

South Carolina Insurance Rules and Regulations



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Please note that these materials are intended to be educational in nature, do not constitute a comprehensive representation of South Carolina statutes, and are not intended to provide legal advice. Please consult an attorney for any specific legal advice.

I. Insurance Regulation

A. Federal Laws Governing Insurance Regulation

1. McCarran-Ferguson Act (1945)

The Federal act which provides that the business of insurance is subject to state regulation and exempt from many federal antitrust laws – to the extent there are state regulations governing certain activities.

2. Fair Credit Reporting Act (1970)

Regulates the collection, distribution and use of consumer credit information. Although credit information has been used in the underwriting of insurance for many years, the now almost universal use of credit information in rating personal insurance trigger the notice requirements and consumer protections of FCRA.

3. Drivers Privacy Protection Act (1994)

Prohibits the disclosure of personal information, including MVR's, without the express consent of the person to whom the information applies.

4. Health Insurance Portability & Accountability Act (HIPPA) (1996)

Protect the confidentiality and security of healthcare information. Also requires certain “administrative” rules be followed in order to safeguard healthcare information.

5. Gramm-Leach-Bliley Act (1999)

Allows banks and other financial institutions to offer insurance-related services. Also regulates the ways that financial institutions handle private information of individuals.

6. Patriot Act (2001)

Established certain requirements to deter money laundering and suspicious business activity by terrorist organizations and their supporters. Requires “financial institutions” to establish anti-money laundering programs and related due diligence policies, procedures and controls. (See Bulletin 2002-3 in Exhibits)

Notes:

B. Statute

1. Federal or state written laws enacted by Congress or the state legislature.
2. SC Insurance statute is **Title 38** <http://www.scstatehouse.gov/code/title38.php>
3. Workers Compensation statute is **Title 42** <http://www.scstatehouse.gov/code/title42.php>

C. Regulation

1. Rules and administrative codes issued by governmental agencies that have the force of law.
2. SC Insurance regulations are in **Chapter 69** – Department of Insurance
<http://www.scstatehouse.gov/coderegs/c069.php>
3. Workers Compensation regulations are in **Chapter 67** – SC Workers Comp Commission
<http://www.scstatehouse.gov/coderegs/c067.php>

D. Bulletin

1. Issued by the SC Department of Insurance to clarify or explain
2. Located on the DOI website under the **“Bulletins & Orders”** tab
<http://www.doi.sc.gov/105/Bulletins-Orders>
3. Filed by year in which the Bulletin was issued

E. Case Law

1. Rules of law made through court decisions and opinions.

Notes:

II. Goals of Insurance Regulation

A. Protect the consumer

1. Review rates, rules and forms
2. Protect against fraud/unethical behavior
3. Assure availability

B. Maintain carrier stability and solvency

1. Nature of coverage provided – future benefit
2. Common public good
3. Protect policyholders funds

C. Guard against unfair competition

1. Rates must be adequate to assure solvency
2. Regulation prevents insurers from “buying” market share
3. Inadequate rates drive out competition

Notes:

SECTION 38-3-110. Duties of Chief Insurance Commissioner.

The director or his designee has the following duties:

(1) supervise and regulate the rates and service of every insurer in this State and fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be observed and followed by every insurer doing business in this State. Nothing contained in this title authorizes or requires a review by the department or the director of any order of the director's designee or the deputy director under the Administrative Procedures Act. This item does not grant any additional authority to the director or his designee with regard to insurance rates other than the ratemaking authority specifically granted to the director or his designee, or the Department of Insurance for certain kinds of insurance in other provisions of this title;

(2) see that all laws of this State governing insurers or relating to the business of insurance are faithfully executed and make regulations to carry out this title and all other insurance laws of this State, the enforcement or administration of which is not otherwise specifically provided for;

(3) report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report;

(4) institute civil actions, either through his office or through the Attorney General, relative to the business of insurance or the provisions of this title which he considers necessary to institute.

(5) The director must hold a public hearing at least annually at a location within the seacoast area, as defined in Section 38-75-310(7), to provide the public with information and an opportunity to discuss and offer input concerning the rates, territory, and other pertinent issues regarding the South Carolina Wind and Hail Underwriting Association. The director must provide notice of the public hearing in newspapers of general circulation within the seacoast area at least thirty days before the date of the public hearing. The director must submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by no later than January thirty-first of each year regarding the status of the South Carolina Wind and Hail Underwriting Association, including any recommended modifications to statutory or regulatory law regarding the operation of the South Carolina Wind and Hail Underwriting Association and its territory.

III. SC Department of Insurance

A. General Provisions

1. Managed and operated by the Director of Insurance who is appointed by the Governor
2. The DOI functions to protect the insurance consumers, the public interest, and the insurance marketplace.
3. They do this by ensuring the solvency of insurers, enforcing and implementing the insurance laws in SC, and by regulating the insurance industry.

B. Duties of the Insurance Director (38-3-110)

1. Supervises and regulates the rates and services of all insurers in SC and sets reasonable standards, classifications, regulations, etc. for all insurers to follow.
2. Enforces the insurance laws in SC
3. Reports criminal violations to the Attorney General or other law enforcement
4. Imposes civil actions relative to insurance in SC
5. Must hold an annual public hearing in the seacoast area of SC to provide information to the public regarding rates, territories and other pertinent information regarding the SC Wind & Hail Underwriting Association.
 - Notice must be given 30 days in advance in area newspapers
 - The Director must submit a report to the President Pro Tempore of the SC Senate and the Speaker of the House of Representatives in SC by Jan 31 each year regarding status of SCWHUA.

SC Director of Insurance – Ray Farmer

Ray Farmer was appointed by Governor Haley to serve as Director for the SC Department of Insurance in November, 2012. Prior to joining the DOI, Ray was the Vice President for the American Insurance Association, an industry group representing more than 300 insurers. He also served as the Deputy Insurance Commissioner of the Enforcement Division for the GA Department of Insurance. He received his degree in Insurance from the University of Southern Mississippi and earned his law degree from Atlanta's John Marshall Law School.

SECTION 38-43-10. Persons considered producers of insurers; excess and surplus lines brokers; using assumed name.

(A) A person who:

- (1) sells, solicits, or negotiates insurance on behalf of an insurer;
- (2) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insurer;
- (3) advertises or otherwise gives notice that he will receive or transmit insurance applications or policies;
- (4) receives or delivers a policy of insurance of an insurer;
- (5) receives, collects, or transmits any premium of insurance; or
- (6) performs any other act in the making of an insurance contract for or with an insurer, other than for himself; whether these acts are done by an employee of an insurer or at the instance or request of an insurer, must be an appointed producer of the insurer for which the act is done or the risk is taken unless provided otherwise in Section 38-43-20.

