CHAPTER 55

Conduct of Insurance Business

ARTICLE 1

General Provisions

**SECTION 38‑55‑10.** No contracts may be made except under this title.

 It is unlawful for an insurer to make a contract of insurance or annuity upon or concerning any property, interest, or lives in this State or with any resident of this State or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of these insurance contracts unless and except as authorized under this title.

HISTORY: Former 1976 Code Section 38‑55‑10 [1947 (45) 322; 1952 Code Section 37‑1223; 1962 Code Section 37‑1202; 1964 (53) 2293] recodified as Section 38‑57‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑10 [1947 (45) 322; 1952 Code Section 37‑142; 1962 Code Section 37‑142] recodified as Section 38‑55‑10 by 1987 Act No. 155, Section 1.

**SECTION 38‑55‑20.** Insurers shall do business in own name; combination policy.

 Every insurer shall conduct its business in the State in, and the policies and contracts of insurance issued by it must be headed or entitled by, its proper or corporate name; provided, however, notwithstanding any other provision of law, an insurer may elect to use a trade name in the conduct of its business if the insurer also clearly discloses its proper or corporate name on its policies, contracts of insurance, and other documents filed with the Department of Insurance. Two or more authorized insurers may, with the approval of the director or his designee, issue a combination policy which shall contain provisions substantially as follows:

 (1) That the insurers executing the policy are severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof aggregating the full amount of insurance under the policy; and

 (2) That service of process or of any notice or proof of loss required by the policy upon any of the insurers executing the policy constitutes service upon all the insurers.

HISTORY: Former 1976 Code Section 38‑55‑20 [1947 (45) 322; 1952 Code Section 37‑1201; 1962 Code Section 37‑1201; 1964 (53) 2293] recodified as Section 38‑57‑20 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑30 [1947 (45) 322; 1952 Code Section 37‑143; 1962 Code Section 37‑143] recodified as Section 38‑55‑20 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 703; 1995 Act No. 58, Section 5.

**SECTION 38‑55‑30.** Limitation of risk; section not applicable to captive insurers.

 Except as otherwise provided in this title, no insurer doing business in this State may expose itself to a loss on one risk in an amount exceeding ten percent of its surplus to policyholders. A risk or portion of it which has been reinsured must be deducted in determining the limitation of risk prescribed in this section. This section does not apply to captive insurers.

HISTORY: Former 1976 Code Section 38‑55‑30 [1947 (45) 322; 1952 Code Section 37‑1204; 1962 Code Section 37‑1203; 1964 (53) 2293] recodified as Section 38‑57‑30 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑180 [1947 (45) 322; 1952 Code Section 37‑153; 1962 Code Section 37‑153] recodified as Section 38‑55‑30 by 1987 Act No. 155, Section 1; 1991 Act No. 13, Section 27; 2001 Act No. 82, Section 18, eff July 20, 2001.

**SECTION 38‑55‑40.** Certain inducements may not be offered.

 No insurer may issue in this State, nor permit its agents, officers, and employees to issue in this State, agency company stock or other stock or securities or any special or advisory bond or other contract of any kind promising returns and profits, as an inducement to the taking of insurance. No insurer is authorized to do business in this State which issues or permits its agents, officers, or employees to issue in any state or territory agency company stock or securities or any special or advisory bond or other contract of any kind, promising returns and profits as an inducement to the taking of insurance. No corporation or stock company, acting as agent of an insurer, nor any of its agents, officers, and employees, is permitted to sell or give, agree to sell or give, or offer to sell or give, directly or indirectly, in any manner whatsoever, any share of stock, security, bond, or agreement of any form or nature promising returns and profits as an inducement to the taking of insurance or in connection therewith. The director or his designee, upon being satisfied that any insurer or its agent has violated this section, shall impose the penalties provided in Section 38‑2‑10. This section does not apply to marine insurers or their agents if the agents write only marine insurance.

HISTORY: Former 1976 Code Section 38‑55‑40 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1204; 1964 (53) 2293] recodified as Section 38‑57‑40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑60 [1947 (45) 322; 1952 Code Section 37‑145; 1962 Code Section 37‑145] recodified as Section 38‑55‑40 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 25; 1993 Act No. 181, Section 704.

