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Indicates New Matter

AMENDED

February 21, 2019

**S. 360**

Introduced by Senator Cromer

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Read the first time February 12, 2019.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑47‑55 SO AS TO CLARIFY THAT CERTAIN INDIVIDUALS ARE AUTHORIZED TO ADJUST FOOD SPOILAGE CLAIMS WITHOUT AN ADJUSTER’S LICENSE; BY ADDING SECTION 38‑72‑75 SO AS TO REQUIRE A LONG‑TERM CARE INSURANCE PROVIDER TO SUBMIT ALL PREMIUM RATE SCHEDULES TO THE DEPARTMENT OF INSURANCE AND TO ESTABLISH CERTAIN PROCEDURES CONCERNING THE PREMIUM APPROVAL PROCESS; TO AMEND SECTION 38‑3‑110, RELATING TO THE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF INSURANCE, SO AS TO ALTER PUBLIC HEARING REQUIREMENTS; TO AMEND SECTION 38‑7‑20, RELATING TO INSURANCE PREMIUM TAXES, SO AS TO EXCLUDE CERTAIN FACTORS FROM THE TOTAL PREMIUM COMPUTATION; TO AMEND SECTION 38‑7‑60, RELATING TO THE SUBMISSION OF A RETURN OF PREMIUMS, SO AS TO REQUIRE THE SUBMISSION OF A RETURN OF PREMIUMS COLLECTED; TO AMEND SECTION 38‑43‑247, RELATING TO THE REPORTING OF CRIMINAL PROSECUTIONS, SO AS TO ONLY REQUIRE THE REPORTING OF CRIMINAL CONVICTIONS; TO AMEND SECTION 38‑44‑50, RELATING TO THE REVIEW OF A MANAGING GENERAL AGENT, SO AS TO ALTER THE SUBMISSION DATE FROM MARCH FIRST TO JUNE FIRST; TO AMEND SECTIONS 38‑46‑60 AND 38‑46‑90, BOTH RELATING TO A PARTY ENGAGED AS A REINSURANCE INTERMEDIARY‑BROKER, SO AS TO ALTER THE SUBMISSION DATE OF CERTAIN DOCUMENTS FROM MARCH FIRST TO JUNE FIRST; TO AMEND SECTIONS 38‑57‑130, 38‑57‑140, AND 38‑57‑150, ALL RELATING TO PROHIBITED TRADE PRACTICES, SO AS TO CLARIFY THAT CERTAIN PRACTICES ARE PROHIBITED; TO AMEND SECTIONS 38‑75‑730 AND 38‑75‑1200, BOTH RELATING TO CANCELLATIONS OF PROPERTY, CASUALTY, AND TITLE INSURANCE POLICIES, SO AS TO EXTEND WHEN AN INSURER CAN CANCEL A POLICY WITHOUT CAUSE TO ONE HUNDRED TWENTY DAYS AND TO PROHIBIT AN INSURER FROM CANCELLING A POLICY OUTSIDE OF THE ONE HUNDRED TWENTY‑DAY PERIOD IF THEY HAD NOTICE OF A CHANGE IN RISK PRIOR TO THE EXPIRATION OF THE ONE HUNDRED TWENTY‑DAY PERIOD; TO AMEND SECTION 38‑90‑160, AS AMENDED, RELATING TO THE APPLICATION OF CERTAIN PROVISIONS TO CAPTIVE INSURANCE COMPANIES, SO AS TO APPLY THE SOUTH CAROLINA INSURANCE DATA SECURITY ACT TO CAPTIVE INSURANCE COMPANIES; AND TO AMEND SECTION 38‑99‑70, RELATING TO LICENSEES EXEMPTED FROM CERTAIN DATA SECURITY REQUIREMENTS, SO AS TO ONLY EXEMPT THE LICENSEES FROM THE PROVISIONS OF SECTION 38‑99‑20.

Amend Title To Conform

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

SECTION 1. Chapter 47, Title 38 of the 1976 Code is amended by adding:

“Section 38‑47‑55. (1) This chapter may not be construed to prevent an executive officer of an insurer, an employee of an insurer handling claims, the duly designated attorney, or producer authorized and acting for subscribers to reciprocal insurers with respect to residential property insurance from adjusting food spoilage claim loss or damages under any insurance contract of such insurer in which the amount of coverage for the applicable type of loss is contractually limited to five hundred dollars or less.

(2) Such officer, employee, attorney, or producer is not required to have an adjuster’s license to adjust food spoilage claims referenced in this section. If any such officer, employee, attorney, or producer in connection with the adjustment of any such food spoilage claim, loss, or damage engages in improper claims practices pursuant to the provisions of Chapter 59 or violates any other provision of this title, the director or his designee may suspend or revoke the insurer’s certificate of authority.”

