CHAPTER 75

Property, Casualty, and Title Insurance Generally

ARTICLE 1

Property Insurance Generally

**SECTION 38‑75‑10.** Fire insurance policy shall indicate allocation of premium and location of property.

Every fire insurer doing business in this State shall cause to be plainly written or printed on the face of each fire insurance policy written and issued by it the name of the county entitled to the allocation of the premiums on the business and the location of the property so insured. This information must be incorporated in all daily reports or other evidence furnished by the agent of coverage assumed.

HISTORY: Former 1976 Code Section 38‑43‑160 [1948 (45) 1961; 1952 Code Section 37‑665; 1962 Code Section 37‑665; 1978 Act No. 585 Section 1] recodified as Section 38‑75‑10 by 1987 Act No. 155, Section 1; 1988 Act No. 329.

Library References

Insurance 1768, 1770.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 477 to 478, 486 to 488.

**SECTION 38‑75‑20.** Maximum amounts of fire insurance policies; stated values; contributions by coinsurers.

No insurer doing business in this State may issue a fire insurance policy for more than the value stated in the policy or the value of the property to be insured. The amount of insurance must be fixed by the insurer and insured at or before the time of issuing the policy. In case of total loss by fire the insured is entitled to recover the full amount of insurance. In case of a partial loss by fire the insured is entitled to recover the actual amount of the loss but in no event more than the amount of the insurance stated in the contract. If two or more policies are written upon the same property, they are considered to be contributive insurance, and, if the aggregate sum of all such insurance exceeds the insurable value of the property, as agreed by the insurer and the insured, each insurer, in the event of a total or partial loss, is liable for its pro rata share of insurance. This section does not apply to insurance on chattels or personal property.

HISTORY: Former 1976 Code Section 38‑9‑190 [1947 (45) 322; 1948 (45) 1734; 1952 Code Section 37‑154; 1962 Code Section 37‑154] recodified as Section 38‑75‑20 by 1987 Act No. 155, Section 1.

Library References

Insurance 2167 to 2194.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 627 to 628, 1539 to 1543, 1566, 1568 to 1588, 1743, 1748 to 1753, 1979 to 1980, 2348.

RESEARCH REFERENCES

Treatises and Practice Aids

Williston on Contracts Section 49:30, Fire Insurance.

LAW REVIEW AND JOURNAL COMMENTARIES

Fire and Windstorm Coverage. 25 S.C. L. Rev. 396.

The South Carolina Valued Policy Statute and the Apportionment of Proceeds From the Insurance of Limited Interests in Real Estate, 10 SCLQ 248 (1958).

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1. Validity of prior law

The General Assembly acted within its police power in passing former Code 1962 Section 37‑154, which abridged no right of an insurance company, nor denied such company the equal protection of the law; former Code 1962 Section 37‑154 was required to be read into insurance policies and would supersede contrary language in the policy. Powell v. Home Ins. Co., 1958, 164 F.Supp. 654.

2. In general

Former Code 1962 Section 37‑154 had no application in suit to enjoin prosecution of suits at law where bill avers that value of property was not fixed at time of issuance of policy and averment was admitted by demurrer. Rochester German Ins. Co. of Rochester, N.Y. v. Schmidt, 1904, 126 F. 998.

Former Code 1962 Section 37‑154 formed a part of every fire insurance policy issued in this State, and any policy provisions in conflicted with it were null and void; but former Code 1962 Section 37‑154 was not applicable when the insured property was destroyed by windstorm. McNeely v. South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1972) 259 S.C. 39, 190 S.E.2d 499.

Former Code 1962 Section 37‑154 formed a part of every fire insurance policy issued in this State, and any policy provisions in conflict with it were null and void. Tedder v. Hartford Fire Ins. Co. (S.C. 1965) 246 S.C. 163, 143 S.E.2d 122. Insurance 2171

3. Purpose

Purpose of section is to protect insured from uncertainty which may arise as to value of property after its destruction by fire. (Decided under former law.) Aetna Ins. Co. v. Norris Bros., 1940, 109 F.2d 172.

The purpose of this legislation was to eliminate controversy after the loss occurred. (Decided under former law.) Division of General Services v. Ulmer (S.C. 1971) 256 S.C. 523, 183 S.E.2d 315.

4. Valuation

Claims for total loss under valued policies of insurance on property are considered liquidated demands, and settlements between the insurer and the insured under such policies for a sum less than the face of the valued policy are not supported by a consideration and do not constitute a bar to a recovery of the balance of the face value where a total loss was shown. (Decided under former law.) Holden v. Hanover Fire Ins. Co., 1955, 128 F.Supp. 527.

Former Code 1962 Section 37‑154 required the parties to a fire insurance contract to agree upon the value of the property to be insured and required that such value be stated in the policy. McNeely v. South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1972) 259 S.C. 39, 190 S.E.2d 499.

The common‑law rule allows recovery in the actual amount of the loss sustained, and the legislature amended former Code 1962 Section 37‑154 so as to provide recovery for the “actual amount of the loss”; this is plain on its face and the words must be given their plain meaning. Division of General Services v. Ulmer (S.C. 1971) 256 S.C. 523, 183 S.E.2d 315.

Although the parties fixed the sound value of the building at $11,000 after the fire damage, the policy valuation of $8,000 was controlling by reason of former Code 1962 Section 37‑154. Hunt v. General Ins. Co. of America (S.C. 1955) 227 S.C. 125, 87 S.E.2d 34.

5. Partial loss

Former statute provided for proportionate recovery in case of partial loss. Parnell v Orient Ins. Co. (1923) 126 SC 198, 119 SE 191, 32 ALR 648. Columbia Real Estate & Trust Co. v Royal Exchange Assur. (1925) 132 SC 427, 128 SE 865. Aiken v Home Ins. Co. (1926) 137 SC 248, 134 SE 870. Ford v George Washington Fire Ins. Co. (1926) 139 SC 212, 137 SE 678. Bruner v Automobile Ins. Co. (1932) 165 SC 421, 164 SE 134. Fowler v Merchants’ Fire Assur. Corp. (1934) 172 SC 66, 172 SE 781. Aetna Ins. Co. v Norris Bros. (1940, CA4 SC) 109 F2d 172.

Section 38‑75‑20, which entitles an insured to recover the full amount of insurance in case of total loss by fire, required a policy covering a home under construction that was destroyed by fire to provide coverage proportional to the full amount of insurance under the policy, rather than an amount proportional to the actual value of the insured property at the completion of construction. Averill v. Preferred Mut. Ins. Co. (S.C. 1994) 314 S.C. 49, 441 S.E.2d 632. Insurance 2171

Based on former Code 1962 Section 37‑154 as it existed prior to 1947, the salvage rule was applicable and, under this rule, the amount of recovery in case of a partial loss was determined by subtracting the salvage value of the damaged building from the agreed value of the building as set forth in the policy, but limited to not more than the amount of insurance bought, the 1947 amendment abolished the salvage rule. Division of General Services v. Ulmer (S.C. 1971) 256 S.C. 523, 183 S.E.2d 315.

Where there was testimony that it would have been possible from a practical standpoint, as well as economically feasible, to reconstruct the building utilizing the remains thereof as the basis for such reconstruction, and that this could have been accomplished even though it would be necessary to have the reconstructed building comply with the Southern Standard Building Code, the conclusion that the loss was a partial loss was well supported by the evidence. (Decided under former law.) Division of General Services v. Ulmer (S.C. 1971) 256 S.C. 523, 183 S.E.2d 315.

Arbitration agreement attempting to change measure of recovery for partial loss laid down by former Code 1962 Section 37‑154 was ineffective. Columbia Real Estate & Trust Co. v. Royal Exch. Assurance (S.C. 1925) 132 S.C. 427, 128 S.E. 865. Insurance 3273

6. Replacement insurance

Former Code 1962 Section 37‑155 allowed replacement value policies notwithstanding former Code 1962 Section 37‑154. Columbia College v. Pennsylvania Ins. Co. (S.C. 1967) 250 S.C. 237, 157 S.E.2d 416.

A policy provision giving to the insurer the right to rebuild or replace the insured property in case of total loss was contrary to the plain provisions of former Code 1962 Section 37‑154 and, therefore, of no binding effect. Tedder v. Hartford Fire Ins. Co. (S.C. 1965) 246 S.C. 163, 143 S.E.2d 122. Insurance 2171; Insurance 2186

7. Open and valued policies

Insured cannot waive benefit of valued policy statute. (Decided under former law.) Holden v. Hanover Fire Ins. Co., 1955, 128 F.Supp. 527. Insurance 2171

Former Code 1962 Section 37‑154 made a valuation clause necessary in all fire insurance policies whatsoever. Columbia College v. Pennsylvania Ins. Co. (S.C. 1967) 250 S.C. 237, 157 S.E.2d 416.

Open policies on builders’ risks. (Decided under former law.) Ulmer v. Phoenix Fire Ins. Co. (S.C. 1901) 61 S.C. 459, 39 S.E. 712.

Distinction between open and valued policies. (Decided under former law.) Riggs v. Home Mut. Fire Protection Ass’n (S.C. 1901) 61 S.C. 448, 39 S.E. 614.

8. Multiple insurers or policies

The policies must be written upon the same property and evidently the word “property” connotes the same interest. (Decided under former law. ) Thomas v Penn Mut. Fire Ins. Co. (1964) 244 SC 581, 137 SE2d 856. Johnson v Fidelity & Guaranty Ins. Co. (1965) 245 SC 205, 140 SE2d 153.

Insurer under valued policy is liable only for proportionate sum of policy as compared to agreed valuation, where there was other insurance. (Decided under former law.) Walker v Queen Ins. Co. (1926) 136 SC 144, 134 SE 263, 52 ALR 259. Cave v Home Ins. Co. (1900) 57 SC 347, 35 SE 577.

One insurer was not acting as a volunteer in paying the full amount of a mutual insured’s loss, thereby relieving the other insurer of liability for contribution, where by paying the insured, the insurer was merely protecting its legal position at a time when all the parties’ rights were uncertain. National Grange Mut. Ins. Co. v. Firemen’s Ins. Co. of Newark, New Jersey (S.C.App. 1992) 310 S.C. 116, 425 S.E.2d 754, rehearing denied.

The master erred in calculating 2 insurer’s pro rata share of costs to repair a mutual insured’s dwelling since he included the amounts of coverage for personal property loss and loss of use in his calculations; however, such error was harmless where the proper pro rata calculation would achieve less favorable results for the appellant. National Grange Mut. Ins. Co. v. Firemen’s Ins. Co. of Newark, New Jersey (S.C.App. 1992) 310 S.C. 116, 425 S.E.2d 754, rehearing denied. Appeal And Error 1033(8)

As a prerequisite to enforcing contribution between insurers, it is essential that both policies insure the same interest against the same casualty. (Decided under former law.) Johnson v. Fidelity & Guaranty Ins. Co. (S.C. 1965) 245 S.C. 205, 140 S.E.2d 153.

To constitute a breach of condition against additional insurance it must appear that the same property and the same interest are therein covered, and persons having distinct insurable interests in property may each have it insured without breaching such a clause. (Decided under law.) Johnson v. Fidelity & Guaranty Ins. Co. (S.C. 1965) 245 S.C. 205, 140 S.E.2d 153. Insurance 3043

Insurance of same interest against same casualty prerequisite to contribution between insurers. (Decided under former law.) Laurens Federal Sav. & Loan Ass’n v. Home Ins. Co. of New York (S.C. 1963) 242 S.C. 226, 130 S.E.2d 558.

Mere consent of first insurer to additional insurance did not effect a waiver of its right to prorate under former Code 1962 Section 37‑154. Edwards v. Great Am. Ins. Co. (S.C. 1959) 234 S.C. 404, 108 S.E.2d 582. Insurance 2193

The procuring of additional insurance without the consent of the insurer, against a provision of the policy and in excess of the agreed insurable value, avoided the policy. (Decided under former law.) Wynn v. Caledonian Ins. Co. (S.C. 1915) 100 S.C. 47, 84 S.E. 306. Insurance 3043

9. Mortgagee and mortgagor insurance

A mortgagor and mortgagee have separate and distinct interests in the same property which they may insure. (Decided under former law.) Johnson v. Fidelity & Guaranty Ins. Co. (S.C. 1965) 245 S.C. 205, 140 S.E.2d 153. Insurance 1790(7)

If an owner and a mortgagee of the same property have procured insurance on their separate interests therein, and the owner seeks to recover on his policy, the defendant insurer is not entitled to contribution against the insurer of the mortgagee’s interest. (Decided under former law.) Johnson v. Fidelity & Guaranty Ins. Co. (S.C. 1965) 245 S.C. 205, 140 S.E.2d 153.

The fact that the policy procured by the mortgagee was in the mortgagor’s name is of no consequence, because it covered only the mortgagee’s interest. (Decided under former law.) Johnson v. Fidelity & Guaranty Ins. Co. (S.C. 1965) 245 S.C. 205, 140 S.E.2d 153.

The inclusion of a standard mortgagee clause does not afford coverage of the mortgagee’s interest in the property insured, although he has a beneficial interest in the policy. (Decided under former law.) Thomas v. Penn Mut. Fire Ins. Co. (S.C. 1964) 244 S.C. 581, 137 S.E.2d 856.

10. Excess insurance

There was nothing in former Code 1962 Section 37‑154 which prevented a company from inserting in its policy a condition against insurance in excess of a limit fixed in the policy. Graham v. American Eagle Fire Ins. Co. of N.Y. (C.A.4 (S.C.) 1950) 182 F.2d 500.

An insurer cannot go behind the terms of a valued interest policy and show that the insured’s interest is worth less than the amount of the policy, especially when insurer has full information of insured’s limited interest. (Decided under former law.) Holden v. Hanover Fire Ins. Co., 1955, 128 F.Supp. 527. Insurance 2171; Insurance 2187

The value stated in an insurance policy is considered the value of the insurable interest of him who procured the insurance where the insurer knew the insured had but a partial interest of less value than the amount of insurance. (Decided under former law.) Thomas v. Penn Mut. Fire Ins. Co. (S.C. 1964) 244 S.C. 581, 137 S.E.2d 856.

An insurance company was not entitled to prorate on the basis of the agreed insurable value as stated in its policy, when its agent subsequently wrote another policy in which the agreed insurable value of the property was increased. (Decided under former law.) Edwards v. Great Am. Ins. Co. (S.C. 1959) 234 S.C. 404, 108 S.E.2d 582.

While public policy frowns upon wagering contracts, it would hardly look with favor upon an insurer, with full knowledge of all the facts, grossly over‑insuring the interest of an insured and unjustly enriching itself by collecting full premiums and retaining the greater portion of the premiums without any offer to return same, for which it recognizes or concedes no corresponding liability. (Decided under former law.) Hunt v. General Ins. Co. of America (S.C. 1955) 227 S.C. 125, 87 S.E.2d 34.