**SECTION 38‑55‑50.** Discrimination prohibited.

 An insurer, its agent, or an insurance broker doing business in this State may not make or permit any discrimination in favor of individuals between insureds of the same class and risk involving the same hazards in the amount of the payment of premiums or rates charged for policies of insurance except as provided in Sections 38‑57‑140, 38‑65‑310, and 38‑71‑1110, in the dividends or other benefits payable, or in any other of the terms and conditions of the contracts it makes. An insurer, its agent, or an insurance broker may not make a contract of insurance or agreement as to a contract other than as plainly expressed in the policy issued. An insurer or its officer, agent, solicitor, or representative or an insurance broker may not pay, allow, or give or offer to pay, allow, or give, directly or indirectly, as inducement to the taking of insurance any rebate of premium payable on the policy, any special favor or advantage in the dividends or other benefits to accrue from the policy, any paid employment or contract for services of any kind, or any valuable consideration or inducement not specified in the policy contract of insurance, or give, sell, or purchase or offer to give, sell, or purchase, as inducement to the taking of insurance or in connection therewith, any stocks, bonds, or other securities of an insurer or other corporation, association, or partnership, any dividends or profits to accrue from them, or anything of value not specified in the policy. This section does not prohibit a licensed agent or broker from charging administrative fees, as promulgated by the Department of Insurance by regulation, for incidental services associated with uninsured motorist related transactions and the electronic reporting of information to the Department of Motor Vehicles. However, fees for uninsured motorist related transactions may be charged only to consumers who have had a lapse in their automobile coverage. Notice of these fees must be posted prominently in the agent's or broker's office.

 This section does not prohibit the payment of a fee to a trade or professional association exempt from income tax under Section 501(c) of the Internal Revenue Code.

 Further, this section does not prohibit the rebating of any commission to the insured on an automobile insurance policy collected by, or on behalf of, a licensed insurance agent.

HISTORY: Former 1976 Code Section 38‑55‑50 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1205; 1964 (53) 2293] recodified as Section 38‑57‑50 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑80 [1947 (45) 322; 1949 (46) 600; 1952 Code Section 37‑147; 1962 Code Section 37‑147] recodified as Section 38‑55‑50 by 1987 Act No. 155, Section 1; 1988 Act No. 394, Section 14; 1990 Act No. 465, Section 2; 1997 Act No. 154, Section 26; 2004 Act No. 241, Section 7, eff January 1, 2005.

**SECTION 38‑55‑60.** Punishment and revocation of license for discrimination.

 Every officer or agent of an insurer doing business in this State who violates Section 38‑55‑50 is guilty of a misdemeanor. The director or his designee, upon being satisfied that the insurer, its agent, or an insurance broker has violated Section 38‑55‑50, shall impose the penalties provided in Section 38‑2‑10.

HISTORY: Former 1976 Code Section 38‑55‑60 [1962 Code Section 37‑1206; 1964 (53) 2293] recodified as Section 38‑57‑60 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑90 [1947 (45) 322; 1952 Code Section 37‑148; 1962 Code Section 37‑148] recodified as Section 38‑55‑60 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 26; 1993 Act No. 181, Section 705.

**SECTION 38‑55‑70.** Secured loans lawful.

 It is not a violation of Section 38‑55‑50 or the criminal laws of this State to offer to make or to make loans to citizens of this State to be secured by mortgage of real estate or other collateral security.

HISTORY: Former 1976 Code Section 38‑55‑70 [1962 Code Section 37‑1207; 1964 (53) 2293] recodified as Section 38‑57‑70 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑110 [1947 (45) 322; 1952 Code Section 37‑149; 1962 Code Section 37‑149] recodified as Section 38‑55‑70 by 1987 Act No. 155, Section 1.

**SECTION 38‑55‑75.** Confidentiality of information received by Department of Insurance.

 The Department of Insurance may receive and shall maintain as confidential any documents or information furnished to the department by the National Association of Insurance Commissioners or regulatory officials of any state, federal agency, or foreign countries which are classified as confidential by that association or state. The Department of Insurance may share documents or information, including confidential documents or information, with the National Association of Insurance Commissioners or regulatory officials of any state, federal agency, or foreign countries if the association, state, federal agency, or foreign country agrees to maintain the same level of confidentiality as is provided under South Carolina law. Documents or information received or exchanged pursuant to this section are not subject to subpoena or subpoena duces tecum in any civil, criminal, or administrative proceeding.

HISTORY: 2001 Act No. 82, Section 19, eff July 20, 2001; 2006 Act No. 395, Section 2, eff June 14, 2006.

**SECTION 38‑55‑80.** Loans to directors or officers.

 (A) An insurer doing business in this State may not make a loan to any of its directors or officers, either directly or indirectly, except as provided in this section, and its director or officer may not accept any loan, directly or indirectly. The insurer may not make an advance to any of its directors or officers for future services to be performed beyond a period of one year from the date of making the advance. This section does not prohibit a life insurer from making a policy loan upon its policy or contract in an amount not exceeding the net reserve or cash value of the policy or contract.

 (B) This section does not prohibit an insurer in connection with the relocation of the place of employment of an officer, including any relocation in connection with the initial employment of the officer, from making, or the officer from accepting, a mortgage loan to the officer on real property owned by the officer which is to serve as his residence or acquiring, or the officer from selling to it, at not more than the fair market value, the residence of the officer. Mortgage loans made or residences acquired under this section are subject to the limitations imposed on investments by Chapter 12 of this title. In addition, this section does not prohibit an insurer from making a loan to its directors or officers if the loan is first approved in writing by the director or his designee.