SECTION 2. Chapter 72, Title 38 of the 1976 Code is amended by adding:

“Section 38‑72‑75. (A) All premium rate schedules for long‑term care insurance must be filed with the department and are subject to the prior approval of the director or his designee.

(1) An insurer may not charge a premium to an insured under a policy or contract of long‑term care insurance before the applicable premium rate is filed with and approved by the director or his designee.

(2) An insurer may not change the premium charged to an insured under a policy or contract of long‑term care insurance until the applicable premium rate change has been filed with and approved by the director or his designee.

(3) The director or his designee may disapprove or modify premium rates if he determines that the benefits provided are unreasonable in relation to the premiums charged, appear to be inadequate, unfairly discriminatory, or excessive in relation to benefits or appear to have assumptions that are unreasonable in the aggregate or for each assumption individually. The director or his designee shall notify the insurer of his decision in writing as soon as is practicable. In the event of disapproval, the notice must contain the reasons for disapproval, and the insurer is entitled to appeal the decision or determination of disapproval before the Administrative Law Court as provided by law. If no action has been taken to approve or disapprove the premium rates after they have been filed for ninety days, they are deemed to be approved. This period may be extended by the director or his designee for an additional period or periods not to exceed ninety days per period if he gives written notice within the waiting period to the insurer which made the filing that he needs additional time for the consideration of the filing. Upon written application by the insurer, the director or his designee may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof.

(4) The director may disapprove a previously approved filing at any time following notice to the insurer.

(B)(1) Any applicable premium rate or premium rate change of an insurer must be filed with the director or his designee in accordance with guidance issued by the director or his designee by bulletin, regulation, or other method.

(2) In addition to the factors set forth in this chapter and in regulation, the director or his designee shall consider the following to the extent appropriate when determining whether to disapprove or modify a premium rate filing of an insurer:

(a) past and prospective loss experience in and outside the State;

(b) underwriting practice and judgment;

(c) a reasonable margin for reserve needs;

(d) past and prospective expenses, both countrywide and those specifically applicable to the State;

(e) prior approved rate changes; and

(f) any other relevant factors necessary including the factors set forth in the regulation.

(C) The director or his designee may hold a public hearing or solicit public comments as a part of the process to review long‑term care insurance rate filings received by the director or his designee. The director or his designee shall provide all individuals present at a public hearing held pursuant to this section an opportunity to offer testimony or written comments. The director or his designee may place time limits on the testimony.

(D)(1) Each premium rate filing and any supporting information filed under this chapter and subject to disclosure must be open to public inspection after the filing becomes effective.

(2) Notwithstanding the provisions of subitem (1), if the director or his designee holds a public hearing or solicits public comments on a premium rate filing pursuant to subsection (D), he may open to public inspection some or all portions of the filing that are subject to disclosure as a part of the public hearing or solicitation of public comments.

(E) Each decision of the director or his designee about premium rates made under this section is subject to judicial review in accordance with Section 38‑3‑210.”

SECTION 3. Section 38‑3‑110(5)(a) of the 1976 Code is amended to read:

“(a) The director ~~must~~ may hold a public hearing ~~at least annually~~ at a location within the seacoast area, as defined in Section 38‑75‑310(7), to provide the public with information and an opportunity to discuss and offer input concerning the rates, territory, and other pertinent issues regarding the South Carolina Wind and Hail Underwriting Association. The director must provide publicized notice of the hearing at least thirty days before the date of the public hearing.”

SECTION 4. A. Section 38‑7‑20 of the 1976 Code is amended to read:

“Section 38‑7‑20. (A)(1) In addition to all license fees and taxes otherwise provided by law, there is levied upon each insurance company licensed by the director or his designee an insurance premium tax based upon total premiums, other than workers’ compensation insurance premiums, and annuity considerations, written by the company in the State during each calendar year ending on the thirty‑first day of December. For life insurance, the insurance premium tax levied herein is equal to three‑fourths of one percent of the total premiums written. For all other types of insurance, the insurance premium tax levied in this section is equal to one and one‑fourth percent of the total premiums written. ~~In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded.~~

(2) For purposes of this section, in computing total premiums, the following are excluded:

(a) return premiums on risks and dividends paid or credited to policyholders; and

(b) for premiums on bail bonds, any amounts retained by a licensed bail bondsman as defined in Chapter 53 for authorized commissions, fees, and expenses.

