CHAPTER 61

Insurance Contracts Generally

**SECTION 38‑61‑10.** Contracts which are considered made in State.

 All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.

HISTORY: Former 1976 Code Section 38‑61‑10 [1977 Act No. 120 Section 1] recodified as Section 38‑81‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑20 [1947 (45) 322; 1952 Code Section 37‑141; 1962 Code Section 37‑141] recodified as Section 38‑61‑10 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724.

**SECTION 38‑61‑20.** Approval of forms by director or designee; notification; withdrawal of approval; exemptions; optional accident or health riders.

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

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

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

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

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

 (B) Within thirty days after the filing of a form requiring approval, the director or his designee shall notify the organization filing the form of the approval or disapproval of the form, and the reason if the form is disapproved. The director or his designee, in his discretion, may extend for up to an additional sixty days the period within which he shall approve or disapprove the form. A form received, but neither approved nor disapproved by the director or his designee, is deemed approved at the expiration of the thirty days if the period is not extended, or at the expiration of the extended period, if any. An organization may not use a form deemed approved pursuant to the default provision of this section until the organization has filed with the director or his designee a written notice of its intent to use the form. The notice must be filed in the office of the director at least ten days before the organization uses the form.

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

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

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

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

 (D) The director or his designee may exempt from the requirements of subsection (A) as long as he considers proper any type of insurance policy, contract, or certificate to which in his opinion subsection (A) practically must not be applied, or the filing and approval of which, in his opinion, is not necessary for the protection of the public. However, each insurer at least annually shall list the types and form numbers of all policies it issues or sells in this State which the director or his designee has exempted from being filed and approved, and an officer of the insurer shall certify that all of these policies comply fully with the laws of this State. If a policy, contract, or certificate is certified to be in compliance with the laws of this State and the director or his designee finds it violates a law of this State, he may disqualify that insurer from certifying policies, contracts, or certificates allowed under this subsection.

 (E) Nothing in this chapter precludes the issuance of a life insurance contract that includes an optional accident, health, or accident and health insurance rider. However, the optional accident, health, or accident and health insurance rider must be filed with and approved by the director or his designee pursuant to Section 38‑71‑310, 38‑71‑720, or 38‑71‑740, as appropriate, and comply with all applicable sections of Chapter 71 of this title and, in addition, in the case of long term care insurance, Chapter 72 of this title.

HISTORY: Former 1976 Code Section 38‑61‑20 [1977 Act No. 120 Section 2] recodified as Section 38‑81‑20 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑360 [1947 (45) 322; 1952 Code Section 37‑170; 1962 Code Section 37‑170; 1979 Act No. 64] recodified as Section 38‑61‑20 by 1987 Act No. 155, Section 1; 1988 Act No. 316, Section 1; 1992 Act No. 332, Section 2; 1993 Act No. 181, Section 724; 1998 Act No. 411, Section 5; 2000 Act No. 235, Section 3; 2000 Act No. 312, Section 12; 2001 Act No. 82, Section 20, eff July 20, 2001; 2018 Act No. 219 (H.4657), Section 5, eff May 18, 2018.

Effect of Amendment

2018 Act No. 219, Section 5, in (A), in (1), substituted "applicable state or federal law the Department of Insurance is authorized to enforce" for "law"; and in (C), inserted ", impose the penalties pursuant to Section 38‑2‑10 if the insurer continues use of the form after it has been ordered withdrawn, or both," following "may withdraw approval", and in (1), substituted "applicable state or federal law the Department of Insurance is authorized to enforce" for "law".

**SECTION 38‑61‑25.** Approval procedures to issue or sell exempt commercial policies.

 It is unlawful for an insurer doing business in this State to issue or sell in this State any exempt commercial policy, contract, or certificate until it has been filed with and approved by the director or his designee. A filing that is filed with the department is deemed to have met the requirements of this chapter unless it:

 (1) does not meet the requirements of law;

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

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

 If a filing is not in compliance with this chapter, the director or his designee shall issue an order specifying in detail the provisions with which the insurer has not complied and stating the time within which the insurer has to comply with the order before the filing is no longer valid. An order issued by the director pursuant to this section must be on a prospective basis only and may not affect a contract issued or made before the effective date of the order. However, this section does not apply to surety contracts or fidelity bonds, except as required in Section 38‑15‑10, or to insurance contracts, riders, or endorsements prepared to meet special, unusual, peculiar, or extraordinary conditions applying to an individual risk.

