a member of the insurer’s or third party administrator’s vehicle glass repair program or preferred provider list. If the provider of choice is a member of the insurer’s vehicle repair program or preferred provider network, the insurer or its third party administrator must assign the claim and provide a claim or reference number at that time to the provider of choice.

 (E) When an insured requests to have covered glass repair work performed by a provider who is not a member of the insurer’s or third party administrator’s vehicle repair program or preferred provider list, the insurer or third party administrator:

 (1) must confirm that the provider agrees to perform the repair at the insurer’s fair and reasonable rate of reimbursement. If the provider refuses to accept the rate, the insurer or third party administrator may inform the insured that he will be responsible for additional costs. If the provider agrees to accept the fair and reasonable rates, no further statements regarding costs shall occur and the provider must be paid the agreed fair and reasonable rate of reimbursement;

 (2) must inform the insured that he or she may use the requested provider of choice; and

 (3) must not make statements regarding the warranty offered by the provider of choice. If an insured asks the insurer or third party administrator questions regarding a provider’s warranty, the insurer or third party administrator must refer the insured to the provider for clarification.

 (F) When an insured does not request to have covered glass repair work performed by a specific provider of choice, the insurer or third party administrator may refer the repair to a vehicle glass repairer who is a member of the insurer’s or third party administrator’s preferred network of providers.

 (G) A vehicle glass repair or replacement facility, including any agent, contractor, vendor, representative, or anyone acting on its behalf, must not:

 (1) threaten, coerce, or intimidate an insured to file a claim for vehicle glass repair or replacement;

 (2) engage in unfair or deceptive practices to induce an insured to file a vehicle glass repair claim;

 (3) induce an insured to file a vehicle glass repair claim when the damage to the vehicle glass is insufficient to warrant vehicle glass repair or replacement;

 (4) perform vehicle glass repair or replacement services under an insurance policy without first obtaining insurer approval;

 (5) make any representations to an insured as to the vehicle glass coverage available under the insurance policy, including, but not limited to, representations that the insured is entitled to a free windshield; or

 (6) represent verbally, electronically, or in any other way, including, but not limited to, advertisements, websites, or any marketing materials that a claim for a windshield replacement under an insurance policy is free.

 (H) The owner, lessee, or insured driver of the vehicle, or the designee of the owner, lessee, or insured driver of the vehicle, if any, must be party to the filing of a vehicle glass repair claim, otherwise known as first notice of loss. A provider of vehicle glass repair services may not serve as the designee for the insured.

 (I) When an insurer or third party administrator determines that an insured’s requested glass repair must be physically inspected, and the inspection is carried out by a representative of a third party administrator, that representative must not make any offer to make repairs, engage in any discussion of other glass repair facilities, or recommend any glass repair facility during the course of the inspection.

 (J) An insurer, agent, or third party administrator only may provide information about a claim to a vehicle glass repairer after the insured has selected that repairer to provide glass services.

 (K) The provisions of this section do not apply to insurers or third party administrators who do not have a ten percent or greater ownership interest in a vehicle glass repair business.

 (L) Violations of this section are subject to the provisions of the South Carolina Insurance Unfair Claim Practices Act.

 (M) Notwithstanding the provisions of this chapter, the insurer has the right to inform the insured that the insurer will not guarantee the work performed by a provider that is not in the network of the insurer or third party administrator.

HISTORY: 2012 Act No. 236, Section 1, eff January 1, 2013.

Library References

Insurance 2719(2), 3141, 3246.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1979 to 1980.

**SECTION 38‑57‑80.** False financial statements prohibited.

 (1) No person may file with any supervisory or other public official, or make, publish, disseminate, circulate, or deliver to any person, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

 (2) No person may make a false entry in a book, report, or statement of an insurer with intent to deceive an agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom the insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, wilfully omit to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

HISTORY: Former 1976 Code Section 38‑57‑80 [1947 (45) 322; 1952 Code Section 37‑1158; 1962 Code Section 37‑1158; 1978 Act No. 585 Section 7] recodified as Section 23‑9‑380 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑80 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1208; 1964 (53) 2293] recodified as Section 38‑57‑80 by 1987 Act No. 155, Section 1.

Library References

Insurance 1566.

Westlaw Topic No. 217.