Where insurer issued a valued interest policy, with full knowledge of insured’s limited interest, for the full amount of the policy valuation, and collected and retained the full premium thereon with no offer to return any portion thereof, it was estopped to deny full ownership of the property and recovery of the full amount of a partial fire loss. (Decided under former law.) Hunt v. General Ins. Co. of America (S.C. 1955) 227 S.C. 125, 87 S.E.2d 34.

11. Other insurance clauses

“Other insurance” clauses in property insurance policies obtained by mortgagor and mortgagee were applicable, in litigation between mortgagor and mortgagee to determine which policy’s proceeds were available to be applied to loss of mortgagor’s home in fire, despite mortgagor’s assertion that the clauses did not apply to a dispute between insureds over proceeds that had already been paid. Blanding v. Long Beach Mortg. Co. (S.C.App. 2008) 379 S.C. 206, 665 S.E.2d 608, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 390 S.C. 439, 702 S.E.2d 558. Insurance 2191

12. Admissibility of evidence

Testimony relating to the cost of repair and the stipulated value of the insured property prior to the loss is admissible. (Decided under former law.) Division of General Services v. Ulmer (S.C. 1971) 256 S.C. 523, 183 S.E.2d 315.

13. Sufficiency of evidence

There was ample evidence to support jury’s verdict awarding plaintiffs $18,000 for their alleged fire losses where the agreed evaluation of plaintiffs’ dwelling in fire policy was $12,000 and under the provisions of former Code 1962 Section 37‑154 if the jury found that plaintiffs were entitled to recover anything they were required as a matter of law to return a verdict for the full amount of the agreed evaluation of the dwelling. Boyleston v. Nationwide Mut. Fire Ins. Co. (D.C.S.C. 1966) 256 F.Supp. 934.

**SECTION 38‑75‑30.** Maximum amounts of fire insurance policies; exceptions for manufacturing property and replacement riders.

Notwithstanding Section 38‑75‑20, insurers may, at the request of owners of property used principally for manufacturing purposes, including places of residence for occupancy by employees, issue policies wholly exempt from Section 38‑75‑20. Riders or endorsements may, in consideration of an adequate premium or premium deposit, be attached to policies insuring property, indemnifying the insured for the difference between the actual value stated in the policy and the amount actually expended to repair, rebuild, or replace with new materials of like size, kind, and quality the insured property that has been damaged or destroyed by fire or other perils insured against.

HISTORY: Former 1976 Code Section 38‑9‑200 [1947 (45) 322; 1948 (45) 1734; 1952 Code Section 37‑155; 1962 Code Section 37‑155] recodified as Section 38‑75‑30 by 1987 Act No. 155, Section 1.

Library References

Insurance 2167.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 627 to 628, 1539, 1541, 1566, 1573 to 1574, 1576, 1585, 1743, 1748, 1750 to 1751, 1753.

NOTES OF DECISIONS

In general 1

1. In general

Former Code 1962 Section 37‑155 contemplates and requires that actual value be inserted in the policy as a foundation for replacement costs coverage, but allows replacement value policies notwithstanding former Code 1962 Section 37‑154. Columbia College v. Pennsylvania Ins. Co. (S.C. 1967) 250 S.C. 237, 157 S.E.2d 416.

Former Code 1962 Section 37‑155 allows an endorsement to be added to a fire insurance policy to indemnify an insured for the difference between the actual value stated in the policy and the amount actually expended to repair, rebuild, or replace the insured property. Columbia College v. Pennsylvania Ins. Co. (S.C. 1967) 250 S.C. 237, 157 S.E.2d 416. Insurance 2172

Replacement cost insurance was devised to provide money for reconstruction. In effect, the insurer, under this plan, agrees to pay not only actual value but also the difference between actual cash value and full replacement cost. (Decided under former law.) Columbia College v. Pennsylvania Ins. Co. (S.C. 1967) 250 S.C. 237, 157 S.E.2d 416.

**SECTION 38‑75‑40.** Validity of additional or coinsurance clause.

No insurer or agency licensed to do business in this State may issue any policy or contract of insurance covering property in this State which contains any clause or provision requiring the insured to take or maintain a larger amount of insurance than that expressed in the policy or in any way provides that the insured is liable as a coinsurer with the insurer issuing the policy for any part of the loss or damage to the property described in the policy. Any such clause or provision is void. However, such a clause or provision may be used if there is stamped on the filing face of the policy or printed in bold type at the top of the clause the words “coinsurance clause”. If there is a difference in the rate for insurance with and without the coinsurance clause, the rates for each must be furnished the insured upon request.

HISTORY: Former 1976 Code Section 38‑9‑220 [1947 (45) 322; 1952 Code Section 37‑157; 1962 Code Section 37‑157] recodified as Section 38‑75‑40 by 1987 Act No. 155, Section 1.

Library References

Insurance 2188.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1542 to 1543, 1583 to 1584, 1586 to 1588, 1743, 2348.

**SECTION 38‑75‑50.** Clause limiting or invalidating policies if property is encumbered is void.

Any clause in any policy of insurance purporting or undertaking to limit or invalidate the force of the policy in case of encumbrance by real estate mortgage of the property insured by the policy is void.

HISTORY: Former 1976 Code Section 38‑9‑210 [1947 (45) 322; 1952 Code Section 37‑156; 1962 Code Section 37‑156] recodified as Section 38‑75‑50 by 1987 Act No. 155, Section 1.

Library References

Insurance 3052.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 970 to 972.

**SECTION 38‑75‑60.** Cause of action by insurer against tenant.

Notwithstanding any other provision of law, no insurer has a cause of action against a tenant who causes damage to real or personal property leased by the landlord to the tenant when the insurer is liable to the landlord for the damages under an insurance contract between the landlord and the insurer, unless the damage is caused by the tenant intentionally or in reckless disregard of the rights of others.

HISTORY: Former 1976 Code Section 38‑9‑370 [En, 1977 Act No. 151 Section 2] recodified as Section 38‑75‑60 by 1987 Act No. 155, Section 1.

Library References

Insurance 3515(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1989, 1993, 1999, 2011 to 2016, 2018, 2022, 2026, 2028 to 2029, 2035.

NOTES OF DECISIONS

In general 1

Summary judgment 2

1. In general

Court of Appeals’ ruling on prior appeal in landlord’s contract action against tenant, arising from fire on premises, that any error in not joining landlord’s insurers to action did not prejudice tenant because South Carolina statute, which prevented insurers from recovering damages against tenants, would have had no effect on landlord’s cause of action, was law of case, and thus issue could not be relitigated. Balcor Equity Properties XVIII v. Caligo Ltd. (C.A.4 (S.C.) 2002) 44 Fed.Appx. 623, 2002 WL 1837940, Unreported. Federal Courts 3752

2. Summary judgment

In an action by a landlord’s insurer against a tenant for damages arising out of the destruction of the landlord’s property by a fire started when two of the tenant’s employees were cleaning grease and dirt from the floor of a garage using a mixture of gasoline and kerosene, which was ignited by the pilot light of a water heater, summary judgment should not have been granted to the tenant where evidence that the employees realized the danger of using gasoline for cleaning, knew of the existence of the pilot light on the water heater, and had been specifically instructed not to use gasoline for cleaning, presented a genuine question of fact as to whether such actions constituted negligence or reckless disregard, which fact could not be determined on a motion for summary judgment. (Decided under former law.) Vaughn v. A. E. Green Co., Inc. (S.C. 1982) 277 S.C. 392, 287 S.E.2d 493.

ARTICLE 3

Hazard Insurance on Mobile Homes

**SECTION 38‑75‑210.** Policies may not exceed three years; refund of unearned premiums on cancellation of policies.

Notwithstanding any other provision of law:

(1) No policy of hazard insurance issued or delivered to cover a mobile home risk situate in South Carolina may be written to provide for a policy period in excess of three years.

(2) Every such policy, and the manual of rules and rates of every insurer issuing such policies in this State, shall provide that all premiums held by the insurer in respect to that part of the policy term subsequent to the anniversary date of the then current policy year are considered unearned and must be refunded in full if the policy is cancelled, without respect to whether cancellation is effected by the insured or insurer. In the event of cancellation during the first year of the policy term, refund of premium for that portion of the policy term must be on a pro rata basis if cancellation is effected by the insurer or on the short rate basis if cancellation is effected by the insured. In the event of cancellation during the second year of the policy term, refund of that portion of the unearned premium attributable to the second year must be on a pro rata basis if cancellation is effected by the insurer or on the short rate basis if cancellation is effected by the insured, subject, however, to the provision that the portion of the unearned premium attributable to the third year is considered entirely unearned and must be returned in full regardless of the party responsible for cancellation. In the event of cancellation during the third year of the policy term, refund of that portion of the unearned premium attributable to the third year must be on a pro rata basis if cancellation is effected by the insured.

(3) Upon the cancellation of any such policy, without respect to the party effecting the cancellation, any unearned premium must be returned to the insured or to the mortgagee. If returned to the mortgagee the unearned premium must be applied to any payment then due or to the next payment or payments to become due. No agreement may be made requiring or permitting the mortgagee to apply the returned premiums to the final payment or payments on the indebtedness.

HISTORY: Former 1976 Code Section 38‑41‑10 [1975 (59) 157] recodified as Section 38‑75‑210 by 1987 Act No. 155, Section 1; 1988 Act No. 399, Section 10.

Library References

Insurance 1930, 2062, 2066.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 706 to 712, 715, 718 to 719, 787 to 789, 835.

**SECTION 38‑75‑220.** Restrictions on amount of insurance that may be written.

No insurer transacting a mobile home insurance business in this State and writing hazard insurance covering loss from physical damage to the mobile homes may issue a policy for more than the value stated in the policy or the value of the property to be insured. The amount of insurance must be fixed by the insurer and insured at or before the time of issuing the policy. In case of total loss as a result of a hazard insured against, the insured is entitled to recover the full amount of insurance. In case of partial loss the insured is entitled to recover the actual amount of loss but in no event more than the amount of insurance stated in the contract. If two or more such policies are written upon the same property and covering the same interests, they are considered to be contributive insurance, and, if the aggregate sum of all such insurance exceeds the insurable value of the property, as agreed by the insured and insurer, each insurer, in the event of a total or partial loss, is liable for its pro rata share of insurance. This section does not preclude an agreement by an insurer with its insured to effect replacement in the event of total loss of the mobile home as a result of a hazard insured against if the insured has maintained insurance of a given percentage in relationship to the market value of the mobile home.

HISTORY: Former 1976 Code Section 38‑41‑20 [1975 (59) 157] recodified as Section 38‑75‑220 by 1987 Act No. 155, Section 1.

Library References

Insurance 2171, 2175, 2189, 2193.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 627 to 628, 1539 to 1543, 1573 to 1574, 1577 to 1578, 1583, 1586 to 1588, 1743, 1748 to 1750, 1752 to 1753.

NOTES OF DECISIONS

Other insurance clauses 1

1. Other insurance clauses

“Other insurance” clauses in property insurance policies obtained by mortgagor and mortgagee were applicable, in litigation between mortgagor and mortgagee to determine which policy’s proceeds were available to be applied to loss of mortgagor’s home in fire, despite mortgagor’s assertion that the clauses did not apply to a dispute between insureds over proceeds that had already been paid. Blanding v. Long Beach Mortg. Co. (S.C.App. 2008) 379 S.C. 206, 665 S.E.2d 608, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 390 S.C. 439, 702 S.E.2d 558. Insurance 2191

**SECTION 38‑75‑230.** Information required on contracts for purchase of mobile homes.

Any contract to purchase a mobile home shall on its face:

(1) clearly include the provisions of Section 38‑75‑210; and

(2) clearly inform the purchaser that it is a violation of the law of this State for the seller of a mobile home or for any person lending money upon the security thereof to require or to attempt to require that hazard insurance be purchased from any particular insurer or agent and shall include the address of the office of the Department of the Insurance with instructions to report any violation or attempted violation to his office.

HISTORY: Former 1976 Code Section 38‑41‑30 [1975 (59) 157] recodified as Section 38‑75‑230 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 792.

Library References

Antitrust and Trade Regulation 201.

Consumer Credit 16.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 70.

C.J.S. Interest and Usury; Consumer Credit Sections 437 to 439.

ARTICLE 5

Wind and Hail Insurance

**SECTION 38‑75‑310.** Definitions.

In this article, unless the context otherwise requires:

(1) “Essential property insurance” means insurance against direct loss to property as defined and limited in the wind and hail insurance policy and forms approved by the director or his designee; and after January 1, 1995, at the request of the insured, coverage for:

(a) actual loss of business income;

(b) additional living expense; or

(c) fair rental value loss.

Before November 1, 1994, the South Carolina Wind and Hail Underwriting Association must file with the department for approval additional policy forms defining the terms of and providing coverage for actual loss of business income, additional living expense, and fair rental value loss.

(2) “Association” means the South Carolina Wind and Hail Underwriting Association established pursuant to the provisions of this article.

(3) “Plan of operation” means the plan of operation of the association approved or promulgated by the department pursuant to the provisions of this article.

(4) “Insurable property” means immovable property at fixed locations in coastal areas of the State as that term is defined, or tangible personal property located in it, which property is determined by the association to be in an insurable condition as determined by reasonable underwriting standards, but not to include farm or manufacturing property, or motor vehicles which are eligible to be licensed for highway use. A structure commenced on or after September 15, 1971, not built in substantial compliance with the most recent building code, adopted by the Building Codes Council as referenced in Section 6‑9‑50, or the approved building code in existence at the time of construction or the standards promulgated under the National Manufactured Housing Construction Standards and Safety Act, including the design‑wind requirements in it, is not an insurable risk under the terms of this article. A structure commenced on or after September 15, 1971, must comply with any construction and zoning requirements affecting the structure, promulgated or adopted pursuant to the requirements of the Federal Flood Insurance Program.

(5) “Coastal area” means:

(a) all areas in Beaufort County and Colleton County which are east of the west bank of the intracoastal waterway;

(b) the following areas in Georgetown County: all areas between the Harrell Siau Bridge and the Georgetown‑Horry County border which are east of a line paralleling U.S. Highway No. 17, and Cedar Island, North Island, and South Island;

(c) all areas in Horry County east of U.S. Highway No. 17 or By‑Pass 17, whichever is farther to the west;

(d) the following areas in Charleston County: Edisto Island, Edingsville Beach, Kiawah Island, Botany Bay Island, Folly Island, Seabrook Island, Morris Island, and all areas north of the City of Charleston which are east of the west bank of the intracoastal waterway and the following areas:

(i) the portion of James Island which is east of the west bank of the James Island Creek;

(ii) the portion of John’s Island which is east of a line paralleling Exchange Road which becomes Plow Ground Road to Hoopstick Island Road to Church Creek; and

(iii) the portion of Wadmalaw Island which is east of a line paralleling Roseville Road to west of Cherry Point Road to Maybank Highway to Brigger Hill Road.