(B) This chapter does not apply to excess and surplus lines brokers licensed pursuant to Section 38-45-30 except as provided in Section 38-43-70.

(C) An insurance producer doing business under any name other than the producer's legal name is required to notify the director or his designee prior to using the assumed name.

Notes:

IV. Producer Statutes

A. Producer Licensing

1. Resident Licensing (38-43-10)
 - a. "Sells, solicits or negotiates" on behalf of an *insurer*
 - b. Takes/transmits applications
 - c. Advertises that they will transact insurance contracts
 - d. Delivers policies
 - e. Receives/collects/transmits premiums
 - f. Performs "other acts" in the making of an insurance contract
 - g. Doesn't apply to surplus lines brokers (need to refer Brokers statute)
2. Exceptions to producer licensing (38-43-20)
 - a. Company/agency officers, directors or employees
 1. That do not receive commission
 2. Perform only executive, administrative, managerial, etc. duties
 3. Are involved in underwriting, loss control, loss adjusting
 4. Providing only technical advice and do not sell, solicit or negotiate
 - b. Employees under producers direct supervision that perform clerical duties only, is not paid commission, acts within the confines of the producer's office, in the acceptance of requests for insurance and payment of premiums.
 - c. Non-residents who sell, solicit, or negotiate commercial property & casualty risks to an insured with risks located in more than one state insured under that contract, provided that person is licensed in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.
 - d. A few others pertaining to L&H
3. Non-resident Licensing (38-43-70)
 - a. Non-residents will be licensed as long as they are in good standing in their home state and pay the applicable non—resident licensing fees.
 - b. Non-resident's state must award same status to SC producers on same basis.
 - c. Producers must be licensed in each state where they conduct business.
 - d. In 1996, the National Insurance Producer Registry (NIPR) was developed to assist producers in obtaining licenses in various states without having to go to each state individually.

SECTION 38-43-100. Individual and agency insurance producer licensing; written examinations; contents of license.

(F) A person applying for a resident insurance producer license or a person applying on behalf of the applicant shall make application to the director or his designee on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief. Before approving the application, the director or his designee shall find that the applicant:

(1) is at least eighteen years of age;

(2) is a person of good moral character and has not been convicted of a felony or any act within the last ten years that is a ground for denial, suspension, or revocation as provided for in Section 38-43-130 or been convicted of a misdemeanor involving dishonesty, breach of trust, or other financial- or insurance-related crime within five years;

(3) has paid the fees provided for in Section 38-43-80; and

(4) has successfully passed the examination or examinations for the line or lines of insurance for which the person has applied.

(5) Before a license is issued to an applicant or is renewed permitting him to act as a resident producer, the applicant shall comply with the licensing and renewal requirements set forth in this section and by regulation. In addition to those licensing requirements, the applicant shall:

(a) furnish a complete set of his fingerprints and the required fees and information in accordance with this subsection to the director or his designee. Failure to furnish the complete set of fingerprints and required fees constitutes grounds for denial of an application for licensure. However, the director may waive the fingerprinting requirements if it is impossible for the applicant to provide fingerprints due to a medically certified physical injury; and

(b) undergo a state criminal records check, supported by his fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by his fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal records checks must be reported to the department. SLED is authorized to retain the fingerprints for use in identification purposes including, but not limited to, unsolved latent prints. The cost associated with the criminal history records checks must be borne by the applicant. The applicant's fingerprints must be certified by a law enforcement officer authorized by SLED.

(G)(1) A licensed insurance producer seeking to renew their current resident insurance producer license is exempt from the fingerprinting requirement set forth in subsection (F)(5) if the applicant complies with the requirements of this section and:

(a) has previously provided and has on file with the appropriate agency of the State an accessible, current, complete, and legible set of fingerprints submitted as part of an earlier application for a license or for renewal of a license which was either approved or granted; and

(b) all licenses issued to the applicant by the department are in good standing on the date of the subsequent application with all licenses.



4. Licensing Fees (38-43-80)
 - a. Producer initial and biennial licensing fee: \$25
 - b. Appointment fee (local): \$40
5. Producer licensing requirements (Bulletin 2016-10; 38-43-100)
 - a. Beginning 1/1/2017, before a new license is issued OR before a current license is renewed, individual must submit a set of fingerprints and undergo a state criminal records check by both SLED and the FBI.
 - b. Fingerprints must be certified by a law enforcement officer authorized by SLED.
 - c. This is a one-time requirement
6. License Renewals (38-43-110)
 - a. Renewed biennially based on birth month/birth year
 - b. Must meet CE requirements (hours/fees) and pay license renewal fee
 - c. If a license lapses, it may be reinstated within 6 months of the lapse once the producer meets the licensing renewal requirements and pays a fine.
 - d. Waivers can be obtained for military service and other extenuating circumstances

B. Agency Licensing (38-43-30)(38-43-80)

1. Agency must have a license (except single-owner, sole proprietorships)
2. Must complete an application using the Uniform Business Entity Application.
3. Must have at least one licensed and appointed producer.
4. Agency initial and biennial license fee: \$40
5. Agency licenses must be renewed every even numbered year between 1/1 and 1/31.



SECTION 38-43-50. Limited line and special producer licensure; appointment by insurer as producer or agent.

(B) When appointing a producer, the insurer shall certify on a form prescribed by the director whether the applicant has been appointed a producer to represent it and that it has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

SECTION 38-2-10. Administrative penalties.

Unless otherwise specifically provided by law, the following administrative penalties apply for each violation of the insurance laws of this State:

(1) If the violator is an insurer or a health maintenance organization licensed in this State, the director or his designee shall (a) fine the violator in an amount not to exceed fifteen thousand dollars, or (b) suspend or revoke the violator's authority to do business in this State, or both. If the violation is wilful, the director or his designee shall (a) fine the violator in an amount not to exceed thirty thousand dollars, or (b) suspend or revoke the violator's authority to do business in this State, or both.

(2) If the violator is a person, other than an insurer or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall (a) fine the person in an amount not to exceed two thousand five hundred dollars, or (b) suspend or revoke the license of the person, or both. If the violation is wilful, the director or his designee shall (a) fine the person in an amount not to exceed five thousand dollars, or (b) suspend or revoke the license of the person, or both.

