~~Indicates Matter Stricken~~

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COMMITTEE REPORT

January 27, 2022

**H. 4832**

Introduced by Reps. Sandifer and Anderson

S. Printed 1/27/22--H.

Read the first time January 20, 2022.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4832) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑69‑247 so as to establish minimum nonforfeiture amounts for contracts issued after June 30, etc., respectfully

**REPORT:**

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

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑69‑247 SO AS TO ESTABLISH MINIMUM NONFORFEITURE AMOUNTS FOR CONTRACTS ISSUED AFTER JUNE 30, 2022; BY ADDING SECTION 38‑72‑78 SO AS TO REQUIRE LONG-TERM CARE INSURERS TO PROVIDE NOTICE OF PROPOSED PREMIUM RATE INCREASES TO POLICYHOLDERS; TO AMEND SECTION 38‑9‑180, RELATING TO STANDARD VALUATION LAW, SO AS TO REMOVE A REQUIREMENT; TO AMEND SECTION 38‑9‑210, AS AMENDED, RELATING TO THE REDUCTION FROM LIABILITY FOR REINSURANCE, SO AS TO CORRECT THE NAME OF THE APPROPRIATE OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; TO AMEND SECTION 38‑13‑80, RELATING TO THE ANNUAL STATEMENT AS TO BUSINESS STANDING AND FINANCIAL CONDITION, SO AS TO PROVIDE THE TIME AND MANNER THAT THE STATEMENT OF BUSINESS STANDING AND FINANCIAL CONDITION MUST BE FILED; TO AMEND SECTION 38‑13‑85, RELATING TO THE FILING OF ANNUAL STATEMENTS, SO AS TO PROVIDE THE TIME AND MANNER THAT THE ANNUAL STATEMENTS ARE FILED; TO AMEND SECTION 38‑57‑150, AS AMENDED, RELATING TO PROHIBITED INDUCEMENTS, SO AS TO ALLOW AN EMPLOYEE, AFFILIATE, OR THIRD PARTY OF AN INSURER TO OFFER AN INSURED SERVICES RELATING TO THE LOSS CONTROL OF THE COVERED RISK; TO AMEND SECTION 38‑73‑240, RELATING TO RATE FILINGS, SO AS TO CLARIFY WHERE AN INSURER MAY FILE A MULTIPLIER; TO AMEND SECTION 38‑73‑910, AS AMENDED, RELATING TO THE APPLICATION OF THE SECTION, SO AS TO ESTABLISH THAT RATE, RULE, AND FORM FILINGS SUBMITTED BY A RATING ORGANIZATION ARE SUBJECT TO PRIOR APPROVAL OF THE DEPARTMENT OF INSURANCE; TO AMEND SECTION 38‑79‑200, AS AMENDED, RELATING TO RATE INCREASE OR ASSESSMENT AUTHORIZATION, SO AS TO INCLUDE A REFERENCE; TO AMEND SECTIONS 38‑101‑20, 38‑101‑30, 38‑101‑40, AND 38‑101‑110, ALL RELATING TO THE ISSUANCE OF FLOOD INSURANCE POLICIES, ALL SO AS TO REQUIRE A PERIL OF FLOOD TO BE NAMED; TO AMEND SECTION 38‑101‑120, RELATING TO THE WRITTEN NOTICE OF CANCELLATION OR NONRENEWAL, SO AS TO CLARIFY THE REQUIRED NOTICE PERIOD; AND TO REPEAL CHAPTER 95 OF TITLE 38 RELATING TO THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT.

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

SECTION 1. Article 5, Chapter 69, Title 38 of the 1976 Code is amended by adding:

“Section 38‑69‑247. (A) This section applies to contracts issued after June 30, 2022, and may be applied by an insurer, on a contract‑form‑by‑contract‑form basis, to a contract issued after June 30, 2022.

(B) The minimum values as specified in Sections 38‑69‑250, 38‑69‑260, 38‑69‑270, 38‑69‑280, and 38‑69‑300 of any paid‑up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section.