 (C) An officer or director of an insurer who violates this section by participating in making the loan or accepting a loan except as authorized in this section, is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

 (D) A loan made by an insurer to its officers, directors, or employees bears the same rate of interest as is available to the public on loans from the insurer.

HISTORY: Former 1976 Code Section 38‑55‑80 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1208; 1964 (53) 2293] recodified as Section 38‑57‑80 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑140 [1956 (49) 2028; 1962 Code Section 37‑149.3; 1980 Act No. 477] recodified as Section 38‑55‑80 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 27; 1993 Act No. 184, Section 217; 1993 Act No. 181, Section 706; 2012 Act No. 137, Section 7, eff April 2, 2012.

**SECTION 38‑55‑90.** Tontine policies prohibited.

 No life insurer, mutual aid association, or fraternal benefit association operating in this State is permitted to issue policies, certificates, or contracts to policyholders or members providing for the establishment of its policyholders or members into divisions and classes for the purpose of providing for the payment of benefits from special funds created for that purpose to the oldest member of the division and class or to the members of the division and class whose policy has been in force the longest period of time upon the death of a member in the division and class.

HISTORY: Former 1976 Code Section 38‑55‑90 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1209; 1964 (53) 2293] recodified as Section 38‑57‑90 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑150 [1947 (45) 322; 1952 Code Section 37‑150; 1962 Code Section 37‑150] recodified as Section 38‑55‑90 by 1987 Act No. 155, Section 1.

**SECTION 38‑55‑100.** Tontine plans prior to May 12, 1947.

 A life insurer, mutual aid association, or fraternal benefit association operating prior to May 12, 1947, on a plan prohibited by Section 38‑55‑90 in this State may continue so to do upon condition that the life insurer, fraternal benefit association, or mutual aid association does not establish its policyholders or members into divisions or classes other than the divisions or classes in this State actually existing on May 12, 1947. However, a life insurer, fraternal benefit association, or mutual aid association is not permitted to operate on an endowment plan unless it has a paid‑in capital stock, if a stock company, or a surplus, if a mutual company or fraternal benefit association, of at least fifty thousand dollars.

HISTORY: Former 1976 Code Section 38‑55‑100 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1210; 1964 (53) 2293] recodified as Section 38‑57‑100 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑160 [1947 (45) 322; 1952 Code Section 37‑151; 1962 Code Section 37‑151] recodified as Section 38‑55‑100 by 1987 Act No. 155, Section 1.

**SECTION 38‑55‑110.** Reserve requirements for tontine policies.

 In order to pay endowments as they severally mature, as well as to pay all other benefits incorporated in the policies, certificates, or contracts of insurance, a life insurer, fraternal benefit society, or mutual aid association operating in this State upon a plan described in Section 38‑55‑90 shall establish and maintain on each policy a reserve upon a basis not lower than the American Experience Table of Mortality, full preliminary term, Illinois Standard, and interest assumption of three and one‑half percent, covering each contingency provided for in the policy.

HISTORY: Former 1976 Code Section 38‑55‑110 [1962 Code Section 37‑1211; 1964 (53) 2293; 1969 (56) 214, 760] recodified as Section 38‑57‑110 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑170 [1947 (45) 322; 1952 Code Section 37‑152; 1962 Code Section 37‑152] recodified as Section 38‑55‑110 by 1987 Act No. 155, Section 1.

**SECTION 38‑55‑120.** Procedure when insurer fails to pay final judgment.

 If an insurer fails to pay a final judgment rendered against it within fifteen days after the judgment becomes final, upon written application of the holder of the judgment the director or his designee shall give fifteen days' written notice to the insurer to pay the judgment and, upon the insurer's failure to pay the judgment within the time, shall revoke the license of the insurer to do business in this State and impound its bond or securities required to be deposited under Sections 38‑9‑80 through 38‑9‑140 or Section 38‑15‑30. In the event the director or his designee revokes the license of the insurer, he shall take any steps he considers necessary for the protection of the insurer's policyholders in this State. A judgment creditor may proceed with the collection of his judgment out of the securities in the possession of the director or his designee or the bond filed with him.

HISTORY: Former 1976 Code Section 38‑55‑120 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1212; 1964 (53) 2293] recodified as Section 38‑57‑120 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑5‑810 [1947 (45) 322; 1948 (45) 1734; 1952 Code Section 37‑191; 1962 Code Section 37‑191] recodified as Section 38‑55‑120 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 707.