The penalties in items (1) and (2) are in addition to any criminal penalties provided by law or any other remedies provided by law. The administrative proceedings in items (1) and (2) do not preclude civil or criminal proceedings from taking place before, during, or after the administrative proceeding.

Notes:

C. Producer Appointments (38-43-50) (38-2-10) (38-43-80)

1. A producer cannot act as an agent of an insurer without an appointment. (38-43-10(6))
2. Appointing one producer in the agency to sign all applications of a particular insurer, but not appointing other producers/CSR's who actively perform activities for, or on behalf of, that insurer which would require a producer's license, is a violation of the insurance code and subjects the agency, the producer and the insurer to fines.
3. Appointment must be made within 15 days from the date the agency contract is executed or the first application is submitted.
4. Penalties for the insurer can be a fine of up to \$30,000 and/or suspension/revocation of the insurers certificate of authority
5. Penalties for the producer can be a fine of up to \$5000 and/or suspension/revocation of the producer's license.
6. Appointment fee is \$40 per producer and MUST be paid by the carrier and not charged back to the producer or the agency.

D. Continuing Education Requirements (38-43-106) (Bulletin 2009-16)

1. Each producer biennially must complete 24 hours of CE credits by the last day of his/her birth month based the producer's odd/even birth year.
2. Producers must complete at least eight (8) hours in each line of authority AND complete a minimum of three (3) hours of Ethics.
3. Producers with reduced compliance requirements (15 hours) must complete twelve (12) hours in the line of authority held and three (3) hours of Ethics; Multi-line producers with reduced compliance requirements must complete six (6) hours in each line of authority and three (3) hours of ethics.
4. Producers may carryover up to eighteen (18) hours of credits (except for Ethics hours) to apply to the following compliance period.
5. Producers must also pay the CE Administrators recordkeeping fee by the producer's compliance deadline.
6. Failure to meet all of the continuing education requirements will result in the lapse of the producer's license and appointments. If requirements are not met within six (6) months of the compliance period, the producer's license will cancel.
7. Producer's can have a lapsed license reinstated by paying a \$50 fine and complying with all of the CE requirements. If the license has cancelled, then the producer must retake and pass the producer licensing exam and re-apply for the license.



SECTION 38-43-130. Probation, revocation, suspension of license, or denial of reissuance.

(A) The director or his designee may place on probation, revoke, or suspend a producer's license after ten days' notice or refuse to issue or reissue a license when it appears that a producer has been convicted of a crime involving moral turpitude, has violated this title or any regulation promulgated by the department, or has wilfully deceived or dealt unjustly with the citizens of this State.

(B) For purposes of this section, "convicted" includes a plea of guilty or a plea of nolo contendere, and the record of conviction, or a copy of it, certified by the clerk of court or by the judge in whose court the conviction occurred is conclusive evidence of the conviction.

(C) The words "deceived or dealt unjustly with the citizens of this State" include, but are not limited to, action or inaction by the producer as follows:

- (1) providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) violating insurance laws, or violating any regulation, subpoena, or order of the director or of another state's director or his designee;
- (3) obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
- (5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) having been convicted of a felony;
- (7) having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;
- (9) having an insurance producer license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;
- (10) forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) improperly using notes or any other reference material to complete an examination for an insurance license;
- (12) knowingly accepting insurance business from an individual who is not licensed;
- (13) failing to comply with an administrative or court order imposing a child support obligation; or
- (14) failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

E. Probation, revocation, suspension of license, or denial of re-issuance (38-43-130)

1. Producer license can be revoked, suspended, or placed on probation if:
 - i. Producer is convicted of a crime of "moral turpitude"
 - ii. Violates any insurance laws or regulations
 - iii. Willfully deceives or deals unjustly with the citizens of SC
2. Convicted includes a plea of "no contest"
3. Deceives or deals unjustly with include, but are not limited to:
 - i. providing incorrect, misleading, incomplete, or materially untrue information in the license application;
 - ii. violating insurance laws, or violating any regulation, subpoena, or order of the director or of another state's director or his designee;
 - iii. obtaining or attempting to obtain a license through misrepresentation or fraud;
 - iv. improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
 - v. intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - vi. having been convicted of a felony;
 - vii. having admitted or been found to have committed any insurance unfair trade practice or fraud;
 - viii. using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;
 - ix. having an insurance producer license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;
 - x. forging another's name to an application for insurance or to any document related to an insurance transaction;
 - xi. improperly using notes or any other reference material to complete an examination for an insurance license;
 - xii. knowingly accepting insurance business from an individual who is not licensed;
 - xiii. failing to comply with an administrative or court order imposing a child support obligation; or
 - xiv. failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.



SECTION 38-13-70. Investigation of charges; liability for expenses.

Upon his own motion or upon written complaint filed by a citizen of this State that an insurer, health maintenance organization, or other person licensed or authorized to transact business in this State has violated this title, the director or his designee shall investigate the matter and, if necessary, examine under oath the president and other officers or agents of the insurer, health maintenance organization, or other person and all books, records, and papers of the insurer, health maintenance organization, or other person. The insurer, health maintenance organization, or other person and its representatives shall respond to the department's inquiries, requests for information, or investigations within seven calendar days or within a larger timeframe granted by the director or his designee. If the director or his designee finds upon substantial evidence that a complaint is justified, the insurer, health maintenance organization, or other person, in addition to the penalties imposed for violation of this title, is liable for the expenses of the investigation, and the director or his designee shall promptly present the insurer with a statement of the expenses. If the insurer, health maintenance organization, or other person refuses or neglects to pay, the director or his designee is authorized to revoke its license and to bring civil action for the collection of the expenses.

F. Administrative penalties for violations of insurance laws (SECTION 38-13-70)

1. When the DOI initiates an inquiry or requests information for an investigation, agents/agencies ***must respond to the DOI request within seven calendar days.***
2. Agents/agencies can request additional time to gather records or otherwise comply with the DOI request, but they must contact the DOI within that seven-day window.
3. It is up to the DOI whether to grant an extension on providing the requested information.

G. Reporting administrative actions and criminal prosecutions (SECTION 38-43-247)

1. Producers must notify the DOI within 30 days of any criminal conviction. In the past, the producer had to notify the DOI within 30 days of any criminal charge.
2. The report must include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

SECTION 38-43-247. Reporting administrative actions and criminal prosecutions.