(B) Effective July 1, 2013, through June 30, 2030, of the revenue of the premium taxes collected pursuant to this section:

(1) one percent must be transferred to the South Carolina Forestry Commission and used by that agency for firefighting and firefighting equipment replacement;

(2) one percent must be transferred to the aid to fire districts account within the State Treasury and distributed for firefighting equipment. One‑half of the annual allocated funds must be distributed equally to each fire department in the State, and the remaining balance must be used to fund the V‑SAFE program pursuant to Section 23‑9‑25;

(3) one quarter of one percent must be transferred to the aid to emergency medical services regional councils within the Department of Health and Environmental Control and used for grants to fund emergency medical technician and paramedic training; and

(4) the remaining insurance premium taxes collected pursuant to this section must be deposited to the credit of the general fund of the State.

(C) The department or the director, as appropriate, may, upon notice and opportunity for all interested persons to be heard, promulgate regulations and orders necessary to carry out the provisions of this section.”

B. Section 38‑7‑60(1) and (3) of the 1976 Code is amended to read:

“Section 38‑7‑60. (1) Not later than March first of each year, every insurer licensed by the director or his designee shall file with him a return of premiums ~~collected~~ written by the insurer in the State during the immediately preceding calendar year ending on December thirty‑first. The return must be made on forms prescribed by the director or his designee and must be made under oath by the insurer’s employee or representative responsible for the preparation of fee and tax returns, as well as an officer of the insurer.

(3) The premium and other taxes imposed on insurers pursuant to Sections 38‑7‑20, 38‑7‑30, 38‑7‑40, 38‑7‑50, and 38‑7‑90 must be paid to the director or his designee in quarterly installments on or before March first, June first, September first, and December first of each calendar year. The quarterly payments must be calculated and paid as follows:

(a) The quarterly installments paid on or before June first, September first, and December first must each be computed based upon one‑fourth of the total premiums ~~collected~~ written by the insurer during the immediately preceding calendar year ending on December thirty‑first. The quarterly installments for June first, September first, and December first must be reported on forms prescribed by the director or his designee.

(b) The quarterly installment paid on or before March first must equal the difference between the total tax liability of the insurer for the immediately preceding calendar year ending on December thirty‑first and the sum of the quarterly installments paid by the insurer on June first, September first, and December first of that immediately preceding calendar year. The quarterly installment for March first must be reported on the returns filed in accordance with subsection (1) of this section. An insurer whose quarterly tax installments are less than one thousand dollars per payment may elect not to pay its tax liability on a quarterly basis and, instead, may elect to report and pay its entire tax liability on the return filed in accordance with subsection (1).”

SECTION 5. Section 38‑43‑247(B) of the 1976 Code is amended to read:

“(B) Within thirty days of ~~the initial pretrial hearing date~~ a conviction, a producer shall report to the insurance director any criminal ~~prosecution~~ conviction of the producer taken in any jurisdiction. The report ~~shall~~ must include a copy of the ~~initial complaint filed, the order resulting from the hearing,~~ order, sentencing document, or plea agreement and any other relevant legal documents.”

SECTION 6. Section 38‑44‑50(A) of the 1976 Code is amended to read:

“(A) The insurer shall file annually with the department not later than ~~March~~ June first an annual independent financial examination of each MGA with which it has done business, prepared by a certified public accountant in a form acceptable to the director or his designee.”

SECTION 7. A. Section 38‑46‑60(C) of the 1976 Code is amended to read:

“(C) The insurer annually shall file with the department not later than ~~March~~ June first a copy of the statements of the financial condition of each reinsurance intermediary‑broker which the insurer has engaged. The statements must be prepared by an independent certified accountant in a form acceptable to the director or his designee.”

B. Section 38‑46‑90(B) and (C) of the 1976 Code is amended to read:

“(B) The reinsurer annually shall file with the department not later than ~~March~~ June first a copy of statements of the financial condition of each reinsurance intermediary‑manager, which the reinsurer has engaged, prepared by an independent certified accountant in a form acceptable to the director or his designee.

(C) If a reinsurance intermediary‑manager establishes loss reserves, the reinsurer annually shall obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary‑manager. The opinion must be filed not later than ~~March~~ June first. This opinion is in addition to other required loss reserve certification.”

SECTION 8.A. Section 38‑57‑130 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) Nothing in this section may be construed to:

(a) permit an unfair method of competition or an unfair or deceptive act or practice; or

(b) prohibit an insurer from offering or giving an insured, for free or at a discounted price, services or other offerings that directly and reasonably relate to the loss control of the risks covered under the policy.”

B. Section 38‑57‑140 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) Nothing in this section may be construed to:

(a) permit an unfair method of competition or an unfair or deceptive act or practice; or

(b) prohibit an insurer from offering or giving an insured, for free or at a discounted price, services or other offerings that directly and reasonably relate to the loss control of the risks covered under the policy.”