**SECTION 38‑55‑130.** Doing business after charter has been canceled or surrendered is unlawful.

 It is unlawful for an insurer or for any person acting for or on its behalf knowingly to solicit, deliver any policy, or collect any premiums of insurance for the insurer from any person within this State when the insurer has surrendered its charter or when its charter has been revoked or canceled for any reason.

HISTORY: Former 1976 Code Section 38‑55‑130 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1213; 1964 (53) 2293] recodified as Section 38‑57‑130 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑280 [1947 (45) 322; 1952 Code Section 37‑164; 1962 Code Section 37‑164] recodified as Section 38‑55‑130 by 1987 Act No. 155, Section 1.

**SECTION 38‑55‑140.** Liability when charter has been canceled, revoked, or surrendered; service of process.

 When an insurer has surrendered its charter or when its charter has been revoked or canceled for any reason, it is still subject to suit under the laws of this State until all outstanding claims and demands against it have been settled. The director or his designee is designated the agent upon whom service of process may be had.

HISTORY: Former 1976 Code Section 38‑55‑140 [1947 (45) 322; 1952 Code Section 37‑1203; 1962 Code Section 37‑1214; 1964 (53) 2293] recodified as Section 38‑57‑140 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑290 [1947 (45) 322; 1952 Code Section 37‑165; 1962 Code Section 37‑165] recodified as Section 38‑55‑140 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 708.

**SECTION 38‑55‑150.** Accepting premiums or assessments in insolvent insurer.

 It is unlawful for a director or officer of an insurer to wilfully receive a premium or assessment on behalf of the insurer, knowing at the time of receipt of the premium or assessment that the insurer is insolvent according to the laws of its home state, and to fail to notify the person paying the premium or assessment of this fact.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years.

HISTORY: Former 1976 Code Section 38‑55‑150 [1947 (45) 322; 1952 Code Section 37‑1202; 1962 Code Section 37‑1215; 1964 (53) 2293; 1968 (55) 2500] recodified as Section 38‑57‑150 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑270 [1947 (45) 322; 1952 Code Section 37‑163; 1962 Code Section 37‑163] recodified as Section 38‑55‑150 by 1987 Act No. 155, Section 1; 1993 Act No. 184, Section 218.

**SECTION 38‑55‑160.** Insuring uninsurable persons with intent to defraud.

 It is unlawful for an agent, physician, or any other person to insure or knowingly cause to be insured or reinstated in membership an infirm or unhealthy person, in an uninsurable condition, with intent to defraud.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years.

HISTORY: Former 1976 Code Section 38‑55‑160 [1962 Code Section 37‑1216; 1964 (53) 2293] recodified as Section 38‑57‑160 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑230 [1947 (45) 322; 1952 Code Section 37‑159; 1962 Code Section 37‑159] recodified as Section 38‑55‑160 by 1987 Act No. 155, Section 1; 1993 Act No. 184, Section 219.

**SECTION 38‑55‑170.** Presenting false claims for payment.

 A person who knowingly causes to be presented a false claim for payment to an insurer transacting business in this State, to a health maintenance organization transacting business in this State, or to any person, including the State of South Carolina, providing benefits for health care in this State, whether these benefits are administered directly or through a third person, or who knowingly assists, solicits, or conspires with another to present a false claim for payment as described above, is guilty of a:

 (1) felony if the amount of the claim is ten thousand dollars or more. Upon conviction, the person must be imprisoned not more than ten years or fined not more than five thousand dollars, or both;

 (2) felony if the amount of the claim is more than two thousand dollars but less than ten thousand dollars. Upon conviction, the person must be fined in the discretion of the court or imprisoned not more than five years, or both;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the amount of the claim is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

HISTORY: Former 1976 Code Section 38‑55‑170 [1962 Code Section 37‑1217; 1964 (53) 2293] recodified as Section 38‑57‑170 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑310 [1947 (45) 322; 1952 Code Section 37‑167; 1962 Code Section 37‑167; 1986 Act No. 410] recodified as Section 38‑55‑170 by 1987 Act No. 155, Section 1; 1989 Act No. 148, Section 23; 1993 Act No. 73, Section 1; 1993 Act No. 184, Section 121; 2010 Act No. 273, Section 16.Z, eff June 2, 2010.

**SECTION 38‑55‑173.** Unlawful vehicle glass repair business practices; penalties.

 (A) A person who is acting on behalf of or engaged in a vehicle glass repair business is guilty of a misdemeanor if the person offers or makes a payment or transfer of money or other consideration to:

 (1) a third person for the third person's referral of an insurance claimant to the vehicle glass repair business for the repair or replacement of vehicle safety glass;

 (2) an insurance claimant in connection with the repair or replacement of vehicle safety glass; or

 (3) waive, rebate, give, or pay all or part of an insurance claimant's casualty or property insurance deductible as consideration for selecting the vehicle glass repair business.