(A) A producer shall report to the director or his designee any administrative action taken against the producer in another jurisdiction or by another governmental agency in this State within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(B) Within thirty days of the initial pretrial hearing date, a producer shall report to the insurance director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

H. South Carolina Insurance Data Security Act (Cybersecurity)

NEW 2019

1. The *South Carolina Insurance Data Security Act* became effective on January 1, 2019. South Carolina is the first state in the nation to pass this important and timely legislation which is modeled after the NAIC Insurance Data Security Model Law.

The Act defines the requirements applicable to a "licensee" and establishes standards for data security and standards for the investigation of and notification to the Director of Insurance of a cybersecurity event.

2. The South Carolina Insurance Data Security Act applies to all insurance licensees (insurance companies, agencies, MGAs) that have 10 or more employees. Agencies with nine or fewer staff are exempt from **certain parts** of the law, and if your agency is already compliant with HIPAA regulations then your agency is exempt from any new requirements in this statute.

ALL "LICENSEES" (agencies) are subject to the notification requirement to the DOI in the event of a cyber breach.

3. Licensees will be required to develop a security plan, train staff, understand data security exposures and risk, and be prepared to respond to a data breach in their organization. The basic requirements of this statute must be implemented by July 1, 2019.

A full copy of the statute can be found at <https://www.scstatehouse.gov/code/title38.php>

Key Implementation Dates

January 1, 2019

South Carolina Insurance Data Security Act becomes effective. This requires, among other things, that a licensee notify the Director no later than 72 hours after determining that a cybersecurity event has occurred when certain criteria are met.

July 1, 2019

Licensees must have implemented Section 38-99-20 by this date. This section requires that licensees establish a comprehensive, written information security program by July 1, 2019. IIABSC and ACT (Agent's Council for Technology) offer member agencies a pre-written template that conforms with the requirements of the SC Insurance Data Security Act. The **Agency Cyber Guide 2.0** can be accessed via the IIABSC website under the Cybersecurity section of the Resources tab.

July 1, 2020

Licensees must have implemented Section 38-99-20(F) by this date. This section details additional requirements for **licensees who contract with third-party service providers** that maintain, process, store or otherwise is permitted access to nonpublic information through its provision of services to the licensee.

February 15, 2020

Beginning on this date, each insurer domiciled in South Carolina must annually submit to the Director a written statement certifying that the insurer is in compliance with the requirements set forth in Section 38-99-20.

Additional details on SC Insurance Data Security Act can be found on the IIABSC website (www.iiabsc.com) under the **Resources** tab.

Broker / Producer Fee Schedule Filing

Date of Filing:

Broker / Agency Code: _____

Broker / Producer Name: _____

Broker / Producer Address: _____

Broker / Producer Phone Number: _____

Broker / Producer Email Address: _____

Fee Type	Maximum Fee	Proposed Fee	Approved Fee
Late Charge	\$10		
Reinstatement Charge	\$10		
Convenience Fee	\$3		
Paper Installment Fee	\$10		
EFT Installment Fee	\$5		
SR22 Fee	\$25		
Certificate of Insurance/Additional Insured Form Fee	\$10		
NSF Fee	\$25		
Other (Describe and Support)	NIA		

Declaration Statement:

- All approved fees will be clearly defined and disclosed to and accepted by the insured in advance of the insured's purchase of the policy as well as any consequence for failure to pay such fees.
- All approved fees will be applied equally and consistently to all insureds of the same class that are subject to such fees.
- All approved fees will only be charged if the insurer is not charging the same type of fee.

I agree to follow the terms of the declaration statement listed above:

Signature: _____ Date: _____

Submission Instructions:

Completed fee schedules, along with any applicable support, should be sent to the following email address: P&CMAIL@doi.sc.gov

08/2013 Revision

I. Commissions (38-43-200)

1. Commission can only be paid to a licensed producer.
2. Producers may split commissions with other producers, but both must be licensed in the line of authority applicable to policy being written.

J. Fees (Bulletin 2013-11; 2006-08) (38-55-50) (38-45-160)

1. SC law limits the charging of fees for services that *are an integral or necessary part* of the insurance contract, insurance transaction or prerequisite to insurance coverage. *Insurers* can charge such fees but only if set forth in the policy, declarations page or endorsements and reflected in the premium rate charged for the policy. (i.e. application fees, inspection fees, policy fees)
2. Producers may not charge such fees and brokers may do so only as permitted in Sec. 38-45-160.
3. Producers may not charge a policy fee in lieu of commission, or reduce their commission to lower the overall policy premium.
4. Fees for *optional services* can be charged by insurers, producers or brokers under certain circumstances. Optional service fees are those that are not incurred on behalf of all insureds or classes of insureds, and are not a prerequisite to the issuance of the policy. (installment payment fees, late payment fees, reinstatement fees)
 - a. The insurer and producer shall not both charge the applicant/insured a fee for the same service.
 - b. Must be reasonable in relation to service being provided, be disclosed to and accepted by insured in advance of purchase of the policy.
 - c. Service Fee schedule must be provided in writing to insured at or before policy delivery.
 - d. Amounts and conditions of service fees must be applied consistently to all insureds if the same class on a non-discriminatory basis.
 - e. Agencies/producers wishing to charge service fees must obtain approval in writing from the DOI at least 30 days prior to the effective date of the policy to which the service fees apply. Any service fees in excess of the Maximum Service Fee schedule provided by the DOI must be submitted for approval and contain proof that actual costs exceed the DOI Maximum fees.

SECTION 38-45-160. Brokers policy fees.

No policy fee may be charged by a broker unless it is a reasonable fee, it is made part of the contract, and the broker's premium tax rate is paid upon the policy fee. If for any reason the director or his designee disapproves the placement or the insurer ultimately refuses to write the risk, the broker shall immediately refund the full policy fee to the policyholder.

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SECTION 38-43-250. Producer records.

All producers shall make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the person to whom issued of every policy or certificate of renewal. The information from these records must be furnished to the director or his designee on demand and the original books or records are open to the inspection of the director or his designee on demand. These records must be kept for a minimum of five years.

SECTION 38-43-107. Business, email and residence street address on application for insurance producer's license; notice of change of legal name or address; penalty.

(A) If an individual applies for an insurance producer's license, he shall supply the department his business, mailing, and residence street address. The producer also shall notify the department within thirty days of any change in legal name or in these addresses.

(B) Failure to inform the director or his designee of a change in legal name or address within this period is a violation of this title and the producer is subject to the penalties provided in Section 38-2-10.