(6) “Net direct premiums” means gross direct premiums excluding reinsurance assumed and ceded written on property other than farm or manufacturing in this State for fire and extended coverage insurance, including the fire and extended coverage components of homeowners policy and commercial multiple peril package policies, less return premiums upon canceled contracts, dividends paid or credited to policyholders, or the unused or unabsorbed portion of premium deposits.

(7) “Seacoast area” means all areas within Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, and Jasper Counties.

HISTORY: Former 1976 Code Section 38‑39‑10 [1962 Code Section 37‑772; 1971 (57) 744] recodified as Section 38‑75‑310 by 1987 Act No. 155, Section 1; 1988 Act No. 479, Section 2; 1990 Act No. 469, Section 1; 1993 Act No. 181, Section 793; 1994 Act No. 504, Sections 1, 2; 1996 Act No. 360 Section 3 and 1996 Act No. 378, Section 3; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Editor’s Note

Under the provisions of Chapter 34, Title 1, an agency is required to adopt the latest edition of a nationally recognized code which it is charged by statute or regulation with enforcing by giving notice in the State Register.

CROSS REFERENCES

Duties of Director of the Department of Insurance, see Section 38‑3‑110.

Library References

Insurance 1220, 1537.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2334, 2362 to 2363, 2366 to 2367.

LAW REVIEW AND JOURNAL COMMENTARIES

Fire and Windstorm Coverage. 25 S.C. L. Rev. 396.

**SECTION 38‑75‑320.** Declaration of purpose.

The purpose of this article is to assure an adequate market for wind and hail insurance in the coastal areas of this State.

HISTORY: Former 1976 Code Section 38‑39‑20 [1962 Code Section 37‑771; 1971 (57) 744] recodified as Section 38‑75‑320 by 1987 Act No. 155, Section 1; 1990 Act No. 469, Section 2; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

**SECTION 38‑75‑330.** South Carolina Wind and Hail Underwriting Association created; members.

(A) There is created the South Carolina Wind and Hail Underwriting Association, an unincorporated association whose responsibilities, liability, and regulations are governed and defined by this article. The association shall function as a residual market mechanism to provide wind and hail insurance for residential and commercial property to applicants who are unable to procure this insurance in the coastal area.

(B) The association consists of all private insurers authorized to write and engage in writing property insurance within this State on a direct and statewide basis, but excluding insurers whose writings are limited to property wholly owned by parent, subsidiary, or allied organizations, or insurers whose writings are limited to property wholly owned by religious organizations. However, as a condition of exemption from membership these insurers providing property insurance for insurable property in the coastal area as defined by this article also shall provide essential property insurance for these risks. Each insurer must be a member of the association and shall remain a member of the association so long as the association is in existence as a condition of its authority to continue to transact the business of insurance in this State.

HISTORY: Former 1976 Code Section 38‑39‑30 [1962 Code Section 37‑773; 1971 (57) 744] recodified as Section 38‑75‑330 by 1987 Act No. 155, Section 1; 1990 Act No. 469, Section 3; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1218, 1537.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 150 to 151, 2334 to 2351, 2360, 2362 to 2372.

NOTES OF DECISIONS

In general 1

1. In general

A property insurer was not exempt from a mandatory association created to ensure that windstorm and hail insurance would be available in the coastal regions of the state where the insurer was a domestic mutual insurance company created to insure property owned by churches, and churches are not “allied organizations” pursuant to the exemption created by Section 38‑75‑330. Southern Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Ass’n (S.C. 1991) 306 S.C. 339, 412 S.E.2d 377.

**SECTION 38‑75‑340.** Plan of operation.

(A) The association shall operate pursuant to a plan of operation which provides for the following:

(1) the number, qualifications, terms of office, and manner of election of the members of the board of directors, provided that four members of the board of directors must be consumers who are representative of business policyholders, residential single‑family dwelling policyholders, and apartment, condominium, or multiple‑family dwelling policyholders, and who are selected from recommendations from the members of the legislative delegations from the seacoast area;

(2) the efficient, economical, fair, and nondiscriminatory administration of the association;

(3) the prompt and efficient provision of essential property insurance in the coastal areas of the State;

(4) the manner of election of officers;

(5) the establishment of necessary facilities;

(6) the management of the association;

(7) the assessment of members to defray losses and expenses;

(8) reasonable underwriting standards, rating subdivisions, and rates including, but not limited to, developing multiple‑tiered rates within the coastal area territory that reflect the relative risks of the properties located within a particular tier;

(9) commissions to be paid to agents or brokers;

(10) procedures for an open, competitive process for the acceptance and cession of reinsurance, provided that the association is not required to follow the provisions of the South Carolina Consolidated Procurement Code, and for determining the amounts of insurance to be provided to specific risks;

(11) time limits and procedures for processing applications for insurance; and

(12) other provisions considered necessary by the director or his designee to carry out the purposes of this article.

(B) Insurance effected pursuant to this article must have limits of liability provided in the plan of operation. The director or his designee shall approve the limits. Excess insurance is not permitted until the maximum available under the plan has been purchased. After that, excess insurance may be purchased and must be included for the purpose of meeting any coinsurance requirement.

(C) The board of the association, subject to the approval of the director or his designee, may amend the plan of operation at any time. The director or his designee shall review the plan of operation annually. The director or his designee shall review the rate structure and loss experience semi‑annually in accordance with Section 38‑75‑400. After review of the plan, the director or his designee may amend the plan and the amendment takes effect immediately upon ratification by the board.

HISTORY: Former 1976 Code Section 38‑39‑50 [1962 Code Section 37‑777; 1971 (57) 744; 1972 (57) 2736; 1976 Act No. 460; 1978 Act No. 562] recodified as Section 38‑75‑340 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1221(2).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2335, 2362 to 2363, 2366 to 2367.

NOTES OF DECISIONS

Insurable interest 1

1. Insurable interest

Insured did not have equity interest in insured property that was destroyed, and thus, even though insured had lease with option to purchase property, insured did not have insurable interest in property; insured’s equity in property was de minimis at best, and insured failed to provide any evidence that equity he had accumulated in property was not diminished, and ultimately depleted, because of his arrearages. Belton v. Cincinnati Ins. Co. (S.C. 2004) 360 S.C. 575, 602 S.E.2d 389. Insurance 1790(5); Insurance 1790(8)

**SECTION 38‑75‑350.** Application for coverage; issuance of policy.

(A) A person having an insurable interest in insurable property is entitled to apply to the association for coverage and for an inspection of the property. The application must be made on behalf of the applicant by a licensed broker or agent authorized by him. An application must be submitted on a form prescribed by the association and approved by the director or his designee. The application must contain a statement as to whether or not there are any unpaid premiums due from the applicant for fire insurance on the property. The term “insurable interest” as used in this section includes any lawful and substantial economic interest in the safety or preservation of property from loss, destruction, or pecuniary damage.

(B) If the association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the association upon receipt of the premium, or a portion of it as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance for a term of at least one year.

(C) If the association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to an applicant or takes no action on an application within the time prescribed in the plan of operation, the applicant may appeal to the director or his designee and the director or a member of his staff designated by him, after reviewing the facts, may direct the association to issue or cause to be issued an insurance policy to the applicant. In carrying out its duties pursuant to this section, the director or his designee may request, and the association shall provide, any information the director or his designee considers necessary to a determination concerning the reasons for the denial or delay of the application.

HISTORY: Former 1976 Code Section 38‑39‑50 [1962 Code Section 37‑777; 1971 (57) 744; 1972 (57) 2736; 1976 Act No. 460; 1978 Act No. 562] recodified as Section 38‑75‑350 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1732, 1780, 1790(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 324 to 334, 380 to 386, 408, 432 to 433, 435 to 440, 445, 448.

NOTES OF DECISIONS

In general 1

1. In general

In order to have an insurable interest in property under contract for purchase, there must be a valid contract in existence both at the time the policy was issued and became effective, and at the time of the loss. Belton v. Cincinnati Ins. Co. (S.C.App. 2003) 353 S.C. 363, 577 S.E.2d 487, rehearing denied, certiorari granted, reversed 360 S.C. 575, 602 S.E.2d 389. Insurance 1790(5)

**SECTION 38‑75‑360.** Powers of Association.

(A) The association, pursuant to the provisions of this article and the plan of operation, and with respect to essential property insurance on insurable property, has the power on behalf of its members to:

(1) cause to be issued policies of insurance to applicants;

(2) assume reinsurance from its members;

(3) cede reinsurance to its members and to purchase reinsurance on risks insured by the association in amounts that are in accordance with procedures adopted by the board;

(4) receive, hold, and transfer personal and real property in the name of the association;

(5) contract for goods and services that may not be reasonably performed by its employees;

(6) solicit and accept goods, loans, grants, etc. in the name of the association;

(7) borrow funds; and

(8) issue bonds, surplus notes, or other debentures.

(B) The association, pursuant to the provisions of this article and the plan of operation, and with respect to essential property insurance on insurable property, shall perform other acts necessary or proper to effectuate the purpose of this subsection.

HISTORY: Former 1976 Code Section 38‑39‑60 [1962 Code Section 37‑774; 1971 (57) 744] recodified as Section 38‑75‑360 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1223, 1538.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2362 to 2363, 2366 to 2367.

**SECTION 38‑75‑370.** Duties of members of Association; limitation on liability.

(A) All members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premium of the member written in this State during the calendar year two years before the current year bears to the aggregate net direct premiums written in this State by all members of the association, as certified to the association by the department after review of annual statements, other reports, and other statistics which the department considers necessary to provide the information required and which the department is authorized to obtain from a member of the association. After certification by the department, the association may rely on the member company’s annual statement in determining the company’s participation in profits and losses for each year.

(B) Each member’s participation in the association must be determined annually in the same manner as the initial determination. An insurer authorized to write and engage in writing insurance, the writing of which requires the insurer to be a member of the association pursuant to Section 38‑75‑330, becomes a member of the association on January first immediately following the authorization. The determination of the insurer’s participation in the association must be made as of the date of the membership in the same manner as for all other members of the association. Member insurers shall receive credit annually for essential property insurance voluntarily written in the coastal area and their participation in the writings of the association must be reduced accordingly. The board of directors shall authorize the method of determining the credit. In order to receive credit for essential property voluntarily written in the coastal area, each member company shall submit its requests by March thirty‑first of the year preceding the year for which credit is sought.

(C) The assessment of a member insurer after hearing may be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the director or his designee, payment of the assessment would render the insurer insolvent or in danger of insolvency or would otherwise leave the insurer in a condition so that further transaction of the insurer’s business would be hazardous to its policyholders, creditors, members, subscribers, stockholders, or the public. If payment of an assessment against a member insurer is deferred by order of the director or his designee in whole or in part, the amount by which the assessment is deferred must be assessed against other member insurers in the same manner as provided in this section. In its order of deferral, or in necessary subsequent orders, the director or his designee shall prescribe a plan by which the assessment so deferred must be repaid to the association by the impaired insurer with interest at the six‑month treasury bill rate adjusted semi‑annually. Profits, dividends, or other funds of the association to which the insurer is otherwise entitled must not be distributed to the impaired insurer but must be applied toward repayment of an assessment until the obligation has been satisfied. The association shall distribute the repayments, including interest, to the other member insurers on the basis at which assessments were made.

HISTORY: Former 1976 Code Section 38‑39‑70 [1962 Code Section 37‑776; 1971 (57) 744; 1983 Act No. 12] recodified as Section 38‑75‑370 by 1987 Act No. 155, Section 1; 1992 Act No. 342, Section 2; 1993 Act No. 181, Section 793; 2006 Act No. 332, Section 30, eff June 1, 2006; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1227.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2344 to 2345, 2348 to 2349, 2360, 2362 to 2363, 2366 to 2368.

**SECTION 38‑75‑375.** Contested assessment or interest levy by association; payment under protest; appeal; exposure to disciplinary procedures.

(A) If a member company perceives an assessment or interest levied by the association to be unjust or illegal, the company shall pay the assessment or interest under protest in writing within thirty days of the assessment or interest charge. Upon receiving this payment, the association shall pay the money collected into the association account and designate the money as having been paid under protest.

(B) A member company paying an assessment or interest under protest shall appeal to the association within thirty days after making the payment. If it is determined in that appeal that the assessment or interest was collected unjustly or illegally, the association shall refund the assessment or interest to the payor.

(C) If a member company fails to pay an assessment or interest within thirty days of the assessment or interest charge by the association, the company is subject to disciplinary procedures pursuant to Section 38‑5‑120 or 38‑5‑130.

HISTORY: 1992 Act No. 342, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

**SECTION 38‑75‑380.** Liability for inspections and statements concerning risk.

There may be no liability on the part of and no cause of action of any nature may arise against the department or any of its staff or the association or its agents, employees, or any participating insurer for any inspections made hereunder or any statements made in good faith by them in any reports or communications concerning risk submitted to the association or at any administrative hearings conducted in connection with it under the provisions of this article.

HISTORY: Former 1976 Code Section 38‑39‑80 [1962 Code Section 37‑782; 1971 (57) 744] recodified as Section 38‑75‑380 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1227(4).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2344 to 2345, 2348 to 2349, 2362 to 2363, 2366 to 2368.

**SECTION 38‑75‑385.** Liability for acts or omissions under this article.

There is no liability on the part of, and no cause of action of any nature may arise against, any member insurer, the association’s agents or employees, the board of directors, or the director, his designees, or his representatives for any act or omission in the performance of their powers and duties under this article. This section does not relieve the association of any of its liability.

HISTORY: 1988 Act No. 479, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1227(4).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2344 to 2345, 2348 to 2349, 2362 to 2363, 2366 to 2368.

**SECTION 38‑75‑386.** Essential property insurance; liability for acts and omissions.

No liability on the part of, and no cause of action of any nature may arise against, the director, the Department of Insurance or its staff, the association, any member insurer, the association’s agents or employees, its board of directors, or the legal representatives of any of the above persons, for any act or omission made in good faith or for any statement made to, or for information provided to, any insurer regarding rates; premiums; classifications; cancellations, determinations, or nonrenewals of coverage; underwriting; inspections; or claims experience history made to facilitate the underwriting of essential property insurance for risks in the coastal area by private insurers or to facilitate competition for the underwriting of essential property insurance for risks in the coastal area among private insurers.

HISTORY: 1996 Act No. 360 Section 2 and 1996 Act No. 378, Section 2; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1224(2), 1227(4).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2344 to 2346, 2348 to 2349, 2362 to 2363, 2366 to 2368.

**SECTION 38‑75‑390.** Cession of essential property insurance to Association.

A member of the association who is designated to receive and write essential property insurance from or through the association shall cede one hundred percent to the association the essential property insurance.

HISTORY: Former 1976 Code Section 38‑39‑90 [1962 Code Section 37‑778; 1971 (57) 744] recodified as Section 38‑75‑390 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1538.