 (B) If the amount of the payment or transfer of subsection (A) has a value of:

 (1) one thousand dollars or more, the person, upon conviction, must be fined in the discretion of the court or imprisoned for not more than three years, or both, per violation; or

 (2) less than one thousand dollars, the person, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both, per violation.

HISTORY: 2002 Act No. 215, Section 2, eff April 22, 2002.

**SECTION 38‑55‑180.** Debit collected for sick, accident, or death benefits on weekly or monthly industrial plan is property of insurer.

 No agent, collector, solicitor, or other employee or representative of an insurer issuing contracts providing for sick, accident, or death benefits and operating on the weekly or monthly industrial plan is considered the owner of any part of the weekly or monthly debit collected by him or that may be under his charge, care, control, or supervision. The debit is considered wholly the property of the insurer in whose name the policies, contracts, or obligations were written or assumed. No former agent, collector, solicitor, superintendent, or other employee or representative of the insurer, within a period of ninety days after the termination of his employment with the insurer, may barter, sell, give, or in any manner transfer to any person or insurer any part of any debit of the insurer or any policies or contracts of the insurer, without the written consent of the insurer formerly employing him.

 The director or his designee shall revoke the license of any person violating this section.

HISTORY: Former 1976 Code Section 38‑55‑180 [1962 Code Section 37‑1218; 1964 (53) 2293] recodified as Section 38‑57‑180 by 1987 Act No. 155, Section 1; New Section 38‑55‑180 enacted by 1988 Act No. 394, Section 16; 1993 Act No. 181, Section 709.

ARTICLE 3

Connection of Undertakers with Certain Insurers

**SECTION 38‑55‑310.** Life insurers may not operate undertaking business.

 It is unlawful for a life insurer, except a fraternal benefit association licensed to do business in this State, to own, manage, supervise, operate, or maintain a mortuary or undertaking establishment or to permit its officers, agents, or employees to own, operate, or maintain a funeral or undertaking business, except as may be authorized under Section 38‑55‑330.

HISTORY: Former 1976 Code Section 38‑55‑310 [1962 Code Section 37‑1231; 1964 (53) 2293] recodified as Section 38‑57‑230 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑510 [1948 (45)947; 1952 Code Section 37‑176; 1962 Code Section 37‑176] recodified as Section 38‑55‑310 by 1987 Act No. 155, Section 1; 1995 Act No. 67, Section 5.

**SECTION 38‑55‑320.** Insurers may not contract with undertakers for funerals.

 It is unlawful for a life insurer, a health insurer, or a funeral benefit company to contract or agree with a funeral director, undertaker, or mortuary that the funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by it.

HISTORY: Former 1976 Code Section 38‑55‑320 [1947 (45) 322; 1952 Code Section 37‑1221; 1962 Code Section 37‑1232; 1964 (53) 2293] recodified as Section 38‑57‑230 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑520 [1948 (45) 1947; 1952 Code Section 37‑177; 1962 Code Section 37‑177] recodified as Section 38‑55‑320 by 1987 Act No. 155, Section 1.

**SECTION 38‑55‑330.** Funeral director may act as agent for life insurer for preneed funeral contract.

 A licensed funeral director employed by a licensed funeral home in South Carolina may be licensed as an agent for a life insurer doing business in this State. However, a funeral director licensed under this section may act only as an agent for a life insurer in connection with the funding of a preneed funeral contract under Chapter 7, Title 32. The amount of an insurance policy sold by a licensed funeral director licensed under this section may not exceed the amount of the preneed funeral contract as defined in Section 32‑7‑10(3). In addition to the filing and approval requirements of Section 38‑61‑20, a life insurer must file a sample policy to fund a preneed funeral contract with the South Carolina Board of Funeral Service. The board also shall maintain a list of all funeral directors licensed as insurance agents, the insurer each director represents, and the type of policy each director is licensed to sell. Except for a funeral director licensed under this title, no insurance agent, as defined in Section 38‑1‑20, or person, as defined in Section 38‑1‑20, shall sell any policy, as defined in Section 38‑1‑20, which has for its purposes the funding of any funeral services, or the furnishing or delivery of personal property, merchandise, services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of a person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker, or monument.

HISTORY: Former 1976 Code Section 38‑55‑330 [1962 Code Section 37‑1233; 1964 (53) 2293] recodified as Section 38‑57‑240 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑530 [1948 (45) 1947; 1952 Code Section 37‑178; 1962 Code Section 37‑178] recodified as Section 38‑55‑330 by 1987 Act No. 155, Section 1; 1995 Act No. 67, Section 6; 2002 Act No. 313, Section 1, eff upon approval (became law without the Governor's signature on June 6, 2002).

**SECTION 38‑55‑340.** Penalties.

 Any person violating this article is guilty of a misdemeanor. Each violation of this article is a separate offense.