Notes:



K. Loss Runs (Bulletin 2004-02; 2009-09)

1. Insurer must provide loss runs within 10 business days of written request from insured, former insured, producer or broker acting on behalf of insured or former insured.
2. Loss run must provide at least three (3) years loss history (or complete loss history with insurer if history is less than 3 years).
3. One copy per policy term must be provided at no charge; insurer can charge up to twenty-five (25¢) per page plus mailing costs for additional copies.
4. Producer/broker that receives loss runs per request of an insured or former insured, must provide them to the insured/former insured within five (5) business days of receipt from insurer.
5. Information should be kept confidential
6. Failure to provide loss runs as outlined is a violation of the Unfair Trade Practices.

L. Records Retention (38-43-250)

1. Producers must keep records for a minimum of five (5) years.
2. Records must be furnished to the DOI or open to DOI inspection on demand.

M. Cancellation of Producer(Agency) contract (38-43-55)

1. Specifications of termination of the Agency's contract with a carrier should be clearly conveyed in the Agency contract with that carrier.
2. IIABA Office of General Counsel has recommended agency-contract company language that members can use as a guideline when reviewing contracts and requesting changes in contract language.
3. Agency-carrier contract cancellation provisions must comply with state law. Provisions include:
 - a. DOI notification (30 days)
 - b. Producer notification (15 days)
 - c. If termination of contract is due to alleged violation of insurance laws, etc., producer has some appeal rights.

N. Change of Address - Business, mailing and email (38-43-107)

1. Change of business address, residence address and **email address** must be sent to the DOI within 30 days of the change.

Notes:



V. Policy & Claims Statutes

A. Approval of Policy rates and forms (38-61-20)

1. Personal lines
 - a. All Personal lines **forms** require prior approval from DOI
 - b. Homeowner and Personal auto **rates/rules** that have an impact of +/- 7% or less, do not have to have prior approval. (File & Use)
 - c. Only two rate increases of +/-7% or less are allowed in a 12 month period, and the second one within 12 months is subject to DOI prior approval.
 - d. All other Personal lines types of policies are prior approval for rates, rules and forms.
2. Commercial lines
 - a. Work Comp
 - i. NCCI *loss costs* are prior approval; company expense multipliers are prior approval.
 - ii. NCCI assigned risks rates are promulgated by DOI after a hearing.
 - b. Prior approval not required for rates and forms (see below)

B. Exempt Commercial Policies (38-1-20) (Reg. 69-64)

1. Includes **ALL** commercial policies except professional liability for physicians and health care providers and insurance related to credit transactions through financial institutions.
2. Commercial insurance rates and forms are not subject to prior approval by the DOI but must conform to SC statutes
3. Rates, classifications and rules do not need to be filed with the DOI
4. Policy forms do need to be filed – but don't require approval prior to their use by a carrier.
5. Insurer may use forms developed by an advisory organization (ISO, AAIS, etc.)
6. Insurers must maintain a desk file of all forms and endorsements used in SC

C. Use of Credit Information (38-73-325) (38-73-425) Bulletins 2002-04, 2004-09, 2004-12

1. SC permits the use of credit information to underwrite and price risks.
2. Carriers must include the use of credit info in their rate filings.
3. Insurers cannot refuse, cancel or non-renew a Personal Auto policy based solely on their credit score.
4. A risk can be moved to an affiliated insurer or a different rating tier.
5. Absence of a credit score cannot be used as an underwriting factor unless approved by the DOI.

SECTION 38-75-485. South Carolina Hurricane Damage Mitigation Program; grant eligibility and use. **(EXCERPT ONLY)**

(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.

(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

D. Coastal Statutes

1. Exclusion of Wind & Hail (38-75-1230)
 - a. Policy may not exclude wind & hail coverage on fire, allied lines or homeowner's policy unless property falls with area covered by SC Wind & Hail Association OR the DOI has approved the exclusion.
2. Named Storm or Wind/Hail Deductible (Reg. 69-56)
 - a. Named Storm – designated by Nat'l Weather Service or National Hurricane Center
 - b. Named Storm only applies to hurricane, tropical storm/depression.
 - c. Wind & Hail Deductibles – separate deductible applying to losses resulting from wind & hail. Doesn't have to result from a named storm.
 - d. Insurer must include an example of how the deductible functions for a policy value of \$100,000
 - e. Notice of separate deductible must be on face page of policy and Dec page
3. Loss mitigation grants (Hurricane Damage Mitigation Program) (38-75-485)
 - a. Also known as the SC Safe Home program (www.scsafehome.com)
 - b. Funded with insurance premium tax
 - c. Matching grant program to provide money to homeowners to make their property more resistant to hurricane and high-wind damage.
 - d. Must be a primary, owner-occupied residence; located in coastal region of SC
 - e. \$5000 maximum grant (\$1 for \$1 match)
 - f. Low income homeowners may qualify for non-matching
4. Catastrophe Savings Accounts (12-6-1610)
 - a. Created by the Omnibus Coastal Property Insurance Reform Act of 2007
 - b. Allows homeowner to save funds to pay insurance deductible or uninsured loss and receive a tax deduction on their state income tax.
 - c. Must be a SC resident and for their primary residence.
 - d. The amount that they can contribute depends on the amount of their deductible or if they self-insure.
 - e. Withdrawals must be made to cover qualified catastrophe expenses or else they are treated as income and subject to a penalty tax as well.
5. Other provisions of the Omnibus Coastal Property Insurance Reform Act of 2007
 - a. State income tax credits for retrofitting their properties
 - b. Premium tax credit for insurers
 - c. Availability of premium discounts and credits
 - d. Annual public hearing
 - e. Review of rates in coastal area by Director
 - f. Changes regarding the SCWHUA



SECTION 38-59-20. Improper claim practices.

Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices:

- (1) Knowingly misrepresenting to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.
- (2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, including third-party claims arising under liability insurance policies.
- (3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.
- (4) Not attempting in good faith to effect prompt, fair, and equitable settlement of claims, including third-party liability claims, submitted to it in which liability has become reasonably clear.
- (5) Compelling policyholders or claimants, including third-party claimants under liability policies, to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through suits brought by the claimants or through settlements with their attorneys employed as the result of the inability of the claimants to effect reasonable settlements with the insurers.
- (6) Offering to settle claims, including third-party liability claims, for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys' fees to recover the amount reasonably due or payable.
- (7) Invoking or threatening to invoke policy defenses or to rescind the policy as of its inception, not in good faith and with a reasonable expectation of prevailing with respect to the policy defense or attempted rescission, but for the primary purpose of discouraging or reducing a claim, including a third-party liability claim.
- (8) Any other practice which constitutes an unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party liability claims, arising under coverages provided by its policies.