**SECTION 38‑57‑90.** Defamation prohibited.

 No person may make, publish, circulate, or disseminate, directly or indirectly, or aid, abet, or encourage the making, publishing, circulating, or disseminating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer or of an organization proposing to become an insurer and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

HISTORY: Former 1976 Code Section 38‑57‑90 [1962 Code Section 37‑1158.1; 1964 (53) 2057; 1978 Act No. 585 Section 8] recodified as Section 23‑9‑390 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑90 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1209; 1964 (53) 2293] recodified as Section 38‑57‑90 by 1987 Act No. 155, Section 1.

Library References

Insurance 1569.

Westlaw Topic No. 217.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Libel and Slander Section 27, Financial Irresponsibility or Unreliability.

S.C. Jur. Libel and Slander Section 28, Injury to a Person in His Occupation.

Treatises and Practice Aids

44 Causes of Action 2d 339, Cause of Action for Defamation Involving Plaintiff’s Profession, Trade, or Business.

**SECTION 38‑57‑100.** Boycotts, intimidation, and coercion prohibited.

 No person may enter into an agreement to commit, or by any concerted action commit, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

HISTORY: Former 1976 Code Section 38‑57‑100 [1962 Code Section 37‑1158.2; 1964 (53) 2057; 1978 Act No. 585 Section 9] recodified as Section 23‑9‑400 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑100 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1210; 1964 (53) 2293] recodified as Section 38‑57‑100 by 1987 Act No. 155, Section 1.

Library References

Insurance 1568.

Westlaw Topic No. 217.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 21, Threats to Compel.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Insurance Law; Tortious breach of duty of good faith and fair dealing. 34 S.C. L. Rev. 28 (August 1982).

**SECTION 38‑57‑110.** Coercion of business by sellers or lenders prohibited.

 (1) No lender, vendor, or person engaged in selling real or personal property or the financing thereof or the lending of money on the security thereof, and no trustee, agent, officer, or other employee of any such person, may require, as a condition precedent, concurrent, or subsequent to the sale or financing the purchase of such property or to lending money upon the security of a mortgage thereon or as a condition precedent, concurrent, or subsequent for the renewal or extension of the loan or mortgage, that the purchaser or borrower negotiate a policy of insurance or renewal thereof covering the property through a particular insurer or agent.

 (2) This section does not prevent a mortgagee, real or chattel, of the right to designate reasonable financial requirements of the insurer and adequacy of the terms and provisions of the coverage with respect to the property pledged or mortgaged. A requirement that the insurer providing coverage be a particular type of insurer is not considered a reasonable financial requirement, if the insurer issues nonassessable policies and otherwise meets reasonable financial requirements.

HISTORY: Former 1976 Code Section 38‑57‑110 [1947 (45) 322; 1952 Code Section 37‑1159; 1962 Code Section 37‑1159; 1978 Act No. 585 Section 10] recodified as Section 38‑7‑70 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑110 [1962 Code Section 37‑1211; 1964 (53) 2293; 1969 (56) 214, 760] recodified as Section 38‑57‑110 by 1987 Act No. 155, Section 1.

Library References

Insurance 1568.

Westlaw Topic No. 217.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:36, Tie‑Ins.

**SECTION 38‑57‑120.** Unfair discrimination in life insurance, annuities, and disability insurance prohibited.

 (1) No person may make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of the contract.

 (2) No person may make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of the contract or in any other manner.

HISTORY: Former 1976 Code Section 38‑57‑120 [1947 (45) 322; 1952 Code Section 37‑1160; 1962 Code Section 37‑1160; 1978 Act No. 585 Section 11] recodified as Section 38‑7‑40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑120 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1212; 1964 (53) 2293] recodified as Section 38‑57‑120 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Premiums for consolidations and mortgage insurance, see Section 38‑85‑60.

Use of senior‑specific certifications and professional designations in the sale of life insurance and annuities, see S.C. Code of Regulations R. 69‑40.1.

Library References

Insurance 1517.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 659 to 662.

**SECTION 38‑57‑130.** Misrepresentations, special inducements, and rebates prohibited on all insurance contracts.

 (1) No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular statement misrepresenting the terms of any policy issued or to be issued, the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon.

 (2) No person may make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies.

 (3) No person may pay, allow, or give or offer to pay, allow, or give, directly or indirectly, as inducement to the purchase or the renewal of an insurance contract, any rebate of premiums payable on the contract, any special favor or advantage in any benefits payable thereon, or any valuable consideration or inducement that is not specified in the contract.