(C) The minimum nonforfeiture amount at any time at or before the commencement of an annuity payment is equal to an accumulation up to that time at a rate of interest as indicated in subsection (E) of the net considerations paid before that time, decreased by the sum of items of (1) through (4):

(1) any previous withdrawals from or partial surrenders of the contract accumulated at a rate of interest as indicated in subsection (E);

(2) an annual contract charge of fifty dollars, accumulated at a rate of interest as indicated in subsection (E);

(3) any premium tax paid by the company for the contract, accumulated at a rate of interest as indicated in subsection (E); and

(4) the amount of any indebtedness to the company on the contract, including interest due and accrued.

(D) The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount equal to eighty‑seven and one‑half percent of the gross considerations credited to the contract during that contract year.

(E)(1) The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of three percent a year and the following, which must be specified in the contract if the interest rate is reset:

(a) the five‑year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than fifteen months before the contract issue date or redetermination date pursuant to subitem (d);

(b) reduced by one hundred twenty‑five basis points;

(c) where the resulting interest rate is no less than 15 basis points (0.15%); and

(d) the interest rate must apply for an initial period and may be redetermined for additional periods.

(2) The redetermination date, basis, and period, if any, must be stated in the contract. The basis is the date or average over a specified period that produces the value of the five‑year Constant Maturity Treasury Rate to be used at each redetermination date.

(F) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (E)(1)(b) by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date after that, of the additional reduction must not exceed the market value of the benefit. The director or his designee may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. If a demonstration is not acceptable to the director, or his designee, he may disallow or limit the additional reduction.

(G) The director, or his designee, may adopt rules to implement the provisions of subsection (F) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the director, or his designee, determines adjustments are justified.”

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

“Section 38‑72‑78. (A) An insurer must notify a policyholder of a long term care insurance policy issued in accordance with this chapter of a proposed premium rate increase that affects policyholders no later than thirty days after the filing by the insurer of the premium rate increase with the Department of Insurance. An insurer must provide written notice by first class mail to the last known mailing address of all affected individual and group policyholders and others who are directly billed for group coverage. The notice must:

(1) show the proposed rate;

(2) state that the rate is subject to regulatory approval;

(3) direct policyholders to present their concerns or objections to the Department of Insurance; and

(4) include contact information for the Department of Insurance.

(B) An increase in premium rate may not be implemented until approved by the Department of Insurance pursuant to Section 38‑72‑75 or until the effective date of the premium rate increase, whichever is later.”

SECTION 3. Section 38‑9‑180(S) of the 1976 Code is amended to read:

“~~(S)(1)~~ ~~A company that has less than three hundred million dollars of ordinary life premium and that is licensed and doing business in this State and that is subject to the requirements of subsections (N) and (O), may hold reserves based on the mortality tables and interest rates defined by the valuation manual for net premium reserves as defined by the valuation manual and using the methodology defined in subsections (G), (I), (J), (K), and (L) as they apply to ordinary life insurance in lieu of the reserves required by subsections (N) and (O), provided that:~~

~~(a)~~ ~~if the company is a member of a group of life insurers, the group has combined ordinary life premiums of less than six hundred million dollars;~~

~~(b)~~ ~~the company reported total adjusted capital of at least four hundred and fifty percent of authorized control level risk‑based capital in the risk‑based capital report for the prior calendar year;~~

~~(c)~~ ~~the appointed actuary has provided an unqualified opinion on the reserves in accordance with subsection (D) for the prior calendar year; and~~

~~(d)~~ ~~the company has provided a certification by a qualified actuary that any universal life policy with a secondary guarantee issued after the operative date of the valuation manual meets the definition of a nonmaterial secondary guarantee universal life product as defined in the valuation manual.~~

~~(2)~~ ~~For purposes of item (1), ordinary life premiums are measured as direct premium plus reinsurance assumed from an unaffiliated company, as reported in the prior calendar year annual statement.~~

~~(3)~~ ~~A domestic company meeting the requirement of items (1) and (2) may file a statement prior to July first with the director or his designee certifying that these conditions are met for the current calendar year based on premiums and other values from the prior calendar year financial statements. The director or his designee may reject the statement before September first and require a company to comply with the valuation manual requirements for life insurance reserves.~~”

SECTION 4. Section 38‑9‑210 of the 1976 Code, as last amended by Act 165 of 2020, is further amended to read:

“Section 38‑9‑210. An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 38‑9‑200 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer provided that the director or his designee may adopt by regulation pursuant to Section 38‑9‑200(N) specific additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements, or the circumstances pursuant to which a credit may be reduced or eliminated.

