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.

Library References

Insurance 1611, 1710.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142, 392.

LAW REVIEW AND JOURNAL COMMENTARIES

Marketing mutual funds and individual life insurance. 28 S.C. L. Rev. 1.

Tort Liability of Insurance Company—Rules of Insurable Interest and Consent. 17 S.C. L. Rev. 454.

NOTES OF DECISIONS

In general 1

1. In general

Punitive damages are not available on the ground that an insurer, in bad faith, refused to pay on a claim, absent tortious conduct that could be categorized as wilful, wanton or malicious (decided under former Section 38‑9‑10). Causby v. Allstate Ins. Co. (D.C.S.C. 1982) 546 F.Supp. 32.

**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.

Library References

Insurance 1560, 3417.

Westlaw Topic No. 217.

**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.

Library References

Insurance 1141.

Westlaw Topic No. 217.

C.J.S. Insurance Section 167.

**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.

Library References

Insurance 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

**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.

CROSS REFERENCES

Inapplicability of this section to agreements or arrangements for the advancing of insurance premiums by an insurance agent, agency or producer of record under Article 3 of Chapter 43, see Section 38‑43‑470.

Insurers offering group health insurance coverage, restrictions on eligibility rules and premium charges for individual enrollees and their dependents based on health status‑related factors, see Section 38‑71‑860.

Premiums for consolidations and mortgage insurance, see Section 38‑85‑60.

Workmen’s compensation, dividends to policyholders, see S.C. Code of Regulations R. 69‑24.

Library References

Insurance 1518, 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 659 to 662.

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 2:32, Rates‑Rebate Prohibitions.

NOTES OF DECISIONS

In general 1

Fraud 2

Group insurance 3

Plainly expressed in policy issued 4

1. In general

Insurance applicant, who applied for non‑preferred whole life policy for his daughter, could not recover against insurance company under statute prohibiting insurance companies from discriminating between insureds of the same class and risk, based on insurer’s failure to inform applicant that his daughter would be eligible for less expensive preferred policy; statute did not create a duty to disclose, and all applicants were treated the same and received the policy they applied for if they qualified. Pitts v. Jackson Nat. Life Ins. Co. (S.C.App. 2002) 352 S.C. 319, 574 S.E.2d 502. Insurance 1518; Insurance 3424

Statute prohibiting insurance companies from discriminating between insureds of the same class and risk does not create an implied duty to inform applicants of all available policies, and does not create a duty to disclose. Pitts v. Jackson Nat. Life Ins. Co. (S.C.App. 2002) 352 S.C. 319, 574 S.E.2d 502. Insurance 1518; Insurance 3421; Insurance 3424

Section 38‑55‑50 relates to discrimination in contracting for insurance and not against claimants; consequently, a claimant in a personal injury action could not assert this statute to support its position that an insurer could not contract to exclude personal injury protection coverage for pedestrians, not related to the insured, injured in accidents that occurred outside the state of Georgia where the insured resided. Smith v. Liberty Mut. Ins. Co. (S.C.App. 1993) 313 S.C. 236, 437 S.E.2d 142.

Cited in Calhoun Life Ins. Co. v. Gambrell (S.C. 1965) 245 S.C. 406, 140 S.E.2d 774. (Decided under former law.)

The purpose of former Code 1962 Section 37‑147] was to prohibit discrimination in the making of insurance contracts and special agreements, which are a natural incident of settling losses under such contracts (decided under former law). Martin v. McLeod (S.C. 1962) 241 S.C. 71, 127 S.E.2d 129.

For a discussion of discrimination between borrowing and nonborrowing insurants, see Pilot Life Ins. Co. v. Peebles (S.C. 1939) 191 S.C. 486, 5 S.E.2d 174. (Decided under former law.)

“Class” in former statute had reference to the nature and character of the risk. Pressly v. Pilot Life Ins. Co. (S.C. 1938) 186 S.C. 209, 195 S.E. 332. (Decided under former law.)

2. Fraud

This statute was never intended to shield a fraud. Crosby v Metropolitan Life Ins. Co. (1932) 167 SC 255, 166 SE 266. Hood v Life & Casualty Ins. Co. (1934) 173 SC 139, 175 SE 76. Aiken Petroleum Co. v National Petroleum Underwriters, etc. (1945) 207 SC 236, 36 SE2d 380.