HISTORY: Former 1976 Code Section 38‑55‑340 [1962 Code Section 37‑1234; 1964 (53) 2293] recodified as Section 38‑57‑250 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑540 [1948 (45) 1947; 1952 Code Section 37‑179; 1962 Code Section 37‑179] recodified as Section 38‑55‑340 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 28.

ARTICLE 5

Insurance Fraud and Reporting Immunity

**SECTION 38‑55‑510.** Short title.

 This article is known and may be cited as the "Omnibus Insurance Fraud and Reporting Immunity Act".

HISTORY: 1994 Act No. 497, Part II, Section 31A.

**SECTION 38‑55‑520.** Purpose of article.

 The purpose of this article is to confront aggressively the problem of insurance fraud in South Carolina by facilitating the detection of insurance fraud; to allow reporting of suspected insurance fraud; to grant immunity for reporting suspected insurance fraud; to prescribe penalties for insurance fraud; to require restitution for victims of insurance fraud; to establish a division within the Office of the Attorney General to prosecute insurance fraud; and to require the investigation of alleged insurance fraud by State Law Enforcement Division.

HISTORY: 1994 Act No. 497, Part II, Section 31A.

**SECTION 38‑55‑530.** Definitions.

 As used in this article:

 (A) "Authorized agency" means any duly constituted criminal investigative department or agency of the United States or of this State; the Department of Insurance; the Department of Revenue; the Department of Public Safety; the Department of Motor Vehicles; the Workers' Compensation Commission; the State Accident Fund; the Second Injury Fund; the Department of Employment and Workforce; the Department of Consumer Affairs; the Human Affairs Commission; the Department of Health and Environmental Control; the Department of Social Services; the Department of Health and Human Services; the Department of Labor, Licensing and Regulation; all other state boards, commissions, and agencies; the Office of the Attorney General of South Carolina; or the prosecuting attorney of any judicial circuit, county, municipality, or political subdivision of this State or of the United States, and their respective employees or personnel acting in their official capacity.

 (B) "Insurer" shall have the meaning set forth in Section 38‑1‑20(25) and includes any authorized insurer, self‑insurer, reinsurer, broker, producer, or any agent thereof.

 (C) "Person" means any natural person, company, corporation, unincorporated association, partnership, professional corporation, or other legal entity and includes any applicant, policyholder, claimant, medical providers, vocational rehabilitation provider, attorney, agent, insurer, fund, or advisory organization.

 (D) "False statement or misrepresentation" means a statement or representation made by a person that is false, material, made with the person's knowledge of the falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud. "False statement or misrepresentation" specifically includes, but is not limited to, an intentional:

 (1) false report of business activities;

 (2) miscount or misclassification by an employer of its employees;

 (3) failure to timely reduce reserves;

 (4) failure to account for Second Injury Fund reimbursements or subrogation reimbursements; or

 (5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance.

 An undeserved economic benefit or advantage includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.

 (E) "Immune" means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this article unless actual malice on the part of the reporting person or gross negligence or reckless disregard for the rights of the reported person is present.

HISTORY: 1994 Act No. 497, Part II, Section 31A; 1996 Act No. 278, Sections 1, 2; 1996 Act No. 459, Section 59; 2007 Act No. 111, Pt I, Section 3, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 38‑55‑540.** Criminal penalties for making false statement or misrepresentation, or assisting, abetting, soliciting or conspiring to do so; restitution to victims.

 (A) A person who knowingly makes a false statement or misrepresentation, and any other person knowingly, with an intent to injure, defraud, or deceive, or who assists, abets, solicits, or conspires with a person to make a false statement or misrepresentation, is guilty of a:

 (1) misdemeanor, for a first offense violation, if the amount of the economic advantage or benefit received is less than one thousand dollars. Upon conviction, the person must be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than thirty days;

 (2) misdemeanor, for a first offense violation, if the amount of the economic advantage or benefit received is one thousand dollars or more but less than ten thousand dollars. Upon conviction, the person must be fined not less than two thousand nor more than ten thousand dollars or imprisoned not more than three years, or both;

 (3) felony, for a first offense violation, if the amount of the economic advantage or benefit received is ten thousand dollars or more but less than fifty thousand dollars. Upon conviction, the person must be fined not less than ten thousand nor more than fifty thousand dollars or imprisoned not more than five years, or both;

 (4) felony, for a first offense violation, if the amount of the economic advantage or benefit received is fifty thousand dollars or more. Upon conviction, the person must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both;

 (5) felony, for a second or subsequent violation, regardless of the amount of the economic advantage or benefit received. Upon conviction, the person must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both.

 (B) In addition to the criminal penalties set forth in subsection (A), a person convicted pursuant to the provisions of this section must be ordered by the court to make full restitution to a victim for any economic advantage or benefit which has been obtained by the person as a result of that violation, and to pay the difference between any taxes owed and any taxes the person paid, if applicable.