The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations, if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, for a trust, held in a qualified United States financial institution, defined in Section 38‑9‑220(B). This security may be in the form of:

(1) cash;

(2) securities listed by the ~~Securities Valuation Office of the~~ National Association of Insurance Commissioners Investment Analysis Office, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office and qualifying as admitted assets as defined in Section 38‑13‑80;

(3) clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution defined in Section 38‑9‑220(A) no later than December thirty‑first of the year for which filing is being made and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, notwithstanding the issuing or confirming institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) other form of security acceptable to the director or his designee.”

SECTION 5. Section 38‑13‑80(A) of the 1976 Code is amended to read:

“(A) Every insurer ~~annually shall~~ must file annually with the department by March first and quarterly as required by this title, ~~in the form and detail the director or his designee prescribes,~~ a statement showing the business standing and financial condition of the insurer on December thirty‑first of the preceding year~~,~~. The filing must be submitted in an electronic format acceptable to the National Association of Insurance Commissioners or in the form and detail the director or his designee prescribes. ~~except that~~ Upon timely written request by the chief managing agent or officer setting forth reasons why the statement cannot be filed within the time provided, the director or his designee may grant in writing an extension of filing time for not more than thirty days. This statement must conform substantially to the form of statement adopted by the National Association of Insurance Commissioners. Unless the director or his designee provides otherwise, the annual statement is to be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners. The annual statement must be verified by at least two of its principal officers, at least one of whom prepared or supervised the preparation of the annual statement.”

SECTION 6. Section 38‑13‑85(a) of the 1976 Code is amended to read:

“(a) Every insurer who is authorized to write insurance in this State ~~shall~~ must file annually with the National Association of Insurance Commissioners by March first a copy of its annual statement convention blank and any quarterly statements required by this title along with any additional filings prescribed by the director or his designee for the preceding year in an electronic format acceptable to the National Association of Insurance Commissioners. The information filed with the National Association of Insurance Commissioners must be in the same format and scope as that required by the director or his designee and must include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement filing subsequently filed with the director or his designee also must be filed with the National Association of Insurance Commissioners in an electronic format acceptable to the National Association of Insurance Commissioners. Foreign insurers domiciled in a state which has a law substantially similar to this subsection are considered in compliance with this subsection.”

SECTION 7. Section 38‑57‑150(3) of the 1976 Code, as last amended by Act 6 of 2019, is further amended to read:

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

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

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

SECTION 8. Section 38‑73‑240(C) of the 1976 Code is amended to read:

“(C) An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense‑constant adjustment to be applied to prospective loss costs that have been filed by ~~an advisory~~ a rating organization on behalf of the insurer as permitted by this chapter.”

SECTION 9. Section 38‑73‑910(A) of the 1976 Code, as last amended by Act 33 of 2021, is further amended to read:

“(A) This section applies to all types of property and casualty insurance coverage except as set forth in this section. Overall rate level increases or decreases for all property and casualty insurance coverages except for property insurance filings governed by Sections 38‑73‑220 and 38‑73‑260 and automobile insurance filings governed by Section 38‑73‑905 are subject to prior approval as set forth in this section. All rate, rule, and form filings, including loss cost filings and other supplementary filings, submitted by a rating organization are subject to the prior approval of the department. Every filing must state the proposed effective date and must indicate the type of coverage to which it applies. The director ~~shall~~ must approve or disapprove these filings in accordance with the applicable provisions of this chapter.”

