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COMMITTEE REPORT

April 22, 2021

**S. 623**

Introduced by Senator Gambrell

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Read the first time April 13, 2021.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 623) to amend Section 38‑73‑910, Code of Laws of South Carolina, 1976, relating to premium rate increase requirements for automobile insurance policies, so as to provide, 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 SECTION 38‑73‑910, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PREMIUM RATE INCREASE REQUIREMENTS FOR AUTOMOBILE INSURANCE POLICIES, SO AS TO PROVIDE THAT A RATE INCREASE MAY NOT BE IMPLEMENTED UNTIL THE ONSET OF A NEW POLICY PERIOD, TO REQUIRE APPROVAL BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE FOR CERTAIN RATE INCREASES, AND TO REMOVE LANGUAGE REQUIRING THE SUBMISSION OF A REPORT BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE.

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

SECTION 1. Article 9, Chapter 73, Title 38 of the 1976 Code is amended by adding:

“Section 38‑73‑905. (A) Overall average rate level increases or decreases, for all coverages combined, of seven percent above or below the insurer’s current rates in effect may take effect without prior approval on a file and use basis with respect to rates for automobile insurance policies as set forth in this section. The seven percent cap does not apply on an individual insured basis. Insurers are limited to two rate increases during any twelve‑month period as set forth in subsections (B) and (C).

(B)(1) Notwithstanding any other provision of this chapter, for any policies governed by this section, filings that produce rate level changes based on the limitation specified in subsection (A) become effective without prior approval; provided, that no more than one rate increase of seven percent above or below the insurer’s current rates in effect may be implemented during any twelve‑month period on a file and use basis. Any other increase request is subject to prior approval. A rate increase may not be implemented until the onset of the new policy period.

(2) A rate increase or decrease falling within the limitation in subsection (A) may become effective not less than thirty days after the date of the filing with the director. The filing is considered to meet the requirements of this chapter unless the director or his designee notifies the insurer that the filing does not comply with this chapter within that thirty‑day time period. If, after the filing becomes effective, the director finds the filing does not comply with the requirements of this chapter, the director shall issue a written order specifying in detail the provisions with which the insurer has not complied and state a reasonable period thereafter in which the filing is considered no longer effective. Any order by the director pursuant to this section that is issued more than thirty days from the date on which the director received the rate filing must be on a prospective basis only and may not affect any contract issued or made before the effective date of the order.

(C) Rate filings for automobile insurance also may be made outside the limitation specified in subsection (A), however those filings are subject to the prior approval of the director. The director shall approve or disapprove these filings in accordance with the provisions of Sections 38‑73‑960 and 38‑73‑990. No more than two rate increases may be implemented during a twelve‑month period. If the two rate increases fall above or below seven percent as specified in subsection (B), the second rate increase request within a twelve‑month period is subject to prior approval. The limitation provided in Section 38‑73‑920 relating to the number of permissible filings within a twelve‑month period does not apply to automobile filings made pursuant to the provisions of this section.

(D) Individual automobile insurance companies and member companies of an affiliated group of automobile insurers may utilize different filed rates for automobile insurance coverages in accordance with rating plans filed with and approved by the director. These rating plans may provide for different rates, rating tiers, and rating plans among affiliated companies. For the purposes of this subsection, an affiliated group of automobile insurers includes a group of automobile insurers under common ownership, management, or control.

(E) The Director of the Department of Insurance or his designee may promulgate regulations to implement the provisions of this section.

(F) This section does not apply to rate or rule filings of insurers who write only exempt commercial policies. Rate or rule filings for exempt commercial policies must comply with the requirements of S.C. Code Ann. Regs. Section 69‑64, Section 38‑73‑920, and other applicable provisions of this title.”

SECTION 2. Section 38‑73‑910 of the 1976 Code is amended to read:

“Section 38‑73‑910. (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. Every filing must state the proposed effective date and must indicate the type of coverage to which it applies. The director shall approve or disapprove these filings in accordance with the applicable provisions of this chapter.

(B) An increase in the premium rates may not be granted for workers’ compensation insurance, nor for any other line or type of insurance with respect to which the director or his designee has, by order, made a finding that (a) legal or other compulsion upon the part of the insured to purchase the insurance interferes with competition, or (b) under prevailing circumstances there does not exist substantial competition, unless notice is given in all newspapers of general, statewide circulation at least thirty days in advance of the insurer’s proposed effective date of the increase in premium rates. The notice must state the amount of increase, the type and line of coverage, and the proposed effective date and must allow any insured or affected party to request within fifteen days a public hearing upon the propriety of the rate increase request before the Administrative Law Court. A copy of the notice must be sent to the Consumer Advocate.