This section does not preclude recovery on fraud cause of action, thus did not bar action by plaintiff which sought to replace five million dollar life insurance policy on life of chairperson of its board of directors and principal shareholder where defendant insurance company, as inducement to plaintiff to purchase policy from defendant, allegedly represented that if plaintiff purchased maximum coverage it anticipated it might need, defendant would permit plaintiff to reduce coverage later if, following receipt of stock valuation, plaintiff determined its actual needs were less, and where plaintiff ultimately purchased policy for eight million dollars and then determined it would need only seven million, but defendant refused to reform policy as promised. Defender Industries, Inc. v. Northwestern Mut. Life Ins. Co. (C.A.4 (S.C.) 1991) 938 F.2d 502, on remand 809 F.Supp. 400.

Insured party may make valid fraud claim against insurer for failure to make rebates as provided for in insurance contract despite unenforceability of provision for rebates under Section 38‑55‑50. Defender Industries, Inc. v. Northwestern Mut. Life Ins. Co., 1989, 727 F.Supp. 252, affirmed in part, reversed in part 938 F.2d 502, on remand 809 F.Supp. 400.

3. Group insurance

Former Code 1962 Section 37‑147 was not applicable to a certificate issued under a group policy, when such certificate did not set forth the full terms of the policy, because of necessity a certificate issued under a group policy is part and parcel of the group policy, of which the insured has full knowledge, and each of the certificate holders under such group policy is bound by the terms thereof (decided under former law). Equitable Life Assur. Soc. of U.S. v. Templeton, 1936, 19 F.Supp. 485.

4. Plainly expressed in policy issued

Agreement between insurance agent and third party concerning the financing of the premium was not included or discussed within the policy and thus was in violation of former Code 1952, Section 37‑147, which stated that no insurance company or agent thereof shall make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon. Maryland Cas. Co. v. Conner, 1961, 200 F.Supp. 647.

The language of former Code 1962 Section 37‑147 specifically prohibited the making of supplementary agreements relating to an insurance policy at the time of the issuance of the policy. Perry v. North Carolina Mut. Life Ins. Co. (S.C. 1936) 180 S.C. 72, 185 S.E. 47.

**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.

Library References

Insurance 1127, 1618, 3646.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71, 140, 144, 147.

**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.

Library References

Insurance 1518, 1567, 3640, 3646.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 147 to 148, 659 to 662.

**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.

Library References

Insurance 1580.

Privileged Communications and Confidentiality 378.

Westlaw Topic Nos. 217, 311H.

C.J.S. Witnesses Section 431.

**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.

CROSS REFERENCES

Penalties for violations of the insurance laws of this state, see Section 38‑2‑10 et seq.

Library References

Insurance 1134.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 162 to 165, 176.

**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.

Library References

Insurance 2441.

Westlaw Topic No. 217.

**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.

Library References

Insurance 2441.

Westlaw Topic No. 217.

NOTES OF DECISIONS

In general 1

1. In general

Former Code 1962 Section 37‑151 plainly prohibited the future issuance of contingent endowment policies, except to the extent of filling the divisions and classes already established, which by unmistakable implication legalized, if they needed it, such policies as had been issued before the enactment and provided for the continued issuance for the purpose of filling the divisions and classes theretofore created by existing companies. This legislative enactment established by public policy upon the subject (decided under former law). Morris v. Unity Life Ins. Co. (S.C. 1942) 200 S.C. 166, 20 S.E.2d 388. Insurance 1725

**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.

Library References

Insurance 1139, 1242(4).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 167 to 169, 178 to 180.

**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.

Library References

Insurance 1127, 3583.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

**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.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

**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.

Library References

Insurance 1127, 3569.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71, 2132.

**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.

Library References

Insurance 1350, 1372.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 189 to 192, 206 to 210, 212, 245 to 247, 256 to 258, 2356, 2360.

**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.

Library References

Insurance 3642, 3646.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 146 to 147.

LAW REVIEW AND JOURNAL COMMENTARIES

Insurance [Fraud]. 25 S.C. L. Rev. 393.

**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.

CROSS REFERENCES

Employer providing health insurance benefits to employees may report instances of alleged over‑utilization of services to Department of Insurance pursuant to this section, see Section 44‑113‑70.

Presenting false claim for payment on insurance as a felony, see Section 16‑11‑125.

Library References

Insurance 3640.

Westlaw Topic No. 217.

C.J.S. Insurance Section 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 48, Supplemental Provision.

LAW REVIEW AND JOURNAL COMMENTARIES

Insurance [Fraud]. 25 S.C. L. Rev. 393.