SECTION 38-57-130. Misrepresentations, special inducements, and rebates prohibited on all insurance contracts.

- (3) No person may pay, allow, or give or offer to pay, allow, or give, directly or indirectly, as inducement to the purchase or the renewal of an insurance contract, any rebate of premiums payable on the contract, any special favor or advantage in any benefits payable thereon, or any valuable consideration or inducement that is not specified in the contract.

VI. Consumer Protections Statutes

A. Unfair Claims Practices (38-59-20)

1. Purpose is to protect insureds and claimants during the claim filing, investigation, and settlement process.
2. Many of them pertain to insurers and their claim representatives, they also affect producers.
3. Improper handling of claims can expose an agency to regulatory penalties and errors & omissions claims.
4. Unfair claims practices in SC include:
 - a. Knowingly misrepresenting facts or policy provisions.
 - b. Failing to acknowledge communications with respect to a claim with reasonable promptness.
 - c. Failing to use reasonable standards to assure prompt investigation and settlement of a claim.
 - d. Failing to negotiate and settle a claim promptly, fairly and in good faith.
 - e. Forcing a claimant or policyholder to file a suit to recover payment by offering a much lower settlement than the one ultimately recovered.
 - f. Offering an unreasonably low claims payment on the premise that the insured would be forced to hire an attorney and incur attorney fees in order to collect what is reasonably due.
 - g. Threatening to revoke policy or not defend an insured if a claim is filed or in an attempt to reduce a claim.
 - h. Any other practice that results in the unreasonable delay of claims payment.

B. Unfair trade practices (38-57)

1. Types of competition, advertising, or procedures that tend to deprive the public of information needed to make informed insurance decisions. Violations are subject to cease and desist orders, loss of licenses, or fines.
2. Unfair trade practices in SC include:
 - a. Misrepresentation and false advertising of policies.
 - b. False information or advertising as to insurance business or persons engaged in insurance business. (Defamation)
 - c. Fraudulent inducement to change, alter, or retain insurance.
 - d. Misrepresentations on possible claims adjustment
 - e. Forcing an insured to use a particular vendor to repair vehicle glass
 - f. Boycotts, intimidation and coercion (including by sellers/lenders)
 - g. Rebating/special inducements



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.

SECTION 38-57-160. Advertising gifts permitted.

Sections 38-57-130, 38-57-140, and 38-57-150 do not prohibit a licensed agent from giving to insureds, prospective insureds, and to others, for the purpose of advertising, an article of merchandise having a value of not more than twenty-five dollars and having an advertisement for the insurer or agent printed on it. Nothing within this section precludes a licensed agent from providing refreshments during a sales presentation which do not exceed ten dollars a person in cost.

SECTION 38-43-200. Prohibition or payment of certain commissions and fees.

(D) An insurer or insurance producer may pay or assign service fees or other valuable consideration to an insurance agency or to a person who does not sell, solicit, or negotiate insurance in this State, unless the payment violates another provision of Title 38. A payment made pursuant to the provisions of this subsection must not be based on completion of the sale of the insurance policy.

Notes:

C. Valued Policy Law (38-75-20)

1. Insurers are required to pay the face amount of a fire insurance policy in the event of a total loss by fire (or fire caused by lightning) on real property.

D. Advertising Gifts (38-57-160)

1. Gifts of \$25 and under with agents advertisement or logo on it are permitted.
2. Refreshments not exceeding @10 per person can be provided during a sales presentation.

E. Referral fees (38-43-200)

1. Referral fees can be paid to non-licensed individuals as long as the receipt of the referral fee is NOT based on the sale of a policy.
2. There is no mention of a maximum referral fee in the statute.

F. Electronic Signatures (Bulletin 2003-05)

1. Electronic Signatures in Global and National Commerce Act (eff. 10/1/00) expressly applies to the business of insurance and provides that signatures, documents or other records related to a transaction cannot be denied legal effect solely because they are in an electronic format.
2. Especially important is the recognition of consumer disclosures that are required to be provided by insurers or insurance producers.
3. SC law also permits the use of electronic signatures and the conduct of electronic commerce. (SC Digital Signatures Law/ SC Electronic Commerce Act)
4. Insurance forms may be electronically created, signed, transmitted and delivered provided the electronic methodology used meets the criteria imposed by applicable law.
5. A person may consent to conduct one transaction electronically, but refuse to conduct subsequent transactions electronically, or can withdraw their permission to conduct business electronically at any time.
6. May be some crossover, or preemption, of state and federal law.
7. Other concerns include: privacy issues, records retention, formatting/type size issues.



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 (5), 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 item (1) of subsection (a) 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 items (2) through (5) of subsection (a) 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 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) of this section 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 item (3) of subsection (a), 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.

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.

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.

VII. Cancellation & Non-renewal Statutes

- Cancellation and Non-renewal provisions apply separately to Automobile, Workers Compensation and “all other” P&C.
- Surplus Lines carriers must comply with the SC cancellation and non-renewal statutes or they risk being removed from the eligibility list.

A. Property & Casualty – except Automobile & Work Comp – but including Surplus Lines

Cancellation (38-75-730)

Cancellation means termination of a policy at a date other than its expiration date.

1. Policies may only be cancelled for one of these reasons (if in effect for at least 4 months):
 - a. Non-payment of premium
 - b. Material misrepresentation which would have caused the carrier not to issue the policy
 - c. Substantial change in the risk
 - d. Substantial breach of contractual duties, conditions, warranties
 - e. Loss of insurer’s reinsurance under certain conditions
2. Cancellation must be delivered/mailed to the insured AND the agent at least thirty (30) days in advance for all reasons above except Non-pay of premium which requires ten (10) days notice.
3. Does not apply to policies in effect less than 120 days and not a renewal of an existing policy.

Non-renewal (38-75-740)

Non-renewal means termination of a policy at its expiration date.

NEW 2021

1. Non-renewal notice must be delivered/mailed to insured AND agent at least *sixty (60) days in advance of the effective date of the policy*. (No longer a distinction between in or out of hurricane season)
2. Must be mailed to last known address.
3. Must state reason for non-renewal.
4. A homeowners policy cannot be non-renewed because the insured has filed a claim resulting from an “act of God”. (38-75-790)

- *Insurers who fail to meet the cancellation/non-renewal provisions **CANNOT** extend the policy in order to meet the notice requirements.*

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.