HISTORY: Former 1976 Code Section 38‑57‑130 [1947 (45) 322; 1952 Code Section 37‑1161; 1962 Code Section 37‑1161; 1978 Act No. 585 Section 13] recodified as Section 38‑7‑80 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑130 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1213; 1964 (53) 2293] recodified as Section 38‑57‑130 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Workmen’s compensation, dividends to policyholders, see S.C. Code of Regulations R. 69‑24.

Library References

Insurance 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 2:32, Rates‑Rebate Prohibitions.

**SECTION 38‑57‑140.** Discrimination and rebating permitted in life insurance, annuities, and disability insurance.

 Nothing in Sections 38‑57‑120 and 38‑57‑130 may be construed as including within the definition of discrimination or rebates any of the following practices:

 (1) In the case of any contract of life insurance, life annuity, or disability insurance, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance. However, these bonuses or abatement of premiums must be fair and equitable to policyholders and for the best interests of the insurer and its policyholders.

 (2) In the case of life insurance and disability policies issued on the debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

 (3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year.

 (4) Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, or payroll deduction plan or other similar plan at a reduced rate reasonably related to the savings made by the use of the plan.

HISTORY: Former 1976 Code Section 38‑57‑140 [1947 (45) 322; 1952 Code Section 37‑1162; 1962 Code Section 37‑1162] recodified as Section 38‑7‑80 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑140 [1947 (45) 322; 1952 Code Section 37‑1203; 1962 Code Section 37‑1214; 1964 (53) 2293] recodified as Section 38‑57‑140 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Application of this section to the prohibition against discrimination in accident and health insurance policies, see Section 38‑71‑200.

Application of this section to the prohibition against discrimination in the conduct of insurance business, see Section 38‑55‑50.

Library References

Insurance 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 2:32, Rates‑Rebate Prohibitions.

**SECTION 38‑57‑150.** Inducements prohibited; exception.

 (1) No policy or annuity contract may provide for, and no person may engage in any of the following, as an inducement to the purchaser or in connection with or as reference to the policy or annuity contract, directly or indirectly:

 (a) Paying, allowing, giving, or offering any paid employment or contract for services of any kind.

 (b) Giving, selling, or purchasing or offering or agreeing to give, sell, purchase, allow, or provide for any agreement promising returns and profits, or any stock, bonds, or other securities, including trading stamps or other properties or present or contingent interest therein of any insurer or other corporation, association, partnership, or person, or any dividends or profits accrued thereon.

 (c) Giving, allowing, arranging for, or offering any advisory board contract, or similar contract, promising returns and profits.

 (2) Subsection (1) does not prohibit a licensed agent who is registered under Chapter 1, Title 35 from offering to sell shares of or interests in mutual funds in connection with or as reference to a policy or annuity contract if the agent, at the time of the offer, gives the prospective buyer a written prospectus which has been filed with and approved by the director or his designee and the Securities Commissioner.

HISTORY: Former 1976 Code Section 38‑57‑150 [1947 (45) 322; 1952 Code Section 37‑1163; 1962 Code Section 37‑1163; 1978 Act No. 585, Section 13] has no comparable provisions in 1987 Act No. 155; Former 1976 Code Section 38‑55‑150 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1215; 1964 (53) 2293; 1968 (55) 2500] recodified as Section 38‑57‑150 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 710.

Library References

Insurance 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

**SECTION 38‑57‑160.** Advertising gifts permitted.

 Sections 38‑57‑130, 38‑57‑140, and 38‑57‑150 do not prohibit a licensed agent from giving to insureds, prospective insureds, and to others, for the purpose of advertising, an article of merchandise having a value of not more than twenty‑five dollars and having an advertisement for the insurer or agent printed on it. Nothing within this section precludes a licensed agent from providing refreshments during a sales presentation which do not exceed ten dollars a person in cost.

HISTORY: Former 1976 Code Section 38‑57‑160 [1947 (45) 322; 1952 Code Section 37‑1164; 1962 Code Section 37‑1164; 1978 Act No. 585 Section 14] recodified as Section 23‑9‑410 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑160 [1962 Code Section 37‑1216; 1964 (53) 2293] recodified as Section 38‑57‑160 by 1987 Act No. 155, Section 1; 1997 Act No. 68, Section 11; 2007 Act No. 27, Section 1, eff upon approval (became law without the Governor’s signature on May 16, 2007).