Westlaw Topic No. 217.

**SECTION 38‑75‑400.** Rates.

(A) The rates, rating plans, and rating rules applicable to the insurance written by the association are those approved for use of the association by the director or his designee. Surcharges may be used as approved by the director or his designee. Rates may include rules for classification of risks insured under the provisions of this article and rate modifications of it.

(B) As a residual market mechanism, the association is not intended to offer rates competitive with the admitted market. Rates for policies issued by the association must be adequate and established at a level that permits the association to operate as a self‑sustaining mechanism. The association shall maintain the necessary rate‑making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured by the association. The association shall monitor rate adequacy and shall notify the director semi‑annually to enable the director to take corrective action by an order. Rates adjusted by a corrective action order are exempt from the twelve‑month limitation requirement of Section 38‑73‑920. The corrective action order is subject to judicial review by the Administrative Law Court.

HISTORY: Former 1976 Code Section 38‑39‑100 [1962 Code Section 37‑779; 1971 (57) 744] recodified as Section 38‑75‑400 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1541.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 91 to 95, 105 to 107.

**SECTION 38‑75‑410.** Appeals; hearings upon appeal.

(A) A person insured pursuant to this article or his representative or a member company who is aggrieved by an act, ruling, or decision of the association:

(1) regarding rates, classification of risks, assessments, voluntary credits, cancellation or termination of policies, or underwriting shall appeal to the director or his designee within sixty days after the act, ruling, or decision;

(2) other than those specified in item (1), may appeal to the director or his designee within thirty days after the act, ruling, or decision.

(B) A hearing held by the director or his designee pursuant to this section must be in accordance with the procedures set forth in Chapter 3, Title 38 and Article 3, Chapter 23, Title 1, “Administrative Procedures”.

HISTORY: Former 1976 Code Section 38‑39‑110 [1962 Code Section 37‑780; 1971 (57) 744] recodified as Section 38‑75‑410 by 1987 Act No. 155, Section 1; 1992 Act No. 342, Section 3; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1055, 1545(7).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 53, 57 to 58, 93, 118 to 123.

NOTES OF DECISIONS

Legislative intent 1

1. Legislative intent

Nothing in former Section 38‑39‑110 indicated an intent on the part of the Legislature to force insureds to pursue the administrative remedy of appeal to the Insurance Commission, since the Legislature used the word “may” in the statute as permissive and not mandatory. Waites v. South Carolina Windstorm and Hail Underwriting Ass’n (S.C. 1983) 279 S.C. 362, 307 S.E.2d 223.

**SECTION 38‑75‑420.** Reports of inspection by Association.

All reports of inspection performed by or on behalf of the association must be made available to the members of the association, applicants, agents, brokers, and the department.

All reports of inspection performed by or on behalf of the association must be made available to the members of the association, applicants, agent, broker, and the department.

HISTORY: Former 1976 Code Section 38‑39‑120 [1962 Code Section 37‑781; 1971 (57) 744] recodified as Section 38‑75‑420 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1230(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2362 to 2363, 2366 to 2367.

**SECTION 38‑75‑430.** Association shall file statement of transactions and the like; additional information.

The association shall file with the department by March thirty‑first of each year a statement which summarizes the transactions, conditions, operations, and affairs of the association during the preceding fiscal year ending October thirty‑first. The statement must contain any matters and information prescribed by the department and must be in the form required by it. The department may at any time require the association to furnish to it any additional information with respect to its transactions or any other matter which it considers material to assist it in evaluating the operation and experience of the association.

HISTORY: Former 1976 Code Section 38‑39‑130 [1962 Code Section 37‑783; 1971 (57) 744; 1976 Act No. 529] recodified as Section 38‑75‑430 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1230(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2362 to 2363, 2366 to 2367.

**SECTION 38‑75‑440.** Examination into affairs of Association.

The department may make an examination into the affairs of the association and in undertaking the examination may hold a public hearing. The expense of the examination must be borne and paid by the association.

HISTORY: Former 1976 Code Section 38‑39‑140 [1962 Code Section 37‑784; 1971 (57) 744] recodified as Section 38‑75‑440 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1048.

Westlaw Topic No. 217.

**SECTION 38‑75‑450.** Regulations.

The department has authority to make reasonable regulations, not inconsistent with law, to enforce, carry out, and make effective the provisions of this article after notice and hearing before the Administrative Law Court.

HISTORY: Former 1976 Code Section 38‑39‑150 [1962 Code Section 37‑785; 1971 (57) 744] recodified as Section 38‑75‑450 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 793; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

CROSS REFERENCES

Administrative Law Court, see Section 1‑23‑500 et seq.

**SECTION 38‑75‑460.** Expansion of area in which essential property insurance provided; factors; multiple tiers.

(A) In order to maintain stability in the property insurance market and to assure the continued, consistent availability of essential property insurance coverage in the coastal area, the Director of the Department of Insurance, who is selected as defined in Section 38‑1‑20(16), or his designee, by written order complying with the requirements of Section 1‑23‑140, may expand the coastal area in which the association shall provide essential property insurance for periods up to twenty‑four months. The order is subject to renewal by the director but no renewal shall exceed twenty‑four months. In determining whether expansion of the coastal area is warranted, the director or his designee shall consider:

(1) changes in the number of insurers writing essential property insurance in the seacoast area and the capacity of those insurers including, but not limited to, the number of policies those insurers have cancelled or nonrenewed, as provided in Sections 38‑75‑730, 38‑75‑740, and 38‑75‑1160, during the previous twelve months;

(2) changes in the extent to which (a) nonadmitted or surplus lines insurers, or (b) South Carolina Coastal Captive Insurance Companies, pursuant to Article 5, Chapter 90, Title 38, are providing essential property insurance in the seacoast area;

(3) changes in reinsurance activity impacting insurers writing essential property insurance in the seacoast area;

(4) changes in the demand for property insurance in the seacoast area; and

(5) any other information considered relevant to effectuate the purpose of this chapter including, but not limited to, the availability of essential property insurance coverage for insurable property that is within the coastal area and is located in a Coastal Barrier Resource Act (CBRA) zone.

(B) The director or his designee shall find and declare the existence of conditions that threaten to destabilize the property insurance market and jeopardize the continued, consistent availability of essential property insurance in the seacoast area. The director or his designee shall utilize market surveys, data calls, catastrophe models, reinsurance information, and other objective sources to support the order of expansion.

(C)(1) The director or his designee may expand the coastal area in which the association shall provide essential property insurance. The expansion may encompass a portion of the seacoast area or the entire seacoast area, but may not extend further than the seacoast area. The area must not be expanded more than reasonably necessary to ensure a stable property insurance market.

(2) In expanding the coastal area, the director or his designee may provide for the coastal area territory to be divided into multiple tiers to allow the association to develop multiple‑tiered rates that reflect the relative risks of the properties located within a particular tier.

(3) An expansion of the coastal area is subject to the plan of operation as amended and approved by the director or his designee.

(4) The director or his designee shall report any expansion of the coastal area to the General Assembly within thirty days of the order of expansion or upon commencement of the next term of the General Assembly, if expansion occurs when the General Assembly is not in session. The General Assembly may approve, revise, or vacate any expansion order by passage of a joint resolution.

(D) On the effective date of this section, the General Assembly ratifies the director’s May 23, 2007, coastal area expansion order and the multiple‑tier structure described in the order for the time period stated in the order and authorized by this section.

HISTORY: 1988 Act No. 479, Section 3; 1993 Act No. 181, Section 793; 2003 Act No. 73, Section 20, eff June 25, 2003; 2007 Act No. 78, Section 10, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

CROSS REFERENCES

Duties of Director of the Department of Insurance, see Section 38‑3‑110.

Library References

Insurance 1219, 1538.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 150 to 151, 2334 to 2337, 2340 to 2345, 2347, 2350 to 2351, 2362 to 2372.

ARTICLE 8

Advisory Committee to the Director and the South Carolina Building Codes Council, Loss Mitigation Grant Program, and South Carolina Comprehensive Hurricane Damage Mitigation Program

**SECTION 38‑75‑470.** Appointment of advisory committee; duties; membership.

(A) The Director of Insurance shall appoint an advisory committee to the director to study issues associated with the development of strategies for reducing loss of life and to address the mitigation of property losses due to hurricane, earthquake, flood, and fire. The advisory committee also shall consider the associated costs to individual property owners. The advisory committee is composed of:

(1) the director or his designee;

(2) the Chairman of the Building Codes Council or his designee;

(3) a representative from Clemson University involved with wind engineering;

(4) a representative from an academic institution involved with the study of earthquakes;

(5) a representative from an insurer writing property insurance in South Carolina;

(6) a representative from the Department of Commerce;

(7) a representative from the South Carolina’s Municipal Association;

(8) a representative from the South Carolina Association of Counties;

(9) a representative from the Homebuilders Association;

(10) a representative from the Manufactured Housing Institute of South Carolina;

(11) a representative from the State Fire Marshal’s office;

(12) a representative from the South Carolina Emergency Management Division;

(13) a representative from the State Flood Mitigation Program;

(14) two at‑large members appointed by the director;

(15) two at‑large members appointed by the Governor;

(16) a general contractor;

(17) a representative from the South Carolina Association of Realtors; and

(18) a structural engineer.

(B) Members shall serve for terms of two years and shall receive no per diem, mileage, or subsistence. Vacancies must be filled in the same manner as the original appointment.

(C) Within thirty days after its appointment, the advisory committee shall meet at the call of the Director of Insurance. The advisory committee shall elect from its members a chairman and a secretary and shall adopt rules not inconsistent with this chapter. Meetings may be called by the chairman on his own initiative and must be called at the request of three or more members of the advisory committee. All members must be notified by the chairman of the time and place of the meeting at least seven days in advance of the meeting. All meetings must be open to the public. At least two‑thirds vote of those members in attendance at the meeting shall constitute an official decision of the advisory committee. Implementation of this program and continued existence of this program is subject to the availability of funding through legislative appropriations or alternative funding sources.

HISTORY: 1997 Act No. 123, Section 5; 2000 Act No. 312, Section 20; 2002 Act No. 190, Section 6, eff March 12, 2002; 2007 Act No. 78, Section 11, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006; 2017 Act No. 28 (S.315), Section 1, eff May 10, 2017.

Effect of Amendment

2017 Act No. 28, Section 1, in (A), deleted “and the South Carolina Building Codes Council” following “to the director”, substituted “to address the mitigation of” for “mitigating”, inserted “flood,” after “earthquake,”, and substituted “associated costs” for “costs associated with these strategies”.

CROSS REFERENCES

South Carolina Hurricane Damage Mitigation program, grant eligibility and use, see Section 38‑75‑485.

**SECTION 38‑75‑480.** Loss mitigation grant program; establishment; purpose.

(A) There is established within the Department of Insurance a loss mitigation grant program. Funds may be appropriated to the grant program, and any funds appropriated must be used for the purpose of making grants to local governments or for the study and development of strategies for reducing loss of life and mitigating property losses due to hurricane, flood, earthquake, and fire. Grants to local governments must be for the following purposes:

(1) mitigating losses for eligible residential properties within the local jurisdiction in accordance with the guidelines established by the director or his designee; and

(2) providing technical assistance to and acting as an information resource for local governments in the development of proactive hazard mitigation strategies as they relate to reducing the loss of life and mitigating property losses due to natural hazards to include hurricane, flood, earthquake, and fire.

(B) Funds may be appropriated for a particular grant only after a majority affirmative vote on each grant by the advisory committee and submission of a resolution approved by a majority of the members of the relevant local governing body approving the application for grant funds.

(C) The Department of Insurance may make application and enter into contracts for and accept grants in aid from federal and state government and private sources for the purposes of:

(1) mitigating losses for eligible residential properties in accordance with the guidelines established by the director or his designee; and

(2) conducting loss mitigation studies for the development of strategies or measures aimed at reducing loss of life and mitigating property losses due to hurricane, flood, earthquake, and fire; or

(3) any other purposes consistent with this article.

HISTORY: 1997 Act No. 123, Section 5; 2000 Act No. 312, Section 21; 2007 Act No. 78, Section 11, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006; 2017 Act No. 28 (S.315), Section 2, eff May 10, 2017.

Effect of Amendment

2017 Act No. 28, Section 2, rewrote the section, providing that grants may be made to local governments to mitigate losses and provide technical assistance for the development of proactive hazard mitigation strategies and allowing the Department of Insurance to accept grants in aid for the mitigation of losses for eligible properties.

**SECTION 38‑75‑485.** South Carolina Hurricane Damage Mitigation Program; grant eligibility and use.

(A) There is established within the Department of Insurance, the South Carolina Hurricane Damage Mitigation Program. The advisory committee, established pursuant to Section 38‑75‑470, shall provide advice and assistance to the program administrator with regard to his administration of the program.

(B) This section does not create an entitlement for property owners or obligate the State in any way to fund the inspection or retrofitting of residential property in this State. Implementation of this program is subject to annual legislative appropriations.

(C) The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that includes the following:

(1) The program may award matching or nonmatching grants based upon the availability of funds. The program administrator also shall apply for financial grants to be used to assist single‑family, site‑built or manufactured or modular, owner‑occupied, residential property owners to retrofit their primary legal residence to make them less vulnerable to hurricane damage.

(a) To be eligible for a matching grant, a residential property must:

(i) be the applicant’s primary legal residence;

(ii) be actually owned and occupied by the applicant;

(iii) be the owner’s legal residence as described in Section 12‑43‑220(c);

(iv) be a single family, site‑built, manufactured, or modular, owner‑occupied residential property;

(v) be a residential property covered by a current homeowners or dwelling insurance policy that:

(A) is issued by an insurer licensed in this State or a surplus lines insurer, where the policy is lawfully placed by a broker authorized to do business in this State; and

(B) provides insurance coverage of the residential property equal to or greater than the fair market value of the residential property as defined in Section 12‑37‑3135(a)(2) and reflected in the county records;

(vi) have undergone an acceptable wind certification and hurricane mitigation inspection in accordance with program requirements.

(b) All matching grants must be matched on a dollar‑for‑dollar basis for a total of ten thousand dollars for the mitigation project. No grant issued by the program for any mitigation project for a residential property may exceed five thousand dollars.

(c) The program must create a process in which mitigation contractors agree to participate and seek reimbursement from the State and homeowners selected from a list of participating contractors. All mitigation projects must be based upon the securing of all required local permits and inspections. Mitigation projects are subject to random reinspection. The program may reinspect up to ten percent of all projects.