HISTORY: 2000 Act No. 235, Section 4.

**SECTION 38‑61‑30.** Promulgation of standards for readability of certain contracts and policies.

 The department shall promulgate regulations which establish minimum standards for the readability of each homeowners, dwelling fire, automobile, accident and health, life, and all other forms of personal insurance, excluding commercial, fleet vehicle, and group insurance, which must be complied with by all insurers authorized to do business in this State. The standards shall include, but are not limited to, standards on an index of policy provisions, general organization of text, text readability, type size, type style, type spacing, and general appearance of the insurance contract.

HISTORY: Former 1976 Code Section 38‑3‑61 [1978 Act No. 550 Section 2] recodified as Section 38‑61‑30 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724.

**SECTION 38‑61‑40.** Compliance with standards for readability of certain contracts and policies; withdrawal of approval or certification on noncomplying documents.

 All insurers licensed to transact insurance business in this State shall comply with the standards prescribed by regulation of the department. The director or his designee is empowered to withdraw approval or certification on all existing policies of commonly purchased insurance that do not comply with Section 38‑61‑30.

HISTORY: Former 1976 Code Section 38‑3‑62 [1978 Act No. 550 Section 3] recodified as Section 38‑61‑40 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724; 2001 Act No. 82, Section 21, eff July 20, 2001.

**SECTION 38‑61‑50.** Standards for readability of certain contracts and policies; advice of other agencies concerning standards.

 The director or his designee shall consult with and call upon the expertise of other state agencies, as may be necessary, to determine the standards to be promulgated and, after promulgation, the effectiveness of these standards. This consultation shall include, but is not limited to, the State Department of Education or its successor entity.

HISTORY: Former 1976 Code Section 38‑3‑63 [1978 Act No. 550 Section 4] recodified as Section 38‑61‑50 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724.

**SECTION 38‑61‑60.** Advertising insurance policy in foreign language; effect on interpretation of policy provided in English.

 (A) If an insurer advertises an insurance policy, or the availability of a foreign language informational sheet, or the availability of a translation of an insurance policy in a language other than English, the insurer only needs to provide an English written insurance policy, so long as the advertisement clearly states that the insurance policy is only available in English. Notwithstanding the use of a language other than English in an advertisement, if there is a dispute, the insurance policy is controlling and an advertisement for an insurance policy, informational sheet, or translation may not be construed to modify or change the insurance policy.

 (B) Nothing in this section may be construed to require insurers to provide insurance related services, such as claim services, in a language other than English.

HISTORY: 2006 Act No. 358, Section 1, eff June 9, 2006.

**SECTION 38‑61‑70.** Commercial general liability policy; coverage for construction professional doing construction related work; definition of occurrence; application

 (A) For purposes of this section:

 (1) "Commercial general liability insurance policy" means a contract of insurance that covers occurrences of damages or injury during the policy period and insures a construction professional for liability arising from construction related work.

 (2) "Construction professional" means a person, sole proprietorship, partnership, corporation, limited liability company, or other recognized legal entity that engages in the development, construction, installation, or repair of an improvement to real property.

 (3) "Construction related work" means activities by a construction professional involving the development, construction, installation, or repair of an improvement to real property.

 (B) Commercial general liability insurance policies shall contain or be deemed to contain a definition of "occurrence" that includes:

 (1) an accident, including continuous or repeated exposure to substantially the same general harmful conditions; and

 (2) property damage or bodily injury resulting from faulty workmanship, exclusive of the faulty workmanship itself.

 (C) This section is not intended to restrict or limit the nature or types of exclusions from coverage that an insurer, including a surplus lines insurer, may include in a commercial general liability insurance policy.

 (D) This section applies only to a commercial general liability insurance policy that insures a construction professional for liability arising from construction related work.

 (E) This section applies to any pending or future dispute over coverage that would otherwise be affected by this section as to all commercial general liability insurance policies issued in the past, currently in existence, or issued in the future.

HISTORY: 2011 Act No. 26, Section 1, eff May 17, 2011.

Validity

For validity of this section, see Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, 736 S.E.2d 651 (S.C. 2012).

Editor's Note

2011 Act No. 26, Section 3, provides as follows:

"This act takes effect upon approval by the Governor and applies to any pending or future dispute over coverage that would otherwise be affected by this section as to commercial general liability insurance policies issued in the past, currently in existence, or issued in the future."