(C) However, the requirements of public notices and public hearings in this section do not apply to applications for rate increases when the applicant insurer had earned premiums in this State in the previous calendar year of less than two million dollars for the line or type of insurance for which the rate increase is sought or, if the rate increase is sought by a modeling organization, the earned premiums in this State for all members and subscribers of the organization for whom an increase is sought were less than two million dollars for the previous calendar year for the line or type of insurance for which the rate increase is sought. The two million dollars must be increased by a factor equal to the increase in the consumer price index, all items, every three years.

~~(B)~~ ~~Except as provided in subsection (C), overall average rate level increases or decreases, for all coverages combined, of seven percent above or below the insurer’s rates then in effect may take effect without prior approval on a file and use basis with respect to rates for automobile insurance policies. The seven percent cap does not apply on an individual insured basis.~~

~~(C)~~ ~~Notwithstanding any other provisions of this chapter, for any policies governed by this section, filings that produce rate level changes within the limitation specified in subsection (B) become effective without prior approval; provided, that (1) no more than one rate increase within the limitation specified in subsection (B) may be implemented during any twelve‑month period, and (2) no rate increase within the limitation specified in subsection (B) may be implemented until the onset of the new policy period unless the insurer, at least thirty days in advance of the end of the policy period, mails or delivers to the named insured at the address shown in the policy a written notice of its intention to change the rate. The overall statewide rate change implemented under this section must be stated in the notice.~~

~~A rate increase or decrease falling within the limitation in subsection (B) may become effective not less than thirty days after the date of the filing with the director. The filing is deemed to meet the requirements of this chapter. The director may find that such a filing is not in compliance with this chapter. In the event of such a finding, the director shall issue a written order specifying in detail the provisions with which the insurer has not complied and state a reasonable period thereafter in which the filing shall be deemed no longer effective. Any order by the director pursuant to this section that is issued more than thirty days from the date on which the director received the rate filing shall be on a prospective basis only and shall not affect any contract issued or made prior to the effective date of the order.~~

~~Rate filings falling outside the limitation specified in subsection (B) are subject to the prior approval of the director. The director shall approve or disapprove these filings in accordance with the provisions of Sections 38‑73‑960 and 38‑73‑990.~~

(D) ~~Individual automobile insurance companies and member companies of an affiliated group of automobile insurers may utilize different filed rates for automobile insurance coverages in accordance with rating plans filed with and approved by the director. These rating plans may provide for different rates, rating tiers, and rating plans among affiliated companies. For the purpose of this subsection, an affiliated group of automobile insurers includes a group of automobile insurers under common ownership, management, or control.~~ If the director finds that a filing is not in compliance with this chapter, he shall issue a written notice of disapproval in accordance with the provisions of Section 38‑73‑990.

(E) The Director of the Department of Insurance or his designee ~~shall~~ may promulgate regulations to implement the provisions of this section.

(F) ~~On or before March 31, 2004, the Director of the Department of Insurance or his designee shall report to the General Assembly on the effectiveness of flexible rating for automobile insurance policies. The report may not include data regarding a specific insurer or insurer group, except data that is in the public record, and must analyze the impact of flexible rating on:~~

~~(1)~~ ~~the extent and nature of competition;~~

~~(2)~~ ~~size and significance of coverage;~~

~~(3)~~ ~~level and range of rates and rate changes among insurers;~~

~~(4)~~ ~~extent of consumer complaints to the Department of Insurance;~~

~~(5)~~ ~~volume of cancellations and nonrenewals;~~

~~(6)~~ ~~changes in the number of policies by territory and by class, including age and sex, in each territory; and~~

~~(7)~~ ~~the number of new insured, nonrenewed insured, and business written by each insurer.~~

~~(G)~~ This section does not apply to rate or rule filings of insurers who write only exempt commercial policies. ~~Exempt commercial policies are not subject to prior approval of the department.~~ Rate or rule filings for exempt commercial policies must comply with the requirements of S.C. Code Ann. Regs. Section 69‑64, Section 38‑73‑920, and other applicable provisions of this title.”

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

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