(d) Matching fund grants also must be made available to local governments and nonprofit entities, on a first‑come, first‑served basis, for projects that reduce hurricane damage to single‑family, site‑built or manufactured or modular owner‑occupied, residential property, provided that:

(i) no matching grant for any one local government or nonprofit entity may exceed fifty thousand dollars in any fiscal year;

(ii) the total amount of matching grants awarded to all local governments and nonprofit entities combined may not exceed two hundred fifty thousand dollars in any fiscal year; and

(iii) the difference between two hundred fifty thousand dollars and the total amount of grants awarded to all local governments and nonprofit entities combined in any fiscal year may be applied to grants to individual homeowners who meet the qualifications for a grant described in subitems (a) through (d) or in subitem (g).

(e) Grants may be used for the following improvements:

(i) roof deck attachment;

(ii) secondary water barrier;

(iii) roof covering;

(iv) brace gable ends;

(v) reinforce roof‑to‑wall connections;

(vi) opening protection;

(vii) exterior doors, including garage doors;

(viii) tie downs;

(ix) problems associated with weakened trusses, studs, and other structural components;

(x) inspection and repair or replacement of manufactured home piers, anchors, and tiedown straps; and

(xi) any other mitigation techniques approved by the advisory committee.

(f) To be eligible for a nonmatching grant, a residential property must comply with the requirements set forth in subsection (C)(1)(a), (c), and (e).

(i) For nonmatching grants, applicants who otherwise meet the requirements of subitems (a), (c), and (e) may be eligible for a grant of up to five thousand dollars and may not be required to provide a matching amount to receive the grant. These grants must be used to retrofit single‑family, site‑built or manufactured or modular, owner‑occupied, residential properties in order to make them less vulnerable to hurricane damage. The grant must be used for the retrofitting measures set forth in Section 38‑75‑485(C)(1)(e).

(ii) Nonmatching grant award amounts will be determined based on the cost of the mitigation project and a percentage of the total adjusted household income of the applicant according to the most recent federal income tax return. Those applicants with a total annual adjusted gross household income of which does not exceed eighty percent of the median annual adjusted gross income for households within the county in which the person or family resides may be eligible for the maximum grant award amount of five thousand dollars. Applicants with a higher total annual adjusted household income may be awarded a lower amount. The director or his designee shall issue a bulletin annually that sets forth the maximum grant award amounts based on the total annual adjusted gross household income of the applicant adjusted for family size relative to the county area median income or the state median family income, whichever is higher, as published annually by the United States Department of Housing and Urban Development. If the cost of the mitigation project exceeds the amount of the grant award, the remaining cost is the applicant’s responsibility. No grant award may exceed five thousand dollars.

(2) The department shall define by regulation the details of the mitigation measures necessary to qualify for the grants described in this section.

(3) Multimedia public education, awareness, and advertising efforts designed to specifically address mitigation techniques must be employed, as well as a component to support ongoing consumer resources and referral services.

(4) The department shall use its best efforts to obtain grants or funds from the federal government to supplement the financial resources of the program. In addition to state appropriations, if any, this program must be implemented by the department through the use of the premium taxes due to this State by the South Carolina Wind and Hail Underwriting Association, and one percent of the premium taxes collected annually and remitted to the Department of Insurance.

(5) The director or his designee may promulgate regulations necessary to implement the provisions of this article.

HISTORY: 2007 Act No. 78, Section 11, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006; 2017 Act No. 28 (S.315), Section 3, eff May 10, 2017.

Effect of Amendment

2017 Act No. 28, Section 3, rewrote the section, establishing criteria that a residential property must meet in order to be eligible for a nonmatching grant, allowing for matching grant funds to be made available to local governments and nonprofit entities, and establishing a formula for determining nonmatching grant awards based on an applicant’s household income.

CROSS REFERENCES

Duties of Director of the Department of Insurance, see Section 38‑3‑110.

**SECTION 38‑75‑490.** Development of rating system to evaluate relative ability of coastal property to withstand wind load from hurricane.

(A) The Department of Insurance, in consultation with the Department of Consumer Affairs, the Department of Commerce, the Federal Alliance for Safe Homes, the Manufactured Housing Institute of South Carolina, South Carolina Building Codes Council, the Home Builders Association of South Carolina, the Civil Engineering Department of Clemson University, and the Institute for Business and Homes Safety shall study and prepare a proposal to develop an objective rating system that will allow homeowners to evaluate the relative ability of South Carolina’s coastal properties to withstand the wind load from a hurricane.

(B) The rating system must be designed in a manner the property owner may easily understand, based on proven readily verifiable mitigation techniques and devices, and able to be implemented through a visual inspection program. The rating system must be designed to facilitate a home inspection process to determine a home’s existing as well as projected wind resistance capabilities.

(C) The rating system must contemplate the use of certified wind resistance and loss mitigation inspectors.

(D) The department must provide a report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives by March 5, 2008, detailing the nature and construction of the rating scale, its projected effectiveness based on implementation in a pilot program, an operational plan for statewide implementation of the rating scale, and any recommendations for additional legislation.

HISTORY: 2007 Act No. 78, Section 11, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

ARTICLE 9

Cancellation, Nonrenewal, and Renewal of Property Insurance and Casualty Insurance

**SECTION 38‑75‑710.** Scope of article.

This article applies to all property insurance and casualty insurance, as defined in Section 38‑1‑20, except for automobile insurance and any other type of property or casualty insurance as to which there are specific statutory provisions of law governing cancellation, nonrenewal, or renewal of policies. This article further applies to policies issued by licensed insurers and to policies issued by eligible surplus lines insurers.

HISTORY: Former 1976 Code Section 38‑9‑810 [1986 Act No. 338] recodified as Section 38‑75‑710 by 1987 Act No. 155, Section 1; 1988 Act No. 314, Section 11.

**SECTION 38‑75‑720.** Definitions.

For the purposes of this article:

(1) “Renewal” or “to renew” means the issuance of or the offer to issue by an insurer a policy succeeding a policy previously issued and delivered by the same insurer or an insurer within the same group of insurers, or the issuance of a certificate or notice extending the term of an existing policy for a specified period beyond its expiration date.

(2) “Nonpayment of premium” means the failure or inability of the named insured to discharge when due any obligation in connection with the payment of premiums on a policy of insurance subject to this article, whether such payment is payable directly to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit.

(3) “Cancellation” means termination of a policy at a date other than its expiration date.

(4) “Expiration date” means the date upon which coverage under a policy ends. It also means, for a policy written for a term longer than one year or with no fixed expiration date, each annual anniversary date of such policy.

(5) “Nonrenewal” means termination of a policy at its expiration date.

HISTORY: Former 1976 Code Section 38‑9‑820 [1986 Act No. 338] recodified as Section 38‑75‑720 by 1987 Act No. 155, Section 1.

Library References

Insurance 1894 to 1907, 1912 to 1937, 2041.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 551 to 561, 761, 763, 775 to 796, 821 to 837, 865 to 867, 872, 882, 1028 to 1029, 1044, 1068 to 1075, 1128, 1135.

NOTES OF DECISIONS

Nonrenewal 2

Renewal 1

1. Renewal

Insurer’s renewal notice attempted “renewal” of policy, not “nonrenewal,” and, therefore, was governed by statutory requirement to furnish renewal notice at least 30 days prior to expiration of policy; notice stated premiums for the vehicles and noted no differences in coverage. Walton v. Canal Ins. Co. (S.C. 1998) 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

Insurance coverage was not in effect on the date of a fire, although the insurer had failed to send a notice of nonrenewal, where the insurer had offered to issue a succeeding policy; since the offer of a succeeding policy constituted a renewal of the policy, the insurer did not need to provide written notice of nonrenewal. Axson v. A. Mortg. Co., Inc. (S.C. 1994) 316 S.C. 253, 449 S.E.2d 491.

2. Nonrenewal

Any attempt by insurer to discontinue coverage on expiration date of motor carrier’s liability insurance policy was ineffective and caused renewal coverage to continue from date of expiration of policy, not from date of payment of premium and submission of application two days later; insurer provided written notice of renewal terms and premium 28 days prior to expiration, not 30 days as required by statute, and statute rendered ineffective any attempted nonrenewal without written notice of nonrenewal 30 days prior to expiration of policy. Walton v. Canal Ins. Co. (S.C.App. 1997) 326 S.C. 482, 485 S.E.2d 107, rehearing denied, certiorari granted, affirmed as modified 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

**SECTION 38‑75‑730.** Restrictions on cancellation of policies and renewals; notice of cancellation; exceptions.

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

(1) nonpayment of premium;

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

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

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

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

(b) Cancellation under subsection (a)(1) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation. Cancellation under subsection (a)(2) through (5) is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation. The notice must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Any notice of cancellation shall state the precise reason for cancellation. Proof of mailing is sufficient proof of notice.

(c) Subsections (a) and (b) do not apply to any insurance policy which has been in effect for less than one hundred twenty days and is not a renewal of a previously existing policy. The policy may be canceled for any reason by furnishing to the insured at least thirty days’ written notice of cancellation, except where the reason for cancellation is nonpayment of premium, in which case not less than ten days’ written notice must be furnished.

(d) For purposes of subsection (a)(3), substantial change in the risk assumed, if based upon changes in climatic conditions, must be based on statistical data relative to South Carolina that has been approved by the director or his designee as a basis for substantial change in the risk assumed.

HISTORY: Former 1976 Code Section 38‑9‑830 [1986 Act No. 338] recodified as Section 38‑75‑730 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 794; 2007 Act No. 78, Section 14, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1921, 1929, 2041.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 781 to 796, 821 to 825, 865 to 867, 872, 882, 1028 to 1029, 1044, 1068 to 1075, 1128, 1135.

NOTES OF DECISIONS

In general 1

Fraudulently obtained policy 2

1. In general

Computer diskette constituted written notice within Section 38‑75‑730. Clyburn v. Allstate Ins. Co., 1993, 826 F.Supp. 955.

Assigned risk workers’ compensation insurer’s compliance with notice requirements of insurance statute with respect to its cancellation of policy with insured was of no effect in terms of determining whether insurer was justified in canceling current policy with insured, as statute had to be read in conjunction with assigned risk plan, under which insurer was not permitted to cancel insured’s current policy because of his alleged noncompliance with audit requests for his former policy, and under which insurer was required, but failed, to provide opportunity for insured to cure the deficiencies in the information he sent at its request. Crews v. W.R. Crews, Inc. (S.C.App. 2010) 390 S.C. 15, 699 S.E.2d 189. Workers’ Compensation 1069

A notice of cancellation for non‑payment of premiums was not effective as to the homeowner’s portion of a dual policy where (1) the policy insured a house and an automobile, which were separately valued risks insured for separate amounts, (2) the premium was quoted in total for the entire policy, but was separated for billing purposes, and (3) the homeowner’s portion of the premium had been paid from the insured’s escrow account. Elias v. Firemen’s Ins. Co. of Newark, New Jersey (S.C. 1992) 309 S.C. 129, 420 S.E.2d 504, rehearing denied.

An insurance company was not justified in cancelling an automobile insurance policy, under former Sections 38‑37‑1410(4) and 38‑37‑1440, for failure of the insured to pay a surcharge which the insurance company attempted to levy prior to expiration of the term of the policy, since the attempt to levy the surcharge constituted a modification of the contract of insurance, which the insured was free to reject. Anderson v. Pennsylvania Nat. Mut. Ins. Co. (S.C. 1983) 279 S.C. 304, 306 S.E.2d 597.

2. Fraudulently obtained policy

Statute governing restrictions on cancellation of insurance policies did not preclude workers’ compensation insurer from rescinding a workers’ compensation policy as void due to employer’s fraud in obtaining the policy just after claimant was injured, so as to render Uninsured Employers’ Fund liable to claimant for his injuries to left hip, right arm, ribs, and back; statute used only the term cancellation, so that common law precedents regarding rescission of a contract remained, and insurer was not assuming any risk or possibility of loss, but instead employer attempted to obtain coverage for a known loss that had already occurred. Bessinger v. R‑N‑M Builders & Associates, LLC (S.C.App. 2017) 421 S.C. 349, 806 S.E.2d 731. Workers’ Compensation 1069

**SECTION 38‑75‑740.** Restrictions on nonrenewal of policies.

(a) No insurance policy may be nonrenewed by an insurer except in accordance with the provisions of this section or Section 38‑75‑730, and any nonrenewal attempted which is not in compliance with this section or Section 38‑75‑730 is ineffective.

(b) A policy written for a term of one year or less may be nonrenewed by the insurer at its expiration date by giving or mailing written notice of nonrenewal to the insured and the agent of record, if any, not less than sixty days prior to the expiration date of the policy for any nonrenewal that would be effective between November first and May thirty‑first and not less than ninety days for any nonrenewal that would be effective between June first and October thirty‑first.

(c) Subject to subsection (c) of Section 38‑75‑760, a policy written for a term of more than one year or for an indefinite term may be nonrenewed by the insurer at its anniversary date by giving or mailing written notice of nonrenewal to the insured and the agent of record, if any, not less than sixty days prior to the anniversary date of the policy for any nonrenewal that is effective between November first and May thirty‑first and not less than ninety days prior to the anniversary date of the policy for any nonrenewal that is effective between June first and October thirty‑first.

(d) The notice required by this section must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Proof of mailing is sufficient proof of notice.

(e) Any notice of nonrenewal shall state the precise reason for nonrenewal.

HISTORY: Former 1976 Code Section 38‑9‑840 [1986 Act No. 338] recodified as Section 38‑75‑740 by 1987 Act No. 155, Section 1; 2007 Act No. 78, Section 14, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1897.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 553 to 554.

NOTES OF DECISIONS

Construction with other laws 1⁄2

Nonrenewal 2

Renewal 1

1⁄2. Construction with other laws

Insured homeowner’s policy provided “property insurance on a risk located in [South Carolina],” and thus, specific statute governing nonrenewal of policy issued on risk located in South Carolina, which required insurer to provide notice of nonrenewal at address shown in policy, controlled over more general statute governing nonrenewal of property insurance, which provided that policy written for term of one year or less may be nonrenewed by insurer at its expiration date by giving or mailing written notice of nonrenewal to insured and agent of record. Bank of New York Mellon Trust Co. v. Grier (S.C.App. 2016) 416 S.C. 63, 785 S.E.2d 208. Insurance 1900

1. Renewal

Insurer’s renewal notice attempted “renewal” of policy, not “nonrenewal,” and, therefore, was governed by statutory requirement to furnish renewal notice at least 30 days prior to expiration of policy; notice stated premiums for the vehicles and noted no differences in coverage. Walton v. Canal Ins. Co. (S.C. 1998) 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

Any attempt by insurer to discontinue coverage on expiration date of motor carrier’s liability insurance policy was ineffective and caused renewal coverage to continue from date of expiration of policy, not from date of payment of premium and submission of application two days later; insurer provided written notice of renewal terms and premium 28 days prior to expiration, not 30 days as required by statute, and statute rendered ineffective any attempted nonrenewal without written notice of nonrenewal 30 days prior to expiration of policy. Walton v. Canal Ins. Co. (S.C.App. 1997) 326 S.C. 482, 485 S.E.2d 107, rehearing denied, certiorari granted, affirmed as modified 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

Insurance coverage was not in effect on the date of a fire, although the insurer had failed to send a notice of nonrenewal, where the insurer had offered to issue a succeeding policy; since the offer of a succeeding policy constituted a renewal of the policy, the insurer did not need to provide written notice of nonrenewal. Axson v. A. Mortg. Co., Inc. (S.C. 1994) 316 S.C. 253, 449 S.E.2d 491.