C. Section 38‑57‑150 of the 1976 Code is amended by adding an appropriately item at the end to read:

“( ) Nothing in this section may be construed to:

(a) permit an unfair method of competition or an unfair or deceptive act or practice; or

(b) prohibit an insurer from offering or giving an insured, for free or at a discounted price, services or other offerings that directly and reasonably relate to the loss control of the risks covered under the policy.”

SECTION 9. A. Section 38‑75‑730(a) and (c) of the 1976 Code is amended to read:

“(a) No insurance policy or renewal thereof may be canceled by the insurer prior to the expiration of the term stated in the policy, except for one of the following reasons:

(1) nonpayment of premium;

(2) material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy;

(3) substantial change in the risk assumed, except to the extent that the insurer had notice of the risk or should reasonably have foreseen the change or contemplated the risk in writing the policy;

(4) substantial breaches of contractual duties, conditions, or warranties;

(5) loss of the insurer’s reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil the insurer’s solvency or place that insurer in violation of the insurance laws of this State. Prior to cancellation for reasons permitted in this item, the insurer shall notify the director or his designee, in writing, at least sixty days prior to such cancellation and the director or his designee shall, within thirty days of such notification, approve or disapprove such action.

(c) Subsections (a) and (b) do not apply to any insurance policy which has been in effect for less than one hundred twenty days and is not a renewal of a previously existing policy. The policy may be canceled for any reason by furnishing to the insured at least thirty days’ written notice of cancellation, except where the reason for cancellation is nonpayment of premium, in which case not less than ten days’ written notice must be furnished. Insurers may not cancel a policy outside of the one hundred twenty‑day period if they had notice of the change in risk prior to the expiration of the one hundred twenty‑day underwriting period.”

B. Section 38‑75‑1200(A) and (D) of the 1976 Code is amended to read:

“(A) An application for the original issuance of a policy of insurance covered in the article 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~~ 120 DAYS. THAT IS THE INSURER’S CHOICE. AFTER THE FIRST ~~90~~ 120 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.’

(D) The insurer may cancel without cause at any time in the first ~~ninety~~ one hundred twenty days during which the policy is in effect.”

SECTION 10. Section 38‑90‑160(A) and (C) of the 1976 Code, as amended by Act 251 of 2018, is further amended to read:

“(A) No provisions of this title or regulations, other than those contained in this chapter or contained in specific references contained in this chapter and regulations applicable to them, apply to captive insurance companies. The South Carolina Insurance Data Security Act set forth in Chapter 99, Title 38 applies to captive insurance companies unless the captive insurer qualifies for an exemption set forth in that chapter.

(C) The provisions of Sections 38‑5‑120(A)(5), 38‑5‑120(B), 38‑5‑120(D)(1), 38‑5‑120(D)(2), 38‑9‑225, 38‑9‑230, 38‑21‑10, 38‑21‑30, 38‑21‑60, 38‑21‑70, 38‑21‑80, 38‑21‑90, 38‑21‑95, 38‑21‑100, 38‑21‑110, 38‑21‑120, 38‑21‑130, 38‑21‑140, 38‑21‑150, 38‑21‑160, 38‑21‑170, 38‑21‑220, 38‑21‑225, 38‑21‑230, 38‑21‑250, 38‑21‑270, 38‑21‑280, 38‑21‑285, 38‑21‑290, 38‑21‑310, 38‑21‑320, 38‑21‑330, 38‑21‑360, 38‑55‑75 and Chapters 44, ~~and~~ 46, and 99, Title 38 and applicable regulations apply in full to a risk retention group and, if a conflict occurs between those code sections and chapters referenced in this subsection and this chapter (Chapter 90, Title 38), then the code sections and chapters referenced in this subsection control.”

SECTION 11. Section 38‑99‑70(A) of the 1976 Code, as added by Act 171 of 2018, is amended to read:

“(A) The following licensees are exempt from the provisions of ~~this chapter~~ Section 38‑99‑20:

(1) a licensee with fewer than ten employees, including any independent contractors;

(2) an employee, agent, representative, or designee of a licensee, who is also a licensee, is exempt from the provisions of ~~this chapter~~ Section 38‑99‑20 and need not develop its own information security program to the extent that the employee, agent, representative, or designee is covered by the information security program of the other licensee; and

(3) a licensee subject to the Health Insurance Portability and Accountability Act, Pub.L. 104‑191, 110 Stat. 1936, that has established and maintains an information security program pursuant to such statutes, rules, regulations, procedures, or guidelines established thereunder, will be considered to meet the requirements of ~~this chapter~~ Section 38‑99‑20, provided that the licensee is compliant with, and submits a written statement certifying its compliance with, the provisions of ~~this chapter~~ Section 38‑99‑20.”

SECTION 12. This act takes effect on July 1, 2019.

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