Notes:

Property & Casualty (con't)

Renewal (38-75-750)

1. Renewal terms, statement of premium or estimated premium must be furnished to *insured*, at the last known address, at least thirty (30) days prior to renewal date; OR furnished to the agent at least forty-five (45) days prior to expiration.
2. If renewal terms are not sent in compliance with the statute, the insured may cancel the policy within thirty (30) days following receipt of renewal terms. Any premium due must be calculated based on current policy rates – not the renewal policy rates.

➤ *Insurers who fail to meet the renewal provisions **CAN** extend the policy in order to meet the notice requirements.*

Surplus Lines (38-75-770)

1. Notice to licensed broker who placed the business and represents the insured is considered notice to the insured.

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.

SECTION 38-77-121. Application for original issuance of policy of insurance covering liability; cancellation notice; disclosure of previous cancellation or refusal to renew.

(D) The insurer may cancel without cause at any time in the first ninety days during which the policy is in effect subject to Section 38-77-122.

SECTION 38-77-123. Insurers and agents prohibited from refusing to renew automobile insurance policies due to certain factors; cancellation restrictions; penalties for violations

(B) No insurer shall cancel a policy except for one or more of the following reasons:

(1) The named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has had his driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date.

(2) The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either, directly or indirectly under any premium finance plan or extension of credit.

Notes:

B. Automobile

Cancellation (38-77-120) (38-77-123) Bulletin 2004-05

1. Must provide fifteen (15) days notice of cancellation

SECTION 38-77-120. Requirements for notice of cancellation of or refusal to renew policy.

(2) must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;

(3) must state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by subsection (B) of Section 38-77-390. However, those notification requirements must not apply when the policy is being canceled or not renewed for the reason set forth in Section 38-77-123(B)

2. If in effect for more than ninety (90) days, must state the specific reason for cancellation and only two reasons are acceptable:
 - a. Driver's license has been revoked or suspended
 - b. Non-payment of premium
3. Must inform the insured of his right to have the cancellation reviewed by the DOI
4. Due to Financial Responsibility laws, once a policy is issued, it must stay in effect for 60 days – EXCEPT under one of the following circumstances:
 - a. Check or other method of payment for the initial payment is invalid. In this case, cancellation is effective at policy inception.
 - b. Insured sells/disposes of the vehicle.
 - c. Insured buys another policy.
 - d. Insured fails to make an installment payment. In this case, the policy must remain in effect for 30 days, so cancellation could not be effective before the 31st day.
5. An auto policy may be cancelled within the first sixty (60) days, however, once issued an auto policy MUST stay in effect for 60 days due to the Financial Responsibility statute (56-10-280) so the cancellation would not go into effect until the sixty-first (61st) day.

SECTION 56-10-280. Insurance not to be issued for period less than six months; contract or policy valid for at least sixty days; cancellation within sixty days.

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days only under one or more of the following circumstances:

(1) a check or bank draft tendered by the insured for payment to an agent, an insurance company, or a premium finance company is returned unpaid for insufficient funds or other reason by the insured's financial institution. If the check or draft is an initial payment made by an applicant for insurance or a payment made by an insured to renew a policy, the cancellation is effective as of the policy inception or renewal date;

(2) the insured produces satisfactory proof from the Department of Motor Vehicles that he has sold or otherwise disposed of the insured vehicle or surrendered its tags and registration;

(3) the insured has secured another policy that meets the financial responsibility requirements prescribed in this chapter; (4) the insured fails to pay

when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

SECTION 38-77-123. Insurers and agents prohibited from refusing to renew automobile insurance policies due to certain factors; cancellation restrictions; penalties for violations.

(A)(1) No insurer shall refuse to renew an automobile insurance policy because of any one or more of the following factors:

- (a) age;
- (b) sex;
- (c) location of residence in this State;
- (d) race;
- (e) color;
- (f) creed;
- (g) national origin;
- (h) ancestry;
- (i) marital status;
- (j) income level.

(2) No insurer shall refuse to renew an automobile insurance policy solely because of any one of the following factors:

- (a) lawful occupation, including the military service;
- (b) lack of driving experience or number of years of driving experience;
- (c) lack of supporting business or lack of the potential for acquiring such business;
- (d) one or more accidents or violations that occurred more than thirty-six months immediately preceding the upcoming anniversary date;
- (e) one or more claims submitted under the uninsured motorists coverage of the policy where the uninsured motorist is known or there is physical evidence of contact;
- (f) single claim by a single insured submitted under the medical payments coverage or medical expense coverage due to an accident for which the insured was neither wholly nor partially at fault;
- (g) one or more claims submitted under the comprehensive or towing coverages. However, nothing in this section prohibits an insurer from modifying or refusing to renew the comprehensive or towing coverages at the time of renewal of the policy on the basis of one or more claims submitted by an insured under those coverages, provided that the insurer mails or delivers to the insured at the address shown in the policy, written notice of the change in coverage at least thirty days before the renewal;
- (h) two or fewer motor vehicle accidents within a three-year period unless the accident was caused either wholly or partially by the named insured, a resident of the same household, or other customary operator; or
- (i) an insured who uses his personal automobile for volunteer emergency services and who provides a copy of the policy promulgated by the chief of his department to his insurer on request.

(3) Nothing contained in subsection (A)(1)(f), (g), and (h) of this subsection 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, national origin, ancestry, location of residence in this State, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director.

(B) No insurer shall cancel a policy except for one or more of the following reasons:

- (1) The named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has had his driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date.
- (2) The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either, directly or indirectly under any premium finance plan or extension of credit.

Automobile (con't)

Renewal/Non-renewal (38-77-123)

1. There are several factors that insurers CANNOT base non-renewal on including age, sex, location of residence(except for a territorial filing), race, income level, marital status, etc.
2. There are some additional factors that cannot be the sole reason for a non-renewal including lack of driving experience, lack of supporting business, certain violations/accidents, etc.

C. Workers Compensation (Regulation 67-405)

1. A Work Comp policy requires a 30 day notice of cancellation or non-renewal. Notice must also be furnished to the SC Work Comp Commission

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

(e) Cancellation of a workers' compensation insurance policy under this section is not effective unless written notice of cancellation is delivered or mailed to the South Carolina Workers' Compensation Commission, and to the insured, not less than the time frame required for notice to the insured under this section."

Notes:

SECTION 42-1-150. "Employment" defined.