Library References

Insurance 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

**SECTION 38‑57‑170.** Free insurance or advertisement prohibited; exceptions.

 (1) No person in this State may advertise, offer, or provide free insurance as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with real or personal property.

 (2) For the purposes of this section, “free” insurance is insurance for which no identifiable and additional charge is made to the purchaser of the real property or personal property or services or insurance for which an identifiable or additional charge is made in an amount less than the cost of the insurance as to the seller or other person, other than the insurer, providing the insurance.

 (3) Subsections (1) and (2) do not apply to:

 (a) insurance against loss of or damage to the real or personal property involved in any sale or services under a policy covering the interest of the seller or vendor;

 (b) credit life or credit accident and health insurance;

 (c) title insurance;

 (d) obligations issued by insurers licensed in this State which shall indemnify against breaches of warranties made in connection with any sale or services.

 (4) No person may use the word “free” to describe life or accident and health insurance in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.

HISTORY: Former 1976 Code Section 38‑57‑170 [1947 (45) 322; 1951 (47) 433; 1952 Code Section 37‑1165; 1962 Code Section 37‑1165; 1978 Act No. 585, Section 15] recodified as Section 23‑9‑420 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑170 [1962 Code Section 37‑1217; 1964 (53) 2293] recodified as Section 38‑57‑170 by 1987 Act No. 155, Section 1.

Library References

Insurance 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:22, Insurance.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of fraudulent insurance claim limited. 39 S.C. L. Rev. 1 ( Autumn 1987).

**SECTION 38‑57‑180.** Insurance cost must be specified in sales and loans.

 Where the premium or charge for insurance is included in the overall purchase price or financing of the purchase of merchandise or property, the vendor or lender shall separately state and identify the amount charged and to be paid for the insurance and the classifications if any, upon which based. The inclusion or exclusion of the cost of insurance in the purchase price or financing may not increase, reduce, or otherwise affect any other factor involved in the cost of the merchandise or property or financing as to the purchaser or borrower.

HISTORY: Former 1976 Code Section 38‑57‑180 [1947 (45) 322; 1952 Code Section 37‑1166; 1962 Code Section 37‑1166; 1978 Act No. 585 Section 16] recodified as Section 23‑9‑430 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑180 [1962 Code Section 37‑1218; 1964 (53) 2293] recodified as Section 38‑57‑180 by 1987 Act No. 155, Section 1.

Library References

Consumer Credit 15, 16.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 429, 436 to 439.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:22, Insurance.

**SECTION 38‑57‑200.** Findings and order.

 If, after a hearing, the director or his designee determines that a method of competition or an act or practice is unfair or deceptive as defined in this title and that the person complained of has engaged in the method of competition, act, or practice in violation of this title, he shall reduce his finding to writing and shall issue and cause to be served upon the person charged with the violation:

 (1) an order requiring the person to cease and desist from engaging in the method of competition, act, or practice; and

 (2) an order imposing penalties provided in Section 38‑2‑10.

HISTORY: Former 1976 Code Section 38‑57‑200 [1947 (45) 322; 1952 Code Section 37‑1167; 1962 Code Section 37‑1167; 1978 Act No. 585, Section 17] recodified as Section 23‑9‑450 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑240 [1947 (45) 322; 1952 Code Section 37‑1210; 1962 Code Section 37‑1224; 1964 (53) 2293] recodified as Section 38‑57‑200 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 29; 1993 Act No. 181, Section 711.

CROSS REFERENCES

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Insurance 1575.

Westlaw Topic No. 217.

**SECTION 38‑57‑210.** Intervenor at hearing; judicial review at instance of intervenor.

 Upon good cause shown, the director or his designee shall permit any person to intervene, appear, and be heard at the hearing by counsel or in person. If the report of the director or his designee does not charge a violation of this chapter, then any intervenor in the proceedings may, within thirty days after the service of the report, cause a petition to be filed in the Circuit Court of Richland County for a review of the report. Upon review the court has authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding the report of the director or his designee, constitutes a violation of this chapter.

HISTORY: Former 1976 Code Section 38‑57‑210 [1951 (47) 433; 1952 Code Section 37‑1168; 1962 Code Section 37‑1168; 1978 Act No. 585 Section 18] recodified as Section 23‑9‑460 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑290 [1947 (45) 322; 1952 Code Section 37‑1220; 1962 Code Section 37‑1229; 1964 (53) 2293] recodified as Section 38‑57‑210 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 712.