2. Nonrenewal

An insurer was not required to mail a nonrenewal notice to homeowners who allowed their policy to expire by its own terms despite the insurer’s offer of renewal, since the statute requiring a nonrenewal notice (Section 38‑75‑740) applied only to policies which were not renewed by the insurer, as opposed to those not renewed by the insured. Axson v. A. Mortg. Co., Inc. (S.C.App. 1994) 312 S.C. 433, 441 S.E.2d 193, rehearing denied, certiorari granted, affirmed 316 S.C. 253, 449 S.E.2d 491. Insurance 1899

Insurer’s November 8th notice that renewal automobile policy would expire November 18th if increased premium were not received did not extend coverage beyond October 19th termination date stated in original policy. (Decided under former law.) Nationwide Mut. Ins. Co. v. American Mut. Fire Ins. Co. (S.C. 1975) 265 S.C. 399, 219 S.E.2d 79.

**SECTION 38‑75‑750.** Requirements for renewal of policies.

(a) If an insurer intends to renew a policy, the insurer shall furnish renewal terms and a statement of the amount of premium or estimated premium due for the renewal policy period in the manner required by this section.

(b) If the policy being renewed (hereinafter “original policy”) is written for a term of one year or less, the renewal terms and statement of premium or estimated premium due must be furnished to the insured not less than thirty days prior to the expiration date of the original policy.

(c) If the original policy is written for a term of more than one year or for an indefinite term, the renewal terms and statement of premium or estimated premium due must be furnished to the insured not less than thirty days prior to the anniversary date of the original policy.

(d) The insurer may satisfy its obligation to furnish renewal terms and statement of premium or estimated premium due by either of the following methods:

(1) mailing or delivering renewal terms and statement to the insured at his address shown in the policy or, if not reflected therein, at his last known address, not less than thirty days prior to expiration or anniversary; or

(2) mailing or delivering renewal terms and statement to the agent of record, if any, not less than forty‑five days prior to expiration or anniversary, along with instructions that the agent furnish the renewal terms and statement to the insured not less than thirty days prior to expiration or anniversary.

(e) If the insurer fails to furnish the renewal terms and statement of premium or estimated premium due in the manner required by this section, the insured may elect to cancel the renewal policy within the thirty‑day period following receipt of the renewal terms and statement of premium or estimated premium due. Earned premium for any period of coverage must be calculated pro rata based upon the premium applicable to the original policy and not the premium applicable to the renewal policy.

HISTORY: Former 1976 Code Section 38‑9‑850 [1986 Act No. 338] recodified as Section 38‑75‑750 by 1987 Act No. 155, Section 1.

Library References

Insurance 1894 to 1907.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 551 to 561.

NOTES OF DECISIONS

In general 1

1. In general

Insured’s mortgage servicer was not insured’s agent, even if servicer paid annual premiums on homeowners’ insurance policy from escrowed amounts taken from mortgage payment, and thus, servicer did not renew homeowners’ insurance policy on insured’s behalf and no policy existed at time of insured’s loss of home from fire, so as to give rise to claim against insurer for breach of policy arising out of insurer’s failure to pay claim; mortgage servicer was not subject to insured’s control, in that servicer, acting on mortgagee’s behalf, required that insured purchase homeowners’ insurance on dwelling to protect collateral for mortgage loan, servicer required that policy contain standard mortgage clause listing it as mortgagee, and insured’s choice of insurance was subject to servicer’s approval. Bank of New York Mellon Trust Co. v. Grier (S.C.App. 2016) 416 S.C. 63, 785 S.E.2d 208. Insurance 1656; Insurance 1895; Mortgages And Deeds Of Trust 1181

Insurer’s renewal notice attempted “renewal” of policy, not “nonrenewal,” and, therefore, was governed by statutory requirement to furnish renewal notice at least 30 days prior to expiration of policy; notice stated premiums for the vehicles and noted no differences in coverage. Walton v. Canal Ins. Co. (S.C. 1998) 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

Insurer’s failure to comply with statutory requirement to furnish renewal notice at least 30 days prior to expiration of policy resulted in the automatic renewal of the policy for 30 following insured’s receipt of notice; statute entitled insured to cancel policy within 30 days of receipt of renewal terms if insurer failed to furnish renewal terms in timely manner. Walton v. Canal Ins. Co. (S.C. 1998) 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

Sunday was not included in the 30‑day period of automatic renewal of insurance policy due to insurer’s failure to furnish notice of renewal at least 30 days prior to expiration; rule of civil procedure excludes weekend days in computing time period proscribed by statute. Walton v. Canal Ins. Co. (S.C. 1998) 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

Any attempt by insurer to discontinue coverage on expiration date of motor carrier’s liability insurance policy was ineffective and caused renewal coverage to continue from date of expiration of policy, not from date of payment of premium and submission of application two days later; insurer provided written notice of renewal terms and premium 28 days prior to expiration, not 30 days as required by statute, and statute rendered ineffective any attempted nonrenewal without written notice of nonrenewal 30 days prior to expiration of policy. Walton v. Canal Ins. Co. (S.C.App. 1997) 326 S.C. 482, 485 S.E.2d 107, rehearing denied, certiorari granted, affirmed as modified 331 S.C. 636, 503 S.E.2d 727. Insurance 1900

Insured’s statutory right to cancel renewal insurance policy within 30 days, if insurer fails to furnish renewal terms and statement of premium at least 30 days prior to expiration of policy, is not limited to unilateral decision by insurer to renew policy and applies if coverage is continued by operation of law because of insurer’s failure to provide timely notice of nonrenewal. Walton v. Canal Ins. Co. (S.C.App. 1997) 326 S.C. 482, 485 S.E.2d 107, rehearing denied, certiorari granted, affirmed as modified 331 S.C. 636, 503 S.E.2d 727. Insurance 1949

Meeting of minds between insurer and insured and additional consideration were not required for renewal of motor carrier’s liability insurance policy; statute giving to insured right to elect to cancel renewal policy within 30 days, if insurer timely fails to furnish renewal terms and statement of premium, explicitly allows policy to be renewed, at least temporarily, with no notice to insured and without insured’s consent. Walton v. Canal Ins. Co. (S.C.App. 1997) 326 S.C. 482, 485 S.E.2d 107, rehearing denied, certiorari granted, affirmed as modified 331 S.C. 636, 503 S.E.2d 727. Insurance 1901

**SECTION 38‑75‑755.** Notification to applicants or renewing policyholders.

(A) All insurers, at the issuance of a new policy and at each renewal, clearly shall notify the applicant or policyholder of a personal lines residential property insurance policy of the availability and the range of each premium discount, credit, other rate differential, or reduction in deductibles for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented, including information related to catastrophe savings accounts. The notice must describe generally what measures the policyholders may take to reduce their windstorm premium.

(B)(1) All insurers, at the issuance of a new policy and at each renewal, shall notify the applicant or policyholder of a personal lines residential property insurance policy of the following:

(a) whether or not the insured has coverage for flood or mold. The disclosure also shall state that insurance is available through the National Flood Insurance Program and that excess flood insurance may be available through an additional policy;

(b) a distinction between replacement cost for losses and actual cash value, the use of depreciation in determining payment for losses, and that the policy may contain time limitations for repairs to be completed in order to receive full replacement cost for the losses;

(c) that the policy determines the process for providing the insurer with a notification of a loss and the requirements of Section 38‑59‑10;

(d) that the insured may have the option to increase the deductible and thus lower the potential premium cost paid;

(e) whether a separate deductible is required for hurricane, wind, or named storm damage, as opposed to some other type of loss, and if so, include an example which illustrates how the deductible functions for a policy valued at one hundred thousand dollars and this illustration will include a clear explanation of the event which will trigger the deductible to the requirements of South Carolina Code of Regulations 69‑56.

(2) The director or his designee shall prescribe the form and manner for insurer notices or disclosures issued pursuant to this subsection.

(3) Any disclosure provided pursuant to this section shall be for informational purposes only and shall not amend, extend, or alter coverage provided in a policy. Any notice or disclosure provided shall not be admissible in any action brought concerning a policy except for the sole purpose of showing that the notice was or was not provided pursuant to this section.

(C) All insurers, at the issuance of a new policy and at each renewal of a commercial property insurance policy, shall include a notice that advises the policyholder that a reduction in premium may be available if the policyholder has taken steps to prevent or reduce damage from windstorm and that the policyholder may contact its agent, broker, or insurer for additional information.

HISTORY: 2007 Act No. 78, Section 6, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006; 2014 Act No. 191 (S.569), Section 3.A, eff June 2, 2014.

Editor’s Note

2014 Act No. 191, Section 4.B, provides as follows:

“3.A. The provisions of this section apply to policies issued or renewed after December 31, 2014.”

Effect of Amendment

2014 Act No. 191, Section 3, in subsection (A), inserted “implemented, including information related to catastrophe savings accounts” at the end of the first sentence; added subsection (B) redesignated former subsection (B) as subsection (C); and deleted former subsection (C), relating to application of the section.

Library References

Insurance 1900.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 555, 558.

**SECTION 38‑75‑760.** Unlawful practices involving cancellation, nonrenewal, or renewal of policies.

(a) It is unlawful for any insurer to cancel, nonrenew, or renew a policy of insurance except in compliance with the requirements of this article.

(b) Midterm cancellation of an entire block, line, or class of business is presumed to be unfair, inequitable, and contrary to the public interest and is unlawful.

(c) If a policy has been issued for a term longer than one year and for additional premium consideration renewal of the policy or an annual premium has been guaranteed, it is unlawful for the insurer to refuse to renew the policy or to increase the annual premium during the term of that policy.

HISTORY: Former 1976 Code Section 38‑9‑860 [1986 Act No. 338] recodified as Section 38‑75‑760 by 1987 Act No. 155, Section 1.

Library References

Insurance 1894 to 1907, 1912 to 1940, 3423.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 551 to 561, 761, 763, 775 to 796, 821 to 837.

NOTES OF DECISIONS

In general 1

1. In general

A notice of cancellation for non‑payment of premiums was not effective as to the homeowner’s portion of a dual policy where (1) the policy insured a house and an automobile, which were separately valued risks insured for separate amounts, (2) the premium was quoted in total for the entire policy, but was separated for billing purposes, and (3) the homeowner’s portion of the premium had been paid from the insured’s escrow account. Elias v. Firemen’s Ins. Co. of Newark, New Jersey (S.C. 1992) 309 S.C. 129, 420 S.E.2d 504, rehearing denied.

**SECTION 38‑75‑770.** Notice requirements for eligible surplus lines insurers.

For eligible surplus lines insurers, the timely giving of all notices required by this article to the licensed broker who placed the insurance and represents the insured is considered notice to the insured.

HISTORY: Former 1976 Code Section 38‑9‑870 [1986 Act No. 338] recodified as Section 38‑75‑770 by 1987 Act No. 155, Section 1; 1988 Act No. 314, Section 12.

Library References

Insurance 1348.

Westlaw Topic No. 217.

**SECTION 38‑75‑775.** Coverage of licensed health care providers.

(A) All property and casualty insurance carriers issuing medical malpractice policies of insurance within South Carolina for licensed health care providers, as defined in Section 38‑79‑410, shall provide and maintain coverage to all qualified applicants who timely remit payments for the coverage period and who meet and comply with the provisions of Chapter 75, Title 38, all underwriting criteria of the policy at the time of issuance and renewal and with all other applicable statutes and regulations. Nothing in this section shall be construed to constitute a mandate to write medical malpractice insurance coverage.

(B) The provisions of this section apply only to policies written on or after January 1, 2006.

HISTORY: 2005 Act No. 32, Section 7, eff July 1, 2005 for causes arising after that date; redesignated from former Section 38‑79‑155 by 2005 Act No. 144 Section 2.A; 2005 Act No. 144, Section 2.B, eff June 7, 2005.

**SECTION 38‑75‑780.** Exemption from liability for action taken in performance of powers and duties of this article; exceptions.

There is no liability on the part of and no cause of action of any nature may arise against the director or his designees, any insurer, or the authorized representatives, agents, and employees of either or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or refusal to write or renew, for any statement made by any of them in complying with this article, or for the providing of information pertaining thereto, unless the person asserting the cause of action establishes that the person against whom the cause of action is asserted was motivated by express malice or gross negligence.

HISTORY: Former 1976 Code Section 38‑9‑880 [1986 Act No. 338] recodified as Section 38‑75‑780 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 795.

Library References

Insurance 1133, 1147.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 162 to 165, 175 to 176, 204.

**SECTION 38‑75‑790.** Nonrenewal of homeowners insurance.

No insurer may nonrenew a policy of homeowners insurance because the insured has filed a claim with that insurer for damages resulting from an act of God.

HISTORY: Former 1976 Code Section 38‑9‑890 [1987 Act No. 166, Section 32] recodified as Section 38‑75‑790 by 1987 Act No. 155, Section 24.

Library References

Insurance 1899.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 553 to 554.

NOTES OF DECISIONS

In general 1

1. In general

Assuming that tort exists for insurer’s decision not to renew homeowner’s policy because homeowner made claim for damages resulting from act of God, insurer that issued homeowner’s policy concerning mobile home located in flood zone did not negligently nonrenew policy, since insureds’ repeated claims put insurer on notice that flood risk was excessive, insurer learned that home was located in flood zone, and insurer’s underwriting guidelines prohibited issuance of homeowner’s policy for mobile home located in flood zone. Hinkle v. National Cas. Ins. Co. (S.C. 2003) 354 S.C. 92, 579 S.E.2d 616, rehearing denied. Insurance 3418

ARTICLE 11

Title Insurance

**SECTION 38‑75‑905.** Definitions.

As used in this article, unless the context otherwise requires:

(1) “Associate” means any one of the following:

(a) a business organized for profit in which a producer of title business is a director, officer, partner, employee, or owner of one percent or more of the equity capital thereof;

(b) an employee of a producer of title business;

(c) a franchisor or franchisee of a producer of title business;

(d) a spouse, parent, or child of a producer of title business;

(e) a person, other than an individual, that controls, is controlled by, or is under common control with, a producer of title business;

(f) a person with whom a producer of title business or any associate of such producer has any agreement, arrangement, or understanding or pursues any course of conduct, the purpose or substantial effect of which is to evade the provisions of this article.

(2) “Financial interest” means any interest, legal or beneficial, that entitles the holder directly or indirectly to one percent or more of the net profits or net worth of the entity in which the interest is held.