SECTION 10. Section 38‑79‑200 of the 1976 Code, as last amended by Act 67 of 2019, is further amended to read:

“Section 38‑79‑200. The association is authorized to provide a rate increase, ~~or~~ assessment as provided in Section 38‑79‑220 or a combination thereof on policyholders which is subject to the approval of the director or his designee to reduce the deficit and to maintain rate adequacy.”

SECTION 11. Section 38‑101‑20(3) of the 1976 Code, as added by Act 166 of 2020, is amended to read:

“(3) ‘Private flood insurance’ means personal lines or commercial lines flood insurance policies or endorsements providing coverage for the named peril of flood issued directly by insurers.”

SECTION 12. Section 38‑101‑30 of the 1976 Code, as added by Act 166 of 2020, is amended to read:

“Section 38‑101‑30. An insurer may issue an insurance policy, contract, or endorsement providing commercial lines or personal lines coverage for the named peril of flood or excess coverage for the named peril of flood on any structure~~,~~ and on the contents of commercial or personal property contained therein, or to insure against indirect losses from the named peril of flood subject to the requirements of this chapter. Any reference to policy in this chapter also includes endorsements that provide private flood insurance coverage.”

SECTION 13. Section 38‑101‑40(A)(1) of the 1976 Code, as added by Act 166 of 2020, is amended to read:

“(1) ‘Standard flood insurance’, which means a private flood insurance policy which covers only losses from the named peril of flood at least equivalent, when taken as a whole, to that provided under a standard flood insurance policy under the National Flood Insurance Program (NFIP) including deductibles, exclusions, and other terms and conditions offered by the insurer. The policy form also must include:

(a) information about the availability of flood insurance coverage under the NFIP;

(b) a mortgage interest clause substantially similar to the clause contained in a standard flood insurance policy under the NFIP;

(c) a provision requiring an insured to file suit no later than one year after the date of a written denial of all or part of a claim under the policy; and

(d) cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.”

SECTION 14. Section 38‑101‑110(A) of the 1976 Code, as added by Act 166 of 2020, is amended to read:

“(A) An admitted insurer offering flood insurance may certify that a policy, contract, or endorsement provides coverage for the named peril of flood which equals or exceeds the flood coverage offered by the NFIP. To be eligible for certification, the policy, contract, or endorsement must contain a provision stating that it meets the private flood insurance requirements specified in 42 U.S.C. Section 4012a(b) and may not contain provisions that, when taken as a whole, are not in compliance with 42 U.S.C. Section 4012a(b).”

SECTION 15. Section 38‑101‑120 of the 1976 Code, as added by Act 166 of 2020, is amended to read:

“Section 38‑101‑120. (A) The insurer ~~shall~~ must give written notice ten days before cancellation due to nonpayment of premium or forty‑five days before cancellation for a reason other than nonpayment of premium or nonrenewal of private flood insurance coverage to:

(1) the insured; and

(2) the federally supervised institution that made the designated loan secured by the property covered by the private flood insurance, or the servicer acting on its behalf, if any.

(B) The notice must:

(1) be filed with the director or his designee subject to the ‘use and file’ requirements as set forth in Section 38‑101‑60;

(2) state the date no less than ten days before cancellation due to nonpayment of premium or forty‑five days for any cancellation for a reason other than nonpayment of premium or nonrenewal; and

(3) inform the insured of its right to request a review by the South Carolina Department of Insurance.

(C)(1) An insurer may cancel or refuse to issue or renew a private flood insurance policy, except for the reasons set forth below:

(a) age;

(b) sex;

(c) race;

(d) color;

(e) creed;

(f) national origin;

(g) ancestry;

(h) marital status;

(i) income level; or

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

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

(3) Nothing in this section prohibits an insurer from refusing to issue private flood insurance policies due to the exposure of flood.

(4) Notwithstanding the provisions of item (1), an insurer only may cancel a standard flood insurance policy in accordance with 42 U.S.C. Section 4012a(b).”

SECTION 16. Chapter 95, Title 38 of the 1976 Code is repealed.

SECTION 17. This act takes effect upon approval by the Governor.

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