Library References

Insurance 1055, 1070, 1575.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 53, 57 to 58, 60 to 64.

NOTES OF DECISIONS

In general 1

1. In general

Situations can exist where failure to exhaust administrative remedies may be excused (decided under former law). Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849.

**SECTION 38‑57‑220.** Immunity from prosecution.

 If any person asks to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty or forfeiture and is, notwithstanding, directed to give the testimony or produce the evidence, he shall comply with the direction, but he may not thereafter be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence pursuant thereto. No testimony so given or evidence produced may be received against him upon any criminal action, investigation, or proceeding. The individual so testifying is not exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence so given or produced is admissible against him upon any criminal action, investigation, or proceeding concerning the perjury, nor is he exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred or to be conferred pursuant to this title. The individual may execute, acknowledge, and file in the office of the department a statement expressly waiving his immunity or privilege in respect to any transaction, matter, or thing specified in the statement and thereupon the testimony of the person or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and, if so received or produced, the individual is not entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

HISTORY: Former 1976 Code Section 38‑57‑220 [1979 Act No. 190 Section 9] recodified as Section 23‑9‑470 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑55‑300 [1947 (45) 322; 1952 Code Section 37‑1222; 1962 Code Section 37‑1230; 1964 (53) 2293] recodified as Section 38‑57‑220 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 713.

Library References

Criminal Law 42.1.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 65, 97, 100 to 109, 111 to 112.

**SECTION 38‑57‑230.** Violation of cease and desist order.

 Any person who contemptuously violates a cease and desist order of any practice issued by the director or his designee shall, upon due notice, receive a hearing before the director or his designee. Upon the determination of the director or his designee that the contemptuous violation has been committed, the director or his designee shall issue his order to the effect that the person is in contempt of his order to cease and desist. Any person who contemptuously violates a cease and desist order of the director or his designee shall pay a fine set by the director or his designee but not to exceed fifty dollars for each day of violation. However, if the violation is wilful, the fine may be assessed in an amount not to exceed one hundred dollars per day of violation.

HISTORY: Former 1976 Code Sections 38‑55‑310 [1962 Code Section 37‑1231; 1964 (53) 2293] and 38‑55‑320 [1947 (45) 322; 1952 Code Section 37‑1221; 1962 Code Section 37‑1232; 1964 (53) 2293] recodified as Section 38‑57‑230 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 714.

Library References

Insurance 1575, 1578.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 144 to 145.

**SECTION 38‑57‑240.** Notice of levy and proceedings for collection.

 If upon completion of the hearing the director or his designee has elected to levy a fine on the person involved, that person must be so notified in writing by certified mail and of the amount of the fine. The notice shall state that, if the fine is not paid within thirty days from the date of receipt of the notice, further action to effect collection under this chapter will be initiated, together with revocation of the person’s license or certificate of authority.

HISTORY: Former 1976 Code Section 38‑55‑330 [1962 Code Section 37‑1233; 1964 (53) 2293] recodified as Section 38‑57‑240 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 715.

Library References

Insurance 1578.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 144 to 145.

**SECTION 38‑57‑250.** Filing order with clerk of court.

 When the time for appeal has expired and no appeal has been perfected by the person fined, the director or his designee shall file with the clerk of court of the county in which the person fined resides and for any other county in which he may own personal or real property, or an interest therein, a copy of the order. The clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the person fined and in appropriate columns the amount of the fine and costs for which the order calls and the date when the copy was filed and shall index the order upon the judgment roll index. The order has the full effect of a civil judgment including rights of the judgment creditor to issue execution and accrue interest at the legal rate until the time as it is satisfied.

HISTORY: Former 1976 Code Section 38‑55‑340 [1962 Code Section 37‑1234; 1964 (53) 2293] recodified as Section 38‑57‑250 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 716.

Library References

Insurance 1575.

Westlaw Topic No. 217.