HISTORY: 1994 Act No. 497, Part II, Section 31A; 2007 Act No. 111, Pt I, Section 4, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 38‑55‑550.** Civil penalties for violations of article; costs; payment; use of revenues; Attorney General to assist Insurance Fraud Division; consent agreements.

 (A) In addition to any criminal liability, any person who is found by a court of competent jurisdiction to have violated any provision of this article, including Section 38‑55‑170, is subject to a civil penalty for each violation as follows:

 (1) for a first offense, a fine not to exceed five thousand dollars;

 (2) for a second offense, a fine of not less than five thousand dollars but not to exceed ten thousand dollars;

 (3) for a third and subsequent offense, a fine of not less than ten thousand dollars but not to exceed fifteen thousand dollars.

 (B) The civil penalty must be paid to the director of the Insurance Fraud Division to be used in accordance with subsection (D) of this section. The court may also award court costs and reasonable attorneys' fees to the director. When requested by the director, the Attorney General may assign one or more deputies attorneys general to assist the bureau in any civil court proceedings against the person.

 (C) Nothing in subsections (A) and (B) shall be construed to prohibit the director of the Insurance Fraud Division and the person alleged to be guilty of a violation of this article from entering into a written agreement in which the person does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may not be used in a subsequent civil or criminal proceeding relating to any violation of this article.

 (D) All revenues from the civil penalties imposed pursuant to this section must be used to provide funds for the costs of enforcing and administering the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, Section 31A.

**SECTION 38‑55‑560.** Insurance Fraud Division; duties; powers and duties of Attorney General; forensic accountant.

 (A) There is established in the Office of the Attorney General a division to be known as the Insurance Fraud Division, which must prosecute violations of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity. Upon receipt of any claims or allegations of violations of Section 38‑55‑170 and 38‑55‑540 and related criminal insurance activity, the Attorney General shall forward the information to the State Law Enforcement Division for investigation.

 (B) The Attorney General, upon receipt of any claims or allegations of violations of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity, is empowered to:

 (1) refer the matter for investigation to the State Law Enforcement Division;

 (2) prosecute persons determined to be in violation of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity in a court of competent jurisdiction; and

 (3) collect fines and restitution ordered by the court. Where considered appropriate, the Attorney General may use the Setoff Debt Collection Act to collect fines and restitution ordered as a result of actions brought pursuant to Sections 38‑55‑170 and 38‑55‑540.

 (C) The State Law Enforcement Division shall investigate thoroughly all claims or allegations of violations of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity received from the Attorney General pursuant to this section.

 (D) The Insurance Fraud Division of the Office of Attorney General and the investigative services of the State law Enforcement Division as provided by this section must be funded by an appropriation of not less than two hundred thousand dollars annually from the general revenues of the State derived from the insurance premium taxes collected by the Department of Insurance and/or from fines assessed under Sections 38‑55‑170 and 38‑55‑540 which must be deposited in the general revenue fund to the credit of the Office of the Attorney General and the State Law Enforcement Division to offset the costs of this program; provided, that the funds generated from these fines, to be utilized by either the Office of the Attorney General or the State Law Enforcement Division shall not total more than five hundred thousand dollars. These monies must be shared equally on a fifty‑fifty basis by the Office of the Attorney General and the State Law Enforcement Division, and the balance must go to the general fund of the State.

 (E) The Office of the Attorney General is authorized to hire, employ, and reasonably equip one forensic accountant, and this forensic accountant must be assigned to the Insurance Fraud Division of the Office of the Attorney General. A person is not qualified to be hired and the Insurance Fraud Division may not hire a forensic accountant unless he possesses and maintains a current license to engage in the practice of accounting pursuant to the provisions of Chapter 2, Title 40.

HISTORY: 1994 Act No. 497, Part II, Section 31A; 2007 Act No. 111, Pt I, Section 5, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 38‑55‑570.** Notification of Insurance Fraud Division of knowledge or belief of false statements or misrepresentations; information to be released; shared among government agencies; privileged; not subject to subpoena.

 (A) Any person, insurer, or authorized agency having reason to believe that another has made a false statement or misrepresentation or has knowledge of a suspected false statement or misrepresentation shall, for purposes of reporting and investigation, notify the Insurance Fraud Division of the Office of the Attorney General of the knowledge or belief and provide any additional information within his possession relative thereto.

 (B) Upon request by the Insurance Fraud Division, any person, insurer, or authorized agency shall release to the Insurance Fraud Division any or all information relating to any suspected false statement or misrepresentation including, but not limited to:

 (1) insurance policy information relevant to the investigation, including any application for such a polity;

 (2) policy premium payment records, audits, or other documents which are available;

 (3) history of previous claims, payments, fees, commission, service bills, or other documents which are available; and

 (4) other information relating to the investigation of the suspected false statement or misrepresentation.