Attorney General’s Opinions

Discussion of whether and under what circumstances a hospital can waive the co‑payments and deductibles that otherwise would be due from patients covered by various health benefit plans. S.C. Op.Atty.Gen. (Nov. 30, 1995) 1995 WL 782417.

**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.

Library References

Insurance 3640.

Westlaw Topic No. 217.

C.J.S. Insurance Section 148.

**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.

Library References

Insurance 1645(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 143, 287 to 288, 290.

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.

Library References

Insurance 1129.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 166, 177.

NOTES OF DECISIONS

Validity of prior laws 1

1. Validity of prior laws

This article does not contravene the due process clause or equal protection clause of the Fourteenth Amendment (decided under former law). Daniel v. Family Sec. Life Ins. Co. (U.S.S.C. 1949) 69 S.Ct. 550, 336 U.S. 220, 10 A.L.R.2d 945, 93 L.Ed. 632.

**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.

Library References

Insurance 1722.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 474 to 476.

NOTES OF DECISIONS

Validity of prior laws 1

1. Validity of prior laws

This article does not contravene the due process clause or equal protection clause of the Fourteenth Amendment (decided under former law). Daniel v. Family Sec. Life Ins. Co. (U.S.S.C. 1949) 69 S.Ct. 550, 336 U.S. 220, 10 A.L.R.2d 945, 93 L.Ed. 632.

**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).

CROSS REFERENCES

As to applicability of regulations governing contracts of preneed funeral service or merchandise, see Section 32‑7‑20.

Library References

Insurance 1613.

Westlaw Topic No. 217.

C.J.S. Insurance Section 139.

NOTES OF DECISIONS

Validity of prior laws 1

1. Validity of prior laws

This article does not contravene the due process clause or equal protection clause of the Fourteenth Amendment (decided under former law). Daniel v. Family Sec. Life Ins. Co. (U.S.S.C. 1949) 69 S.Ct. 550, 336 U.S. 220, 10 A.L.R.2d 945, 93 L.Ed. 632.

**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.

CROSS REFERENCES

Penalties for violations of the insurance laws of this state, see Section 38‑2‑10 et seq.

Library References

Insurance 3642, 3651.

Westlaw Topic No. 217.

C.J.S. Insurance Section 146.

NOTES OF DECISIONS

Validity of prior laws 1

1. Validity of prior laws

This article does not contravene the due process clause or equal protection clause of the Fourteenth Amendment (decided under former law). Daniel v. Family Sec. Life Ins. Co. (U.S.S.C. 1949) 69 S.Ct. 550, 336 U.S. 220, 10 A.L.R.2d 945, 93 L.Ed. 632.

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.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

**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.

Library References

Insurance 3640.

Westlaw Topic No. 217.

C.J.S. Insurance Section 148.

NOTES OF DECISIONS

Admissibility of evidence 2

Constitutional issues 1

1. Constitutional issues

Double jeopardy did not bar convictions for both forgery and insurance fraud, arising from defendant signing another person’s name to “Affidavit of Total Theft of a Motor Vehicle,” which she then faxed to her insurer even though New York authorities had notified her that vehicle had been recovered and was impounded in New York; conviction for forgery required proof that defendant falsely made writing or instrument, which was not element of insurance fraud, and insurance fraud conviction required proof that she intended to obtain undeserved economic benefit, i.e., insurance payment, which was not necessary for forgery conviction. State v. Pace (S.C.App. 1999) 337 S.C. 407, 523 S.E.2d 466. Double Jeopardy 147

2. Admissibility of evidence

Probative value of second certified letter that New York police sent to defendant, informing her that her vehicle had been recovered and impounded, outweighed prejudicial effect of that evidence in insurance fraud prosecution, alleging that defendant made insurance claim on that vehicle after New York authorities sent first letter informing defendant that vehicle had been recovered and was impounded in New York; second letter tended to show defendant’s guilty knowledge and intent. State v. Pace (S.C.App. 1999) 337 S.C. 407, 523 S.E.2d 466. Criminal Law 433

Even though defendant’s employee, not defendant, signed certification receipt for second certified letter from New York police informing defendant that her vehicle had been recovered and impounded, letter was relevant and admissible in insurance fraud prosecution, alleging that defendant made insurance claim on that vehicle after New York authorities sent first letter informing defendant that it had been recovered; letter was relevant to show defendant’s knowledge of vehicle’s whereabouts, employee testified he placed certified letter on desk shared by defendant and her husband, and any question regarding defendant’s actual receipt of letters went to credibility and implicated weight of evidence, not its admissibility. State v. Pace (S.C.App. 1999) 337 S.C. 407, 523 S.E.2d 466. Criminal Law 433

**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.

Library References

Insurance 3182.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1759, 1804 to 1805, 1856, 1858 to 1862, 1864 to 1865, 1867 to 1871.