**SECTION 38‑57‑260.** Levy of execution; sheriff’s fees.

 If the fine remains unpaid after filing the order, the director or his designee shall levy on the real or personal property or any interest he may have therein, by issuing execution to the sheriff of the county of residence of the person fined. The sheriff shall proceed upon the execution with like effect and in the same manner prescribed by law with respect to executions issued against property upon judgments of a court of record. The sheriff is entitled to a fee equivalent to five percent of the total amount of the warrant for service in executing the order and the clerk of court is entitled to the same fees for recording the order as one prescribed by law in respect to executions issued against property upon judgments of a court of record. These fees are to be added to and collected with the total amount of the order.

HISTORY: Former 1976 Code Section 38‑55‑350 [1962 Code Section 37‑1235; 1964 (53) 2293] recodified as Section 38‑57‑260 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 717.

Library References

Execution 123.

Westlaw Topic No. 161.

C.J.S. Executions Section 135.

**SECTION 38‑57‑270.** Remedies when fine not satisfied in full.

 If an order is returned not satisfied in full, the director or his designee has the same remedies to enforce the claim for the fine and costs against the person fined as if the people of the state had recovered judgment against the person fined for the amount of the fine and costs.

HISTORY: Former 1976 Code Section 38‑55‑360 [1962 Code Section 37‑1236; 1964 (53) 2293] recodified as Section 38‑57‑270 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 718.

Library References

Insurance 1578.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 144 to 145.

**SECTION 38‑57‑280.** Payment of fine under protest.

 When the director or his designee levies a fine against a person and takes action to effect collection of the fine under this chapter, that person may pay the fine under written protest if he considers the fine to be unjust or illegal. Upon the protested payment being made, the director or his designee shall pay the fine into the state treasury, giving the State Treasurer notice at that time that the payment was made under protest.

HISTORY: Former 1976 Code Section 38‑55‑370 [1962 Code Section 37‑1237; 1964 (53) 2293] recodified as Section 38‑57‑280 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 719.

Library References

Insurance 1578.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 144 to 145.

**SECTION 38‑57‑290.** Action for recovery of fine paid under protest.

 Any person paying a fine levied by the director or his designee, under protest, may at any time within thirty days after payment, but not afterwards, bring an action against the director or his designee for the recovery thereof in the court of common pleas of the county in which the fine was payable. If it is determined in that action that the fine was wrongfully or illegally levied and collected, for any reason going to the merits, the court before whom the case is tried shall certify of record that the fine was wrongfully collected and should be refunded and thereupon the Comptroller General shall issue his warrant for the refunding of the fine so paid.

HISTORY: Former 1976 Code Section 38‑55‑380 [1962 Code Section 37‑1238; 1964 (53) 2293] recodified as Section 38‑57‑290 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 720.

Library References

Insurance 1578.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 144 to 145.

**SECTION 38‑57‑300.** Attorney General to defend actions against director for recovery of fines; how judgment against director to be paid.

 The Attorney General shall defend any suit or proceeding against the director or his designee for the recovery of fines allegedly illegally or unjustly paid under this title. Any judgment against the director or his designee must be paid in the manner prescribed in Section 38‑57‑290.

HISTORY: Former 1976 Code Section 38‑55‑390 [1962 Code Section 37‑1239; 1964 (53) 2293] recodified as Section 38‑57‑300 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 721.

Library References

Attorney General 6.

Westlaw Topic No. 46.

C.J.S. Attorney General Sections 26 to 78.

C.J.S. Parent and Child Section 271.

**SECTION 38‑57‑310.** Limit of recovery against director or designee.

 In any action or proceeding against the director or his designee for the purpose of recovering a fine allegedly illegally or unjustly collected, the amount received in the suit may not exceed the amount of the fine paid under protest, together with costs arising from the service of process and procuring the attendance of witnesses.

HISTORY: Former 1976 Code Section 38‑55‑400 [1962 Code Section 37‑1240; 1964 (53) 2293] recodified as Section 38‑57‑310 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 722.

Library References

Insurance 1035.

Westlaw Topic No. 217.

C.J.S. Insurance Section 59.

**SECTION 38‑57‑320.** Revocation or suspension of license or certificate of authority to effect collection of fine.

 In all cases when it is necessary to file an order with a clerk of court to effect collection of a fine, the license or certificate of authority of the person fined may be summarily revoked or suspended.

HISTORY: Former 1976 Code Section 38‑55‑410 [1962 Code Section 37‑1241; 1964 (53) 2293] recodified as Section 38‑57‑320 by 1987 Act No. 155, Section 1.

Library References

Insurance 1127, 1618.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71, 140, 144.