**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 50 TO TITLE 38 SO AS TO PROVIDE FOR THE LICENSING OF INSURANCE CONSULTANTS BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE; AND TO PROVIDE DEFINITIONS, EXEMPTIONS, AND PENALTIES.

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

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

“CHAPTER 50

Insurance Consultants

Section 38‑50‑10. As used in this chapter:

(1) ‘Department’ means the State Department of Insurance.

(2) ‘Director’ means the Director of the State Department of Insurance.

(3)(a) ‘Insurance consultant’ means a person who, for a fee, holds himself out to the public as engaged in the business of offering advice, counsel, opinion, or service regarding the benefits, coverages, advantages, or disadvantages of any policy of insurance that could be issued in this State.

(b) ‘Insurance consultant’ does not mean:

(i) an attorney licensed to practice law in this State who is acting in his professional capacity;

(ii) a licensed insurance producer, agent, broker, or surplus lines broker acting within the scope of his employment;

(iii) a trust officer of a bank acting within the scope of his employment;

(iv) an actuary or certified public accountant acting within the scope of his business or employment;

(v) an adjuster representing an insurer who is licensed pursuant to Chapter 47;

(vi) a public insurance adjuster who is licensed pursuant to Chapter 48; or

(vii) a person employed as a risk manager and who consults only for his employer.

(4) ‘Person’ means an individual, corporation, partnership, limited liability company, or other entity.

Section 38‑50‑20. Unless licensed as an insurance consultant pursuant to this chapter, no person may:

(1) act as an insurance consultant; or

(2) in or on advertisements, cards, signs, circulars, letterheads, flyers, or elsewhere, or in any other manner by which public announcements are made, use the title ‘insurance consultant’, ‘insurance advisor’, ‘insurance counselor’, or other similar title or combination of words or abbreviations indicating that he gives or is engaged in the business of offering to the public advice, counsel, opinion, or service regarding the benefits, coverages, advantages, or disadvantages of any policy of insurance that could be issued in this State.

Section 38‑50‑30. (A) The director, or his designee, shall issue a license as an insurance consultant to a person who has:

(1) reached the age of majority;

(2) filed a written application in the manner and form prescribed by the director, stating the lines of insurance for which the applicant desires a license;

(3) passed an examination as provided in subsection (B) of this section;

(4) satisfied the director that he is competent, responsible, and of good moral character; and

(5) paid an application fee of eighty dollars and an examination fee of ten dollars.

(B) The director shall examine all initial applicants for a license as an insurance consultant in the manner and form prescribed by the director. The examination must be of sufficient scope to demonstrate a broad knowledge of insurance contracts and the practices of the insurance industry in the lines of insurance for which the applicant desires a license.

(C) If an applicant fails an examination he may be reexamined upon payment of a ten dollar examination fee for each subsequent reexamination.

(D) When an individual applies for an insurance consultant’s license he shall provide the department his business, residence, and email addresses and telephone numbers. The individual shall notify the department within thirty days of a change of any of these addresses.

(E) The biennial fee for an insurance consultant’s license is eighty dollars payable in advance and fully earned when received, not refundable, transferable, nor proratable.

(F) An insurance consultant’s license is for an indefinite term, unless sooner revoked or suspended, if the biennial license fee is paid at the time and in the manner which the department provides by regulation. If the license fee for an insurance consultant is not received when due, the license must be canceled. If the license is to be reinstated, an original application must be filed, and a reinstatement fee equal to the unpaid biennial license fee must be paid in addition to the regular biennial license fee.

(G) Individuals engaged in providing insurance consulting services without a license must be deemed to be engaged in the unauthorized transaction of insurance business and subject to the remedies provided in Chapter 25, as well as the disgorgement of fees or restitution to the individual’s client for any fees paid.