 (C) Any authorized agency provided with or obtaining information relating to a suspected false statement or misrepresentation as provided for above may release or provide the information to any other authorized agency. The Department of Insurance, the Department of Revenue, the Department of Public Safety, and the Department of Motor Vehicles shall report, but not adjudicate, all cases of suspected or reported false statement or misrepresentation to the Insurance Fraud Division of the Office of Attorney General of South Carolina for appropriate investigation or prosecution, or both. The Workers' Compensation Commission may refer such cases as provided in Section 42‑9‑440.

 (D) Except as otherwise provided by law, any information furnished pursuant to this section is privileged and shall not be part of any public record. Any information or evidence furnished to an authorized agency pursuant to this section is not subject to subpoena or subpoena duces tecum in any civil or criminal proceeding unless, after reasonable notice to any person, insurer, or authorized agency which has an interest in the information and after a subsequent hearing, a court of competent jurisdiction determines that the public interest and any ongoing investigation will not be jeopardized by obedience of the subpoena or subpoena duces tecum. The Department of Insurance may receive and must maintain as confidential any documents or information furnished to it by the National Association of Insurance Commissioners or insurance departments of other states which is classified as confidential by that association or state. The Department of Insurance may share documents or information, including confidential documents or information, with the National Association of Insurance Commissioners or insurance departments of other states, if the association or other state agrees to maintain the same level of confidentiality as is provided under South Carolina law. If the documents or information received by the Department of Insurance from the National Association of Insurance Commissioners or the insurance departments of other states involve allegations of insurance fraud, the documents or information must be forwarded by the Department of Insurance to the Insurance Fraud Division of the Office of the Attorney General.

HISTORY: 1994 Act No. 497, Part II, Section 31A; 1995 Act No. 58, Section 6; 1996 Act No. 278, Section 3; 1996 Act No. 459, Section 60.

**SECTION 38‑55‑580.** Immunity from liability arising out of providing information concerning false statements or misrepresentations to authorized agency; malice or bad faith.

 (A) A person, insurer, or authorized agency, when acting without malice or in good faith, is immune from any liability arising out of filing reports, cooperating with investigations by any authorized agency, or furnishing other information, whether written or oral, and whether in response to a request by an authorized agency or upon their own initiative, concerning any suspected, anticipated, or completed false statement or misrepresentation when such reports or information are provided to or received by any authorized agency.

 (B) Nothing herein abrogates or modifies in any way common law or statutory privilege or immunity heretofore enjoyed by any person, insurer, or authorized agency.

 (C) Nothing herein limits the liability of any person or insurer who, with malice or in bad faith, makes a report of suspected fraud under the provisions of this article.

 (D) In addition to the immunity granted in this section, persons identified as designated employees whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts may share information relating to persons suspected of committing fraudulent insurance acts with other designated employees employed by the same or other insurers whose responsibilities include the investigation and disposition of claims relating to fraudulent insurance acts, provided the department has been given written notice of the names and job titles of these designated employees prior to any designated employee sharing information. Unless the designated employees of the insurer act in bad faith or in reckless disregard for the rights of any insured, neither the insurer nor its designated employees are civilly liable for libel, slander, or any other relevant tort, and a civil action does not arise against the insurer or its designated employees:

 (1) for any information related to suspected fraudulent insurance acts provided to an insurer; or

 (2) for information related to suspected fraudulent insurance acts provided to the National Insurance Crime Bureau or the National Association of Insurance Commissioners.

 Provided, however, that the qualified immunity against civil liability conferred on any insurer or its designated employees shall be forfeited with respect to the exchange or publication of any defamatory information with third persons not expressly authorized by subsection (D) to share in such information.

HISTORY: 1994 Act No. 497, Part II, Section 31A; 1996 Act No. 278, Section 4.

**SECTION 38‑55‑590.** Annual report by Director of Insurance Fraud Division in Office of Attorney General to General Assembly.

 The Director of the Insurance Fraud Division in the Office of the Attorney General shall annually report to the General Assembly regarding:

 (A) the status of matters reported to the division, if not privileged information by law;

 (B) the number of allegations or reports received;

 (C) the number of matters referred to the State Law Enforcement Division for investigation;

 (D) the outcome of all investigations and prosecutions under this article, if not privileged by law;

 (E) the total amount of fines levied by the court and paid to or deposited by the division; and

 (F) patterns and practices of fraudulent insurance transactions identified in the course of performing its duties. The director shall also periodically report this information to insurers transacting business in this State, health maintenance organizations transacting business in this State, and other persons, including the State of South Carolina, which provide benefits for health care in this State, whether these benefits are administered directly or through a third person.

HISTORY: 1994 Act No. 497, Part II, Section 31A.