(3) “Producer of title business” or “producer” means any person, including any officer, director, or owner of five percent or more of the equity or capital of any person engaged in this State in the trade, business, occupation, or profession of any one of the following:

(a) buying or selling interests in real property;

(b) making loans secured by interests in real property;

(c) acting as broker, agent, representative, or attorney of a person who buys or sells any interest in real property or who lends or borrows money with such interest as security.

HISTORY: 1988 Act No. 562.

**SECTION 38‑75‑910.** Limitation of risk on title insurance.

No insurer transacting title insurance business in this State may expose itself to any one risk in an amount exceeding fifty percent of the aggregate amount of its total capital and surplus and its reserves other than its loss or claim reserves. As used in this section, the words “any one risk” mean the risk or hazard attaching to or arising in connection with any one piece or parcel of property, whether or not the policy insures other property. Any risk or portion of any risk which has been reinsured as authorized in this title must be deducted in determining the limitation of risk prescribed in this section.

HISTORY: Former 1976 Code Section 38‑9‑185 [1980 Act No. 402] recodified as Section 38‑75‑910 by 1987 Act No. 155, Section 1.

Library References

Insurance 1141.

Westlaw Topic No. 217.

C.J.S. Insurance Section 167.

**SECTION 38‑75‑920.** Title insurers to maintain reinsurance reserve.

(A) A domestic title insurer shall establish and maintain a reinsurance reserve computed in accordance with this section, and all sums attributed to the reserve are at all times and for all purposes considered unearned portions of the original premiums. This reserve must be reported as a liability of the title insurer in its financial statements.

(B) The reinsurance reserve must be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reinsurance reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured.

(C) A foreign or alien title insurer licensed to transact title insurance business in this State shall maintain at least the same reserves on title insurance policies issued on properties located in this State as are required of domestic title insurers, unless the laws of jurisdiction of domicile of the foreign or alien title insurer require a higher amount.

(D) The reinsurance reserve consists of:

(1) the amount of the reinsurance reserve on the effective date of this act; and

(2) one dollar and fifty cents a policy and, in addition, a sum equal to twelve and one‑half cents for each one thousand dollars of net retained liability under each title insurance policy on a single risk written on properties located in this State written after the effective date of this act.

(E) Amounts placed in the reinsurance reserve in any year in accordance with subsection (D)(2) of this section must be deducted in determining the net profit of the title insurer for that year.

(F) A title insurer shall release from the reinsurance reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added and shall release from the reinsurance reserve a sum equal to three and one‑third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the reinsurance reserve or similar unearned premium reserve maintained before the effective date of this act must be released in accordance with the law in effect before the effective date of this act.

HISTORY: 1988 Act No. 562.

Library References

Insurance 1139.

Westlaw Topic No. 217.

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

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 9:7, State Statutory Schemes Authorizing Various Types of Reinsurance.

**SECTION 38‑75‑930.** Insolvency of domestic title insurer.

(A) If a domestic title insurer becomes insolvent, is in the process of liquidation or dissolution, or is in the possession of the director or his designee:

(1) the amount of the assets of the title insurance company equal to the reinsurance reserve then remaining may be used with the written approval of the director or his designee to pay for reinsurance of the liability of each title insurer upon all outstanding title insurance policies or reinsurance agreements to the extent for which claims for losses by the holders are not then pending. The balance of the assets, if any, equal to the reinsurance reserve then may be transferred to the general assets of the title insurer;

(2) the assets net of the reinsurance reserve must be available to pay claims for losses sustained by holders of title insurance policies then pending or arising up to the time reinsurance is effected. If claims for losses exceed other assets of the title insurer, the claims, when established, must be paid pro rata out of the surplus assets attributable to the reinsurance reserve, to the extent of the surplus, if any.

(B) If reinsurance is not obtained, assets equal to the reinsurance reserve and assets constituting minimum capital, or so much as remains after outstanding claims have been paid, constitute a trust fund to be held and invested by the director or his designee for twenty years, out of which claims of policyholders must be paid as they arise. The balance, if any, of the trust fund shall revert to the general assets of the title insurer at the expiration of twenty years.

HISTORY: 1988 Act No. 562; 1993 Act No. 181, Section 796.

Library References

Insurance 1362.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 238 to 239, 245 to 247.

**SECTION 38‑75‑940.** Loss and loss expense reserves.

(A) All title insurers licensed in this State shall establish and maintain reserves against unpaid losses and loss expenses.

(B) Upon receiving written notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve which shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim.

(C) Reserves required under this section may be revised from time to time and must be redetermined at least once each year.

(D) If the director or his designee determines that the loss and loss expense reserves of the title insurer are inadequate, he may require the title insurer to increase the amount of reserves to an amount he considers reasonable.

HISTORY: 1988 Act No. 562; 1993 Act No. 181, Section 797.

Library References

Insurance 1139.

Westlaw Topic No. 217.

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

**SECTION 38‑75‑950.** Obtaining reinsurance.

(A) A title insurer may obtain reinsurance for all or any part of its liability under one or more of its title insurance policies or reinsurance agreements and also may reinsure title insurance policies issued by other title insurers on risks located in this State or elsewhere. Reinsurance on policies issued on properties located in this State must be obtained from title insurers licensed to transact title insurance business in this State.

(B) Upon application by a title insurer, the director or his designee may permit the insurer to obtain reinsurance from a title insurer not licensed in this State upon the following conditions:

(1) the title insurer is unable to obtain reinsurance from a title insurer licensed in this State; and

(2) the unlicensed title insurer meets the requirements of approved reinsurers in Section 38‑5‑60.

HISTORY: 1988 Act No. 562; 1993 Act No. 181, Section 798.

Library References

Insurance 3590.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2051, 2351.

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 9:7, State Statutory Schemes Authorizing Various Types of Reinsurance.

**SECTION 38‑75‑960.** Financial interest in title insurer or agent.

(A) No title insurer or title insurance agent may accept an order for, issue a title insurance policy to, or provide services to an applicant if it knows or has reason to believe that the applicant was referred to it by any producer of title business or by any associate of the producer where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed to the buyer, seller, or lender the financial interest of the producer of title business or associate referring the title business. The disclosure must be made in writing on forms prescribed by the director or his designee. The title insurer or agent shall maintain the disclosure forms for a period of three years.

(B) Each title insurer and title agent shall file with the department, on forms prescribed by the director or his designee, reports setting forth the names and addresses of those persons, if any, who have had a financial interest in the title insurer or title agent during the calendar year who are known or reasonably believed by the title insurer or title agent to be producers of title business or associates of producers.

(1) Each title insurer shall file the report required under this subsection with its application for a license and at any time there is a change in the information provided in the last report.

(2) Each title agent shall file the report required under this subsection with its application for license and at any time there is a change in the information provided in its last report.

(3) Each title insurer or title agent licensed on the effective date of this act, shall file the report required under this subsection within ninety days after the effective date of this act.

HISTORY: 1988 Act No. 562; 1993 Act No. 181, Section 799.

Library References

Abstracts of Title 2, 3.

Insurance 1561.

Westlaw Topic Nos. 6, 217.

C.J.S. Abstracts of Title Sections 4 to 5, 8 to 28.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 6:152 , Title Insurance Disclosure.

**SECTION 38‑75‑970.** Premium rates.

(A) Premium rates may not be inadequate, excessive, or unfairly discriminatory.

(B) Rates are excessive if in the aggregate they are likely to produce a long‑run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.

(C) Rates are inadequate if they are clearly insufficient, together with investment income attributable to them, to sustain projected losses and expenses or if the continued use of the fees have the effect of substantially lessening competition or the effect of tending to create a monopoly.

(D) Premium rates are unfairly discriminatory if the premium charged for any classification is not reasonably related to the services performed or the risks assumed by the insurer. Within rate classifications, premiums, to a reasonable degree, may be less in the case of smaller insurances and the excess may be charged against larger insurances without rendering the rate unfairly discriminatory.

(E) In making or reviewing rates, due consideration must be given to past and prospective loss experience, to exposure to loss, to underwriting practice and judgment, to past and prospective expenses including amounts paid to or retained by title agents, to investment income, to a reasonable margin for profit and contingencies, and to all other relevant factors both within and outside this State. A five‑year experience period is required for all filings of rates provided that the filing of any insurer in existence less than five years must be supported by experience consistent with the period of its existence.

HISTORY: 1988 Act No. 562.

Library References

Insurance 1540.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 91 to 123.

**SECTION 38‑75‑980.** Filing of premium rate schedules.

(A) A title insurer shall file with the director or his designee the premium rate schedules it proposes to use in this State. If the director or his designee finds in his review of a filing that it does not violate Section 38‑75‑970, he shall approve the schedule within sixty days of filing. Before the approval, the director or his designee may conduct public hearings with respect to the filing. Filings that the director or his designee has failed to approve or disapprove within sixty days of filing is considered approved. Upon notice to the title insurer, the period for review of the rate filing may be extended for an additional sixty days.

(B) If after the approval of filing the director or his designee believes that the filing does not meet the requirements of this section or is otherwise contrary to law, or if any party having an interest in the filing makes a written complaint to the director or his designee setting forth specific and reasonable grounds for the complaint, or if any insurer, upon notice of disapproval by the director or his designee of a filing pursuant to this section, should so request, the director or his designee shall hold a hearing within thirty days and give written notice of the hearing to all parties in interest. The director or his designee may confirm, modify, change, or rescind any previous action if warranted by the facts shown at the hearing.

HISTORY: 1988 Act No. 562; 1993 Act No. 181, Section 800.

Library References

Insurance 1544.

Westlaw Topic No. 217.

C.J.S. Insurance Section 93.

**SECTION 38‑75‑990.** Title insurers to make schedules of current premiums and charges available to public.

(A) Each title insurer and title agent shall print and make available to the public schedules of its currently effective premiums and charges.

(B) The schedules shall:

(1) be dated to show the date the premiums and charges became effective;

(2) be kept available to the public during normal business hours in each office of the title insurer or title agent in this State; and

(3) set forth the total premium and charge for each type of title insurance policy or service issued or provided by the title insurer or title agent either by stating the premium or charge for each type of title insurance policy in given amounts of coverage or for each service, or by stating the premium or charge rate a unit amount of coverage, or by a combination of the two.

(C) Each title insurer and title agent shall keep a complete file of its schedules of premiums and charges and of all changes and amendments to those schedules until at least five years after they have ceased to be in effect.

HISTORY: 1988 Act No. 562.

Library References

Insurance 1560.

Westlaw Topic No. 217.

**SECTION 38‑75‑1000.** Restrictions on amount of commission.

A title insurer may not pay a commission, directly or indirectly, of greater than sixty percent on a title insurance policy.

HISTORY: 1988 Act No. 562.

Library References

Insurance 1652(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 291 to 294.

**SECTION 38‑75‑1010.** Title insurers; issuance of closing or settlement insurance; indemnity; premiums.

(A) Notwithstanding Section 38‑5‑30, a title insurer may issue closing or settlement protection to a person who is a party to a transaction in which a title insurance policy will be issued, but may not provide any other coverage that purports to indemnify against improper acts or omissions of a person with regard to settlement or closing services.

(B) Closing or settlement protection may indemnify a person only against loss of closing or settlement funds because of one of the following acts of a settlement agent under the terms and conditions of the closing or settlement protection:

(1) theft or misappropriation of settlement funds in connection with a transaction in which a title insurance policy will be issued by or on behalf of the title insurer issuing the closing or settlement protection, but only to the extent that the theft relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land; or

(2) failure to comply with the written closing instructions when agreed to by the settlement agent, title agent, or employee of the title insurer, but only to the extent that the failure to follow the instructions relates to the status of the title to that interest in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

(C) A premium charged by a title insurer for each party receiving closing or settlement protection must be submitted to and approved by the department in accordance with this article and must not be subject to any agreement requiring a division of fees or premiums collected on behalf of the title insurer.

HISTORY: 2012 Act No. 217, Section 1, eff June 11, 2012.

Library References

Insurance 1130, 2630.

Westlaw Topic No. 217.

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

ARTICLE 13

Property Insurance Cancellation and Nonrenewal

**SECTION 38‑75‑1110.** Purpose.

(A) The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to the end that they may not be excessive, inadequate, or unfairly discriminatory and to authorize and regulate cooperative action among insurers in ratemaking and in other matters within the scope of this chapter; and

(2) empower the director or his designee to review and evaluate natural hazard catastrophe models that are used in rate filings.

(B) Nothing in this chapter is intended to prohibit or discourage reasonable competition.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1541, 1544(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 91 to 95, 105 to 107.

**SECTION 38‑75‑1120.** Report on coastal insurance issues.

(A) The director or his designee shall issue a report by February 1, 2005, regarding cause of and potential solutions to coastal insurance issues.

(B) The report must be provided to the Speaker of the House and the President of the Senate.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1047.

Westlaw Topic No. 217.

**SECTION 38‑75‑1130.** Scope of article.

(A) This article applies only to property insurance on risks located in this State.

(B) This article does not apply to automobile insurance nor to insurance against liability arising out of the ownership, maintenance, or use of motor vehicles. The director or his designee may exempt from this article various specialty lines of insurance.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Notes of Decisions

Construction with other laws 1

1. Construction with other laws

Insured homeowner’s policy provided “property insurance on a risk located in [South Carolina],” and thus, specific statute governing nonrenewal of policy issued on risk located in South Carolina, which required insurer to provide notice of nonrenewal at address shown in policy, controlled over more general statute governing nonrenewal of property insurance, which provided that policy written for term of one year or less may be nonrenewed by insurer at its expiration date by giving or mailing written notice of nonrenewal to insured and agent of record. Bank of New York Mellon Trust Co. v. Grier (S.C.App. 2016) 416 S.C. 63, 785 S.E.2d 208. Insurance 1900

**SECTION 38‑75‑1140.** Evaluation of natural hazard catastrophe models; requirements for modeling organizations.

(A) In recognition of the use of natural hazard catastrophe computer models and other recently developed or improved actuarial methodologies for projecting natural hazard losses, the director or his designee may make or cause to be made an evaluation of any natural hazard catastrophe model used in property rate filings in this State. Natural hazard catastrophe models are computer programs that estimate losses from potential natural hazard disasters, combining data on property exposures with information on natural hazards, such as storms or earthquakes, to generate estimates of potential losses.

(B) If required to do so by the director, a modeling organization that prepares catastrophe models used by insurers in rate filings in this State shall submit an initial report to the director or his designee consisting of but not limited to:

(1) a statement of its qualification as a modeling organization;

(2) an outline of the background and experience of the staff of the modeling organization engaged in the development and preparation of the catastrophe models used by insurers in rate filings; and

(3) one or more statements describing and attesting to the validity of the model for use in predicting losses associated with natural hazard catastrophes in this State. A separate statement must be made by an individual possessing expertise appropriate to the hazard being modeled in fields such as meteorology, engineering, building codes, geology, and actuarial science as they apply to natural hazard catastrophes faced by this State.