**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.

Library References

Attorney General 5.

Westlaw Topic No. 46.

C.J.S. Attorney General Sections 26 to 78.

C.J.S. Parent and Child Section 271.

Attorney General’s Opinions

One who would serve simultaneously on Greenville City Council and as the Director of the Insurance Fraud Division of the Attorney General’s Office would most probably hold dual offices in contravention of Article XVII, Section 1A of the South Carolina Constitution. S.C. Op.Atty.Gen. (March 20, 1995) 1995 WL 233145.

**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.

Library References

Privileged Communications and Confidentiality 352, 358.

Records 30.

Westlaw Topic Nos. 311H, 326.

C.J.S. Records Sections 74, 76, 78, 80, 112.

C.J.S. Witnesses Sections 421, 428, 430.

Notes of Decisions

In general 1

1. In general

Letter that Director of Workers’ Compensation Commission’s Compliance Division sent to Attorney General to report accusations of insurance fraud by claimant was not an ex parte communication between Commission and carrier, and, thus, the Commission did not need to recuse itself from hearing the claim; in contacting the Fraud Division of the Office of the Attorney General, Director was discharging duties required of the Commission by statute, Director merely suggested that the carrier be made aware of individual’s allegations and did not instruct the Attorney General to convey this information to carrier, and in making the suggestion, Director was advising the Attorney General’s Office of a course of action that it had a right to follow and never expressed a desire that the Attorney General take any action on the Commission’s behalf. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Workers’ Compensation 1687

Including among materials before single commissioner a letter sent by Director of the Workers’ Compensation Commission’s Compliance Division to the Insurance Fraud Division of the Office of the Attorney General, reporting allegations of insurance fraud by claimant, violated Omnibus Insurance Fraud and Reporting Immunity Act, and, therefore, although Director’s letter might have been part of the Commission’s file, it should have been segregated from those portions of the file that could be viewed by members of the public. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Records 30; Workers’ Compensation 2081

**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.

Library References

Libel and Slander 42(2).

Torts 122.

Westlaw Topic Nos. 237, 379.

C.J.S. Libel and Slander; Injurious Falsehood Sections 153 to 154.

C.J.S. Torts Sections 34 to 37.

Notes of Decisions

In general 1

1. In general

Letter that Director of Workers’ Compensation Commission’s Compliance Division sent to Attorney General to report accusations of insurance fraud by claimant was not an ex parte communication between Commission and carrier, and, thus, the Commission did not need to recuse itself from hearing the claim; in contacting the Fraud Division of the Office of the Attorney General, Director was discharging duties required of the Commission by statute, Director merely suggested that the carrier be made aware of individual’s allegations and did not instruct the Attorney General to convey this information to carrier, and in making the suggestion, Director was advising the Attorney General’s Office of a course of action that it had a right to follow and never expressed a desire that the Attorney General take any action on the Commission’s behalf. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Workers’ Compensation 1687

**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.

Library References

Attorney General 6.

Westlaw Topic No. 46.

C.J.S. Attorney General Sections 26 to 78.

C.J.S. Parent and Child Section 271.

ARTICLE 7

Electronic Documents

**SECTION 38‑55‑710.** Definitions.

 As used in this article:

 (1) “Delivered by electronic means” includes:

 (a) delivery to an electronic mail address at which a party has consented to receive notices or documents; or

 (b) placement on an electronic network or site accessible by means of the Internet, mobile application, computer, mobile device, tablet, or another electronic device, together with separate written notice of the placement that must be provided by electronic mail to the address at which the party has consented to receive notice or by another delivery method that has been consented to by the party.

 (2) “Party” means a recipient of a notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder, or an annuity contract holder.

HISTORY: 2017 Act No. 70 (H.3488), Section 1, eff January 1, 2018.

**SECTION 38‑55‑720.** Delivery of notices or documents by electronic means; consent to method of delivery.

 (A) Subject to the provisions of subsection (C), notice to a party of another document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if it meets the requirements of Chapter 6, Title 26, the South Carolina Uniform Electronic Transactions Act.

 (B) Delivery of a notice or document pursuant to this section must be considered equivalent to the following delivery methods:

 (1) first‑class mail; and

 (2) first‑class mail, postage prepaid.

