**A** **BILL**

TO AMEND SECTION 38–77–122 OF THE 1976 CODE, RELATING TO THE ISSUANCE OF AUTOMOBILE INSURANCE COVERAGE AND THE AMOUNT OF AUTOMOBILE INSURANCE PREMIUMS, TO PROVIDE THAT INSURERS MAY NOT USE A NUMERICAL, CREDIT‑BASED INSURANCE SCORE OR OTHER CREDIT RATING AS A BASIS FOR DETERMINING COVERAGE OR THE AMOUNT OF A PREMIUM; AND TO AMEND SECTION 38–77–123, RELATING TO RENEWALS OF AUTOMOBILE INSURANCE POLICIES, TO PROVIDE THAT INSURERS MAY NOT USE A NUMERICAL, CREDIT‑BASED INSURANCE SCORE OR OTHER CREDIT RATING AS A BASIS FOR DETERMINING RENEWAL OF A POLICY FOR AUTOMOBILE INSURANCE.

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

SECTION 1. Section 38–77–122 of the 1976 Code is amended to read:

“Section 38–77–122. (A)(1) 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~~,~~; numerical, credit‑based insurance score or other credit rating; 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.

(2) 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~~,~~; numerical, credit‑based insurance score or other credit rating; 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~~,~~; numerical, credit‑based insurance score or other credit rating; 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 2. Section 38–77–123 of the 1976 Code is amended to read:

“Section 38–77–123. (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) numerical, credit‑based insurance score or other credit rating;

(k) 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~~,~~; numerical, credit‑based insurance score or other credit rating; 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 3. This act takes effect upon approval by the Governor.

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