~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 24, 2022

**H. 4220**

Introduced by Reps. Sandifer and Hardee

S. Printed 2/24/22--H.

Read the first time April 15, 2021.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4220) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑63‑230 so as to provide for mutual rescission of individual life insurance policies, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting language and inserting:

/ SECTION 1. Article 3, Chapter 63, Title 38 of the 1976 Code is amended by adding:

“Section 38‑63‑230. (A) An insurer may rescind a life insurance policy within the two‑year contestability period in Section 38‑63‑220(d) by:

(1) a mutual rescission agreement executed by all parties based on false statements included in the application; or

(2) proving a fraudulent or material misrepresentation by clear and convincing evidence in a court of competent jurisdiction.

(B) Mutual rescission of a policy may be accomplished by:

(1) mailing a certified letter to the last known address on record of the insured, policy owner or, if the owner is deceased, the beneficiary, notifying the insured, policy owner, or beneficiary that the insurer is seeking a mutual rescission of the policy. The letter must state the policy is being rescinded for false statements included in the application and include the important notice language set forth in subsection (C). The letter must also specify which statements in the application were false along with a brief explanation of the facts supporting the determination that the statements were false;

(2) including a check reimbursing the insured, policy owner, or beneficiary the premium paid to the insurer with language stamped on the back of the check that reads: ‘I understand that cashing or depositing this check voids the policy and no benefits will be payable under the policy and am agreeing to the rescission of this policy’; and

(3) signing and cashing or depositing the premium reimbursement check by the insured, policyowner, or beneficiary, which will be deemed an acceptance of the proposed mutual rescission of the policy.

(C) Any certified letter proposing the rescission of a life insurance policy during the contestability period must include the following language in 12‑point bold face type:

‘IMPORTANT NOTICE:

You are the insured, owner, or beneficiary of an insurance policy the company proposes to rescind. This letter is notice the company seeks your consent to void and rescind the policy issued to you or that names you as a beneficiary based on false statements made in the application for insurance. If rescinded, the policy is void and no benefits will be payable under the policy. You do not have to agree to the rescission of this policy. If you do not agree, do not cash or deposit the enclosed check. Return it to the insurer or destroy it.

By cashing or depositing the enclosed premium reimbursement check, you are agreeing to rescind this policy. No benefits will be due or payable under the voided policy. If you do not agree to rescind this policy, the insurer has the right, in its sole discretion, to bring a court action to rescind the policy in accordance with South Carolina law.

You also have the right to bring an action in court if your policy is canceled or your claim for benefits is denied for material misrepresentation.

You may want to speak with an attorney about this notice. If you have any questions concerning this proposal, either you or your attorney may contact the insurer at the number listed in the letter.

Information regarding the specific misrepresentation that was made in your policy and a brief explanation of the insurer’s determination that the representation is false is included with this letter.’

(D) Insurance policies that are guaranteed issue or are not underwritten are not subject to mutual rescission.”

SECTION 2. Section 38‑63‑220(d) of the 1976 Code is amended to read:

“(d) a provision that the policy and any rider or supplemental benefits attached to the policy are incontestable as to the truth of the application for insurance and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. Any rider or supplemental benefits subsequently attached to the policy are incontestable as to the truth of the application for the rider or supplemental benefits and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. If an insurer initiates a mutual rescission or institutes proceedings to vacate a policy on the ground of the falsity of the representations contained in the application for the policy, the proceedings or mutual rescission must commence within the time permitted in this subsection;”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑63‑230 SO AS TO PROVIDE FOR MUTUAL RESCISSION OF INDIVIDUAL LIFE INSURANCE POLICIES; AND TO AMEND SECTION 38‑6‑220, RELATING TO REQUIRED INDIVIDUAL LIFE INSURANCE POLICY PROVISIONS, SO AS TO ALLOW FOR THE MUTUAL DECISION TO TERMINATE OR RESCIND A POLICY OF INSURANCE.

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

SECTION 1. Article 3, Chapter 63, Title 38 of the 1976 Code is amended by adding:

“Section 38‑63‑230. (A) An insurer may rescind a life insurance policy by:

(1) a mutual agreement executed by all parties; or

(2) proving a fraudulent or material misrepresentation by clear and convincing evidence in a court of competent jurisdiction.

(B) Mutual rescission of a policy may be accomplished within the two‑year contestability period in Section 38‑63‑220(d) by:

(1) mailing a certified letter to the last known address on record of the policy owner or, if the owner is deceased, the beneficiary, notifying the owner or beneficiary that the insurer is seeking a mutual rescission of the policy. The letter must inform the owner or beneficiary the policy is being rescinded for false statements included in the application and includes the important notice language set forth in subsection (C);

(2) including a check reimbursing the policy owner or beneficiary the premium paid to the insurer with language stamped on the back of the check that reads: ‘I understand that cashing or depositing this check terminates policy benefits from the date of initial coverage’; and

(3) the owner or beneficiary signing and cashing or depositing the premium reimbursement check, which will be deemed an acceptance of the proposed mutual rescission of the policy.

(C) Any certified letter proposing the rescission of a life insurance policy during the contestability period must include the following language in bold face type:

‘IMPORTANT NOTICE:

This letter proposes to void and rescind the policy issued to you for material misrepresentation based on statements made on your application for insurance. The rescission of a policy means the policy is void and no benefits will be paid under the terms and conditions of the policy. You do not have to agree to the rescission of this policy. If you do not agree, you must return or destroy the premium reimbursement check enclosed with this certified letter. By cashing or depositing the premium reimbursement check, you are agreeing to the rescission of this policy which means the policy is void as of the original date of issuance and no benefits will be due or paid under the terms and conditions of the policy. If you do not agree to rescind this policy, the insurer has the right, in its sole discretion, to bring a legal action to rescind the policy in accordance with South Carolina law.

You have the right to speak with an attorney concerning this notice. You also have the right to bring an action in court if your policy is canceled or your claim for benefits is denied for material representation. If you have any questions concerning this proposal, please contact the insurer at the number listed in the letter.’

(D) Insurance policies that are guaranteed issue or are not underwritten are not subject to mutual rescission.”

SECTION 2. Section 38‑63‑220(d) of the 1976 Code is amended to read:

“(d) a provision that the policy and any rider or supplemental benefits attached to the policy are incontestable as to the truth of the application for insurance and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. Any rider or supplemental benefits subsequently attached to the policy are incontestable as to the truth of the application for the rider or supplemental benefits and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. If an insurer institutes proceedings to vacate a policy on the ground of the falsity of the representations contained in the application for the policy, the proceedings must commence within the time permitted in this subsection. Nothing in this section precludes the parties from reaching a mutual agreement to terminate or rescind a policy pursuant to Section 38‑63‑230;”

SECTION 3. This act takes effect upon approval by the Governor.

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