 (C)(1) A notice or document may be delivered by electronic means by an insurer to a party if:

 (a) the party has affirmatively consented to the method of delivery and has not withdrawn consent;

 (b) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

 (i) the right or option of the party to have the notice or document provided or made available in paper or another non‑electronic form at no additional cost;

 (ii) the right of the party at any time to withdraw his consent to have a notice or document delivered by electronic means;

 (iii) the specific notice or document or categories of notices or documents that may be delivered by electronic means during the course of the relationship between the insurer and the party;

 (iv) the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means at no additional cost; and

 (v) the procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

 (c) the transmission or delivery method used for the electronic notice includes conspicuous language concerning its subject or purpose;

 (d) the party:

 (i) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

 (ii) consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means for which the party has given consent; and

 (e) after consent of the party is given, if a change occurs in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means that creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, then the insurer shall:

 (i) provide the party with a statement of the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

 (ii) comply with the requirements of subsection (A).

 (2) No insurer may cancel, refuse to issue, or refuse to renew a policy because the applicant or insured refuses to agree to receive mailings electronically pursuant to this subsection.

 (D) A hardcopy of a notice of cancellation, notice of non‑renewal, or notice of termination must be delivered by first‑class mail, postage prepaid, to the last known mailing address of a party if the insurer knows that the notice of cancellation, notice of non‑renewal, or notice of termination sent by electronic means was not received by the party. For the purposes of this subsection, the determination of whether an insurer sends, or a party receives, a notice of cancellation, notice of non‑renewal, or notice of termination shall be governed by Section 26‑6‑150.

 (E) This section does not affect requirements related to content or timing of any notice or document required under applicable law.

 (F) If a provision of this title or other applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, then the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

 (G) The legal effectiveness, validity, or enforceability of the underlying contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party pursuant to subsection (C)(1)(d)(ii).

 (H) A withdrawal of consent by a party:

 (1) does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective; and

 (2) is effective four business days after receipt of the withdrawal by the insurer.

 (I) Failure by an insurer to comply with subsection (C)(1)(e) may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

 (J) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this section to a party who, before that date, had consented to receive notice or document in an electronic form otherwise allowed by law.

 (K) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this section and if, pursuant to this section, an insurer intends to deliver additional notices or documents to the party in an electronic form, then, prior to delivering such additional notices or documents electronically, the insurer shall notify the party of:

 (1) the notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically; and

 (2) the party’s right to withdraw at any time consent to have notices or documents delivered by electronic means.

 (L) If a provision of this title or applicable law requires a signature, notice, or document to be notarized, acknowledged, verified, or made under oath, then the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.

 (M) This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106‑229, as amended. It is intended to provide an insurer additional options for the delivery of electronic notices and documents. An insurer choosing to use procedures outlined in ESIGN, UETA, or other applicable law or regulation governing such notice or documents must be considered to be in compliance with this section.

 (N) An insurer delivering a notice or document by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices of documents is secure and protects the confidentiality of information as defined by applicable law. An insurer who is in compliance with the Health Insurance Portability and Accountability Act, 45 C.F.R. 164.512(b), or the Gramm Leach Bliley Act, 16 C.F.R. 314.1, must be considered to be in compliance with this section.

 (O) An insurer delivering a notice or other document pursuant to this article shall retain records in the manner provided in Sections 26‑6‑120, 38‑13‑120, 38‑13‑140, and 38‑13‑160.

 (P) The director or his designee may promulgate, by bulletin, regulation, or order the requirements necessary to implement the provisions of this section.

HISTORY: 2017 Act No. 70 (H.3488), Section 1, eff January 1, 2018.

Federal Aspects

Electronic Signatures in Global and National Commerce Act (E‑Sign Act), Pub.L. 106‑229, June 30, 2000, 114 Stat. 464; Short title, see 15 U.S.C.A. Section 7001 note.

Gramm‑Leach‑Bliley Act (Financial Services Modernization Act of 1999) (GLBA) (Gramm‑Leach) (Gramm‑Leach‑Bliley Act of 1999), Pub.L. 106‑102, Nov. 12, 1999, 113 Stat. 1338; Short title, see 12 U.S.C.A. Section 1811 note.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) (HIPPA) (Health Insurance Portability and Accountability Act), Pub.L. 104‑191, Aug. 21, 1996, 110 Stat. 1936; Short title, see 42 U.S.C.A. Section 201 note.