Section 38‑50‑40. (A) A licensed insurance consultant shall complete biennially a minimum of twenty‑four hours of continuing insurance education in order to be eligible for licensure for the following two years. A person who falsely represents that he or another person has met the continuing insurance education requirements of this section, after being afforded notice and an opportunity for a hearing by the Administrative Law Court, is subject to the penalties provided in Section 38‑2‑10.

(B) The director, or his designee, shall administer these continuing education requirements and shall approve courses of instruction which qualify for these purposes. However, the director may enter into reciprocal agreements with the insurance commissioners of other states regarding the approval of continuing education courses, sponsors, instructors, or proctors if, in his judgment, the arrangements or agreements are in the best interest of the State and if the proposed courses, sponsors, instructors, or proctors submitted meet the minimum statutory requirements of this State for approval. However, the director, or his designee, may not enter into or continue a reciprocal agreement unless the other state has requirements similar to this State in approving courses, sponsors, instructors, or proctors. In administering this program, the department, in its discretion, may promulgate regulations insurance consultants provide to a continuing education administrator established within the department proof of compliance with continuing education requirements as a condition of license renewal or, in the alternative, contract with an outside service provider to provide recordkeeping services as the continuing education administrator. The costs of the continuing education administrator must be paid from the continuing insurance education fees paid by insurance consultants in the manner provided by this section, except that course-approval responsibilities may not be designated to the continuing education administrator. The continuing education administrator shall compile and maintain records reflecting the continuing insurance education status of all licensed or qualified insurance consultants subject to the requirements of this section. All licensed insurance consultants shall provide evidence of their continuing insurance education status to the continuing education administrator by the last day of the individual’s month of birth. An individual born in an odd‑numbered year shall comply every odd‑numbered year. An individual born in an even‑numbered year shall comply every even‑numbered year.

Section 38‑50‑50. The director, or his designee, may enter into reciprocal agreements with the insurance commissioners or directors of other states regarding the licensing of nonresident insurance consultants if in his judgment these arrangements are in the best interests of the State and if the applicant for an insurance consultant’s license meets the minimum statutory requirements in this State for the issuance of a license.

Section 38‑50‑60. An insurance consultant may not enforce a contract or an agreement for advice, counsel, recommendation, or other information provided within the scope of his license unless:

(1) it is in writing and executed in duplicate by the person to be charged or his legal representative;

(2) the duplicate is delivered to or retained by the person to be charged when it is signed by him;

(3) it plainly specifies the amount of the fee paid or payable by the person to be charged and the services to be rendered by the insurance consultant; and

(4) it is in a form approved by the director, or his designee.

Section 38‑50‑70. After providing notice and an opportunity for a hearing pursuant to the Administrative Procedures Act, the director, or his designee, may impose the penalties provided for in Section 38‑2‑10 if, following an investigation, the director, or his designee, determines that an insurance consultant has:

(1) violated this state’s or another state’s insurance law, rule, regulation, or order of the director, or his designee;

(2) recommended the purchase of insurance, annuities, or securities from an authorized insurer in which the consultant or a member of his immediate family has an economic interest or holds an executive position;

(3) received compensation in any form from an agency or other insurance organization for recommending that agency or organization to the consultant’s client;

(4) knowingly and wilfully misrepresented the terms of an actual or proposed insurance contract;

(5) been found guilty of an unfair trade practice or fraud;

(6) been convicted of a felony or misdemeanor evidencing that the consultant is not worthy of the public trust;

(7) had a consultant’s license suspended or revoked in another state;

(8) had a producer’s license suspended or revoked in this State or another state;

(9) demonstrated incompetency, untrustworthiness, or failure to comply with the provisions of his consultant’s contract; or

(10) obtained the license through misrepresentation, fraud, or a cause for which issuance could have been refused had it been known by the director, or his designee, at the time of issuance.

Section 38‑50‑80. The department shall promulgate regulations necessary to carry out the provisions of this chapter.

Section 38‑50‑90. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.”

SECTION 2. This act takes effect upon approval by the Governor.

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