(C) The modeling organization shall submit a supplemental report to the director or his designee following any substantially material revision of the model if the revision is used by insurers in determining rates for this State. The supplemental report must specify the changes made to the catastrophe model, specify a list of variables that are subject to insurer input, and contain one or more statements by experts attesting to the continuing validity of the model for use in predicting losses associated with natural hazard catastrophes in this State.

(D) If the director or his designee determines the expert statements provided to be insufficient, he may reject the report.

(E) In conducting his evaluation of a model, the director or his designee may rely on the report of an official of another state who has made such an evaluation pursuant to the laws of that state.

(F) Proprietary or trade secret information that is submitted in a report, or is obtained, developed, or compiled in the course of any evaluation must be kept confidential by the director.

(G)(1) To recover the costs associated with the review and evaluation of catastrophe models, the director or his designee may impose a filing fee on:

(a) all insurers who use catastrophe or other computer simulated models; and

(b) modelers or modeling organizations that submit a model to the department for its review, evaluation, or approval. This fee must be retained by the department to defray the costs of retaining actuaries and other experts to evaluate such models.

(2) The fees collected pursuant to this section must be used only to offset expenses associated with the review of catastrophe models.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004); 2007 Act No. 78, Sections 12, 13, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

CROSS REFERENCES

“Modeling organization” defined, see Section 38‑1‑20.

Library References

Insurance 1542(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 93, 97 to 98, 100 to 102.

**SECTION 38‑75‑1150.** Separate premium for fire and allied lines coverage.

An insurer shall provide a separate premium for fire coverage and for allied lines coverage on a policy that includes fire and allied lines coverages. This includes a homeowner’s and a businessowner’s policy.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 2000.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 650 to 655.

**SECTION 38‑75‑1160.** Notice requirement prior to cancellation or refusal to renew; exceptions.

(A)(1) Except for a cancellation pursuant to Section 38‑75‑730, a cancellation or refusal to renew by an insurer of a policy of insurance covered in this article is not effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice must:

(a) be approved as to form by the director or his designee before use;

(b) state the date not less than sixty days for any cancellation or refusal to renew that is effective between November first and May thirty‑first and not less than ninety days for any cancellation or refusal to renew that is effective between June first and October thirty‑first after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;

(c) state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by Section 38‑75‑1180(B);

(d) inform the insured of his right to request in writing within thirty days of the receipt of notice that the director review the action of the insurer. The notice of cancellation or refusal to renew must contain the following statement in bold print to inform the insured of this right:

“IMPORTANT NOTICE: Within thirty days of receiving this notice, you or your attorney may request in writing that the director review this action to determine whether the insurer has complied with South Carolina laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the director may require that your policy be reinstated. However, the director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the director does not have the authority to overturn this action.”

(e) inform the insured of the possible availability of other insurance which may be obtained through his agent, or through another insurer; and

(f) state that the Department of Insurance has available a buyer’s guide regarding property insurance shopping and availability, and provide applicable mailing addresses and telephone numbers, including a toll‑free number, if available, for contacting the Department of Insurance.

(2) Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance.

(B) Subsection (A) does not apply if the:

(1) insurer has manifested to the insured its willingness to renew by actually issuing or offering to the insured to issue a renewal policy, certificate, or other evidence of renewal, or has manifested this intention to the insured by another means;

(2) named insured has demonstrated by some overt action to the insurer or its agent that he expressly intends that the policy be canceled or that it not be renewed; or

(3) the notice of cancellation or refusal to renew by an insurer regarding private passenger automobile insurance or to insurance against liability arising out of ownership, maintenance, or use of:

(a) an individual private passenger automobile as defined in Section 38‑77‑30(5.5)(a); or

(b) property having wheels.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004); 2007 Act No. 78, Section 15, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1900, 1929.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 555, 558, 781 to 786.

**SECTION 38‑75‑1170.** Access to recorded personal information; disclosure requirements and limitations.

(A) If an individual, after proper identification, submits a written request to an insurance‑support organization for access to recorded personal information about the individual that reasonably is described by the individual and reasonably able to be located and retrieved by the insurance‑support organization, the insurance‑support organization, within thirty business days from the date the request is received shall:

(1) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance‑support organization prefers;

(2) permit the individual to see and obtain a copy of the recorded personal information pertaining to him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers, unless the recorded personal information is in coded form, in which case an accurate translation in plain language must be provided in writing;

(3) disclose to the individual the identity, if recorded, of those persons to whom the insurance‑support organization has disclosed the personal information within two years before the request, and if the identity is not recorded, the names of those insurance‑support organizations or other persons to whom the information is disclosed in the regular course of business; and

(4) provide the individual with a summary of the procedures by which he may request correction, amendment, or deletion of recorded personal information.

(B) Personal information provided pursuant to subsection (A) must identify the source of the information if it is an institutional source.

(C) Medical record information supplied by a medical care institution or medical professional and requested pursuant to the provisions of subsection (A), together with the identity of the medical professional or medical care institution that provided the information, must be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurer, agent, or insurance‑support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurer, agent, or insurance‑support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.

(D) Except for personal information provided by this section, an insurer, agent, or insurance‑support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(E) The obligations imposed by this section upon an insurer or agent may be satisfied by another insurer or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request provided by subsection (A), an insurer, agent, or insurance‑support organization may make arrangements with an insurance‑support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(F) The rights granted to individuals in this section must extend to all natural persons to the extent information about them is collected and maintained by an insurer, agent, or insurance‑support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(G) For purposes of this section, “insurance‑support organization” does not include “consumer reporting agency”.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

CROSS REFERENCES

“Insurance‑support organization” defined, see Section 38‑1‑20.

Library References

Insurance 1587.

Westlaw Topic No. 217.

**SECTION 38‑75‑1180.** Notice of reasons for cancellation or nonrenewal.

(A) If there is a cancellation or nonrenewal of an insurance policy covered pursuant to the provisions of this article, the insurer or agent responsible for the cancellation or nonrenewal shall give a written notice in a form approved by the director that:

(1) either provides the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the cancellation or nonrenewal in writing or advises the person that upon written request he may receive the specific reason or reasons in writing; and

(2) provides the applicant, policyholder, or individual proposed for coverage with a summary of the rights provided by subsection (B) and Section 38‑75‑1160.

(B) Upon receipt of a written request within ninety business days from the date of the mailing of notice or other communication of a cancellation or nonrenewal to an applicant, policyholder, or individual proposed for coverage, the insurer or agent shall furnish to the person within twenty‑one business days from the date of receipt of the written request:

(1) the specific reason or reasons for the cancellation or nonrenewal in writing, if that information was not furnished initially in writing pursuant to subsection (A)(1);

(2) the specific items of personal and privileged information that support those reasons; however:

(a) the insurer or agent is not required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the director, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(b) specific items of medical record information supplied by a medical care institution or medical professional must be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurer or agent prefers; and

(3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (B)(2). However, the identity of any medical professional or medical care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurer or agent prefers.

(C) The obligations imposed by this section upon an insurer or agent may be satisfied by another insurer or agent authorized to act on its behalf. However, the insurer or agent making the cancellation or nonrenewal remains responsible for compliance with the obligations imposed by this section.

(D) If a cancellation or nonrenewal results only from an insured’s oral request or inquiry, the explanation of reasons and summary of rights required by subsection (A) may be given orally.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1900, 1929(2).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 555, 558, 782.

**SECTION 38‑75‑1190.** Immunity from liability absent malice or gross negligence.

There is no liability on the part of and no cause of action of any nature may arise against the director or his designees, any insurer, or the authorized representatives, agents, and employees of any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or refusal to write or renew, for any statement made by any of them in complying with this article, or for the providing of information pertaining to it, unless the person asserting the cause of action establishes that the person against whom the cause of action is asserted was motivated by express malice or gross negligence.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1035, 1133, 1147.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 59, 162 to 165, 175 to 176, 204.

**SECTION 38‑75‑1200.** Notice regarding cancellation in application for original issuance of policy.

(A) An application for the original issuance of a policy of insurance covered in the article must have the following statement printed on or attached to the first page of the application form, in boldface type:

“THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER’S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.”

(B) An application for the original issuance of a policy of insurance covered in this article that requires the insured to disclose information as to any previous cancellation or refusal to renew also must permit the insured to offer or provide a full explanation of the reason for the cancellation or refusal to renew.

(C) The notice required by this section must accompany the initial declarations page if the applicant is not provided a written copy at the time of the application and the coverage has been bound by the insurer.

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

(E) This section does not apply to the renewal of any policy of insurance.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1922.

Westlaw Topic No. 217.

**SECTION 38‑75‑1210.** Prohibited grounds for refusal to issue policy or determination of premiums; penalties.

(A)(1) An insurer or agent may not refuse to issue an insurance policy as defined in this article because of any one or more of the following factors:

(a) age;

(b) sex;

(c) race;

(d) color;

(e) creed;

(f) national origin;

(g) ancestry;

(h) marital status; or

(i) income level.

(2) An insurer or agent may not refuse to issue an insurance policy defined in this article only because of any one of the following factors:

(a) the previous refusal of property insurance by another insurer; or

(b) lawful occupation, including the military service, of the person seeking the coverage.

(3) Nothing in this section prohibits an insurer from limiting the issuance of insurance policies covered in this article only to persons engaging in or who have engaged in a particular profession or occupation, or who are members of a particular religious sect.

(4) Nothing in this section prohibits an insurer from setting rates in accordance with relevant actuarial data.

(5) Nothing in this section prohibits an insurer from refusing to issue policies of insurance due to the catastrophe exposure of wind.

(B)(1) In determining the premium rates to be charged for an insurance policy covered in this article, it is unlawful to consider:

(a) race;

(b) color;

(c) creed;

(d) religion;

(e) sex;

(f) national origin;

(g) ancestry;

(h) economic status; or

(i) income level.

(2) An insurer, agent, or a broker may not refuse to write an insurance policy covered in this article based upon:

(a) age;

(b) sex;

(c) race;

(d) color;

(e) creed;

(f) religion;

(g) national origin;

(h) ancestry;

(i) economic status; or

(j) income level.

(3) However, nothing in this subsection may preclude the use of a territorial plan approved by the director.

(C) An insurer or agent who violates this section is subject to the penalties as provided in Section 38‑2‑10. If the Director of the Department of Insurance or his designee finds that an insurer or agent is participating in a pattern of unfair discrimination, the director or his designee may impose a fine of up to two hundred thousand dollars. However, if the unfair discrimination is required by an insurer, only the insurer is subject to the penalty as long as the agent of the insurer has reported the pattern of unfair discrimination to the department. The director or his designee at any time may examine an insurer, agent, or a broker to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1517, 1542(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 93, 97 to 98, 100 to 102, 659 to 662.

**SECTION 38‑75‑1220.** Prohibited grounds for refusal to renew policy; immunity from liability; review by director of cancellation or refusal; penalties.

(A)(1) An insurer may not refuse to renew an insurance policy covered in this article because of any one or more of the following factors:

(a) age;

(b) sex;

(c) race;

(d) color;

(e) creed;

(f) national origin;

(g) ancestry;

(h) marital status; or

(i) income level.

(2) An insurer may not refuse to renew an insurance policy covered in this article only because of any one of the following factors:

(a) lawful occupation, including the military service;

(b) lack of supporting business or lack of the potential for acquiring the business;

(c) one or more claims that occurred more than thirty‑six months immediately preceding the upcoming anniversary date; or

(d) inquiries concerning coverage submitted to the insurer where no notice of claim was made.

(3) Nothing contained in subsection (A)(1)(e), (f), and (g) prohibits an insurer from refusing to renew a policy where a claim is false or fraudulent. Nothing in this section prohibits an insurer from setting rates in accordance with relevant actuarial data except that no insurer may set rates based in whole or in part on race, color, creed, religion, sex, national origin, ancestry, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director.

(4) Nothing in this section prohibits an insurer from refusing to renew policies of insurance due to the catastrophe exposure of wind.

(B) There is no liability on the part of and no cause of action of any nature shall arise against the director or his designees; an insurer, its authorized representatives, its agents, or its employees; or a person furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in complying with this section or for providing information pertaining to the cancellation or refusal to renew. For the purposes of this section, an insurer is not required to furnish a notice of cancellation or refusal to renew to anyone other than the named insured, a person designated by the named insured, or any other person to whom the notice is required to be given by the terms of the policy and the director.

(C) Within fifteen days of receipt of the notice of cancellation or refusal to renew, an insured or his attorney is entitled to request in writing to the director that he review the action of the insurer in canceling or refusing to renew the policy of the insured. Upon receipt of the request, the director promptly shall begin a review to determine whether the insurer’s cancellation or refusal to renew complies with the requirements of this section. If the director finds from the review that the cancellation or refusal to renew has not complied with the requirements of this section, he immediately shall notify the insurer, the insured, and any other person to whom the notice was required to be given by the terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the director to substitute his judgment as to underwriting for that of the insurer.

(D) Each insurer shall maintain for at least three years, records of cancellation and refusal to renew and copies of each notice or statement referred to in Section 38‑75‑1160 that it sends to any of its insureds.

(E) The provisions of this section do not apply to an insurer that limits the issuance of insurance policies covered in this article to one class or group of persons engaged in any one particular profession, trade, occupation, or business. Nothing in this section requires an insurer to renew a policy of insurance covered in this article if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization. An insurer is not required to renew a policy if the insured becomes a nonresident of South Carolina.

(F) An insurer who violates this section is subject to the penalties as provided in Section 38‑2‑10. If the director of the Department of Insurance or his designee finds that an insurer, agent, or a broker is participating in a pattern of unfair discrimination, the director or his designee may impose a fine of up to two hundred thousand dollars. However, if the unfair discrimination is required by an insurer, only the insurer is subject to the penalty as long as the agent of the insurer has reported the pattern of unfair discrimination to the department. The director or his designee at any time may examine an insurer, agent, or a broker to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1899.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 553 to 554.

**SECTION 38‑75‑1230.** Wind and hail exclusions on fire, allied lines, or homeowner’s policy.

An insurer may not exclude wind and hail on a fire, allied lines, or homeowner’s policy unless the property is in the area served by the South Carolina Wind and Hail Underwriting Association or the exclusion has been approved by the director or his designee.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 2142(2), 2145.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1523 to 1525, 1535, 1538.

**SECTION 38‑75‑1240.** Provision to director of underwriting restrictions based upon geography.

An insurer shall provide the director each year a listing of underwriting restrictions based upon geography and also provide notice of new changes to current underwriting restrictions. These restrictions do not require approval of the director or his designee and are not public information.

HISTORY: 2004 Act No. 290, Section 2.A, eff six months after approval by the Governor (approved July 29, 2004).

Library References

Insurance 1515.

Westlaw Topic No. 217.