The term "employment" includes employment by the State, all political subdivisions thereof, all public and quasi-public corporations therein and all private employments in which four or more employees are regularly employed in the same business or establishment.

SECTION 42-1-540. Employee's rights and remedies under Title exclude all others against employer.

The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

Provided, however, this limitation of actions shall not apply to injuries resulting from acts of a subcontractor of the employer or his employees or bar actions by an employee of one subcontractor against another subcontractor or his employees when both subcontractors are hired by a common employer.

SECTION 42-1-400. Liability of owner to workmen of subcontractor.

When any person, in this section and Sections 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

SECTION 42-1-440. Indemnity of principal contractor.

When the principal contractor is liable to pay compensation under any of Sections 42-1-400 to 42-1-450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workmen independently of such sections or from an intermediate contractor, and have a cause of action therefor.

A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant.

VIII. Workers Compensation

A. Covered Employments (42-1-150)

1. All public employments
2. Most private employments with four (4) or more employees

B. Exemptions (42-1-360)

1. Casual labor/not in course of employer's business
2. Persons employed by employer with total annual payroll during previous year of less than \$3000
3. Agricultural employees
4. Certain agricultural product salespeople
5. Commissioned real estate agents working under an independent contract agreement
6. Certain truck drivers

C. Exclusive Remedy (42-1-540)

1. Work comp benefits are the exclusive remedy of the employee against the employer and also against a fellow employee.

D. Liability of Principal Contractor (42-1-400; 42-1-440)

1. Owners and contractors who hire others to perform work for them are liable for compensation to the employees of the contractors/subcontractors as if they were direct employees.
2. Principal contractor is entitled to recover damages from employees direct employer and call that employer as a codefendant if necessary



SECTION 38-45-10. "Insurance broker" defined.

(A)(1) An "insurance broker", as used in this chapter, means a property and casualty insurance producer licensed by the director or his designee who:

- (a) sells, solicits, or negotiates insurance on behalf of an insured;
- (b) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insured;
- (c) advertises or otherwise gives notice that he receives or transmits a surplus lines application or policies;
- (d) receives or delivers a policy of surplus lines insurance for an insured on behalf of a surplus lines insurer;
- (e) receives, collects, or transmits a premium of surplus lines insurance; or
- (f) performs another act in the making of a surplus lines insurance contract for or with an insured.

(2) However, an insurance broker's license is not required of a broker's office employee acting within the confines of the broker's office, under the direction and supervision of the licensed broker and within the scope of the broker's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties.

(B) An insurance broker may place that insurance either with an eligible surplus lines insurer or with a licensed insurance producer appointed by an insurance carrier licensed in this State.

SECTION 38-45-90. Duties of brokers placing business with nonadmitted insurers; statements and reports.

At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in its home state, that it is solvent, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any given time to maintain the insurer's status as an eligible surplus lines insurer. The director or his designee may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains its status as an eligible surplus lines insurer, a duly licensed resident broker may, under the terms of this chapter, place business with the insurer. An insurance broker shall exercise due care in the placing of insurance. Each broker transacting business in the State during a calendar year shall annually file with the department within thirty days after December thirty-first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker's books, papers, and accounts must at all times be open to the inspection of the director or his designee.

SECTION 38-5-180. Authority required for insurer to operate in State.

No insurer may operate from a location within South Carolina unless it is licensed as an insurer as provided in Section 38-5-10, or permitted to operate as an approved reinsurer as provided in Section 38-5-60, or qualified to operate as an eligible surplus lines insurer as provided in Section 38-45-90.

IX. Surplus Lines

*** Big changes in 2016***

A. Broker Licensing (38-45-10)

1. Broker is defined as a producer who:
 - a. "Sells, solicits or negotiates" on behalf of an *insured*
 - b. Takes/signs applications
 - c. Advertises they are a broker
 - d. Delivers policies
 - e. Collects premium
2. Exceptions/exemptions:
 - a. Employees acting within the confines of the brokers office, under brokers direct supervision, performing clerical office duties.
 - b. *A P&C producer who places surplus lines insurance through another licensed insurance broker*

3. *However, you still need a S.C. insurance broker license if you:*

- a. **Directly represent or contract with surplus lines or non-admitted insurance companies**
If you work directly with a surplus lines company – to provide surplus lines insurance to consumers or other insurance producers, you will need an insurance broker's license.
- b. **Pay surplus lines taxes to the SC Department of Insurance**
If you pay surplus lines taxes to the Department of Insurance, you will need an Insurance broker's license.
- c. **Add a fee to a surplus lines policy in accordance with S.C. Code Ann. § 38-45-160.**
If you are adding a fee to a surplus lines policy in accordance with S.C. Code 38-45-160, you will need an insurance broker's license
- d. **Access a licensed (admitted) insurance company through another licensed producer of that company (and you do not have an appointment with that company)**
If you access licensed (admitted) insurance companies through another licensed producer of that company (and you are not directly appointed with that company also), you will need an insurance broker's license.



SECTION 38-45-90. Duties of brokers placing business with nonadmitted insurers; statements and reports.

At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in its home state, that it is solvent, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any given time to maintain the insurer's status as an eligible surplus lines insurer. The director or his designee may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains its status as an eligible surplus lines insurer, a duly licensed resident broker may, under the terms of this chapter, place business with the insurer. An insurance broker shall exercise due care in the placing of insurance. Each broker transacting business in the State during a calendar year shall annually file with the department within thirty days after December thirty-first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker's books, papers, and accounts must at all times be open to the inspection of the director or his designee.

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SECTION 38-45-80. Brokers to keep records of business done, furnish to director for inspection.

All brokers doing any kind of insurance business in this State shall make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the person to whom issued of every policy or certificate of renewal. The information from these records must be furnished to the director or his designee on demand and the original books or records are open to the inspection of the director or his designee on demand. These records must be kept for a minimum of five years. The director or his designee also may conduct examinations of broker records. Examinations must be conducted in accordance with the requirements of Chapter 13 of this title. The broker is responsible for the costs of any examination.

B. Duties of a Broker (38-45-90)

1. Must attempt to place risk in admitted market first.
2. Must get one *or more* declinations from admitted carriers.
3. Must place business only with eligible surplus lines carriers.
4. Must file a report of business placed in surplus lines with the DOI within 30 days after the end of the year.

C. Surplus Lines Authorization (38-45-90) (38-5-180)

1. Carrier must be approved as an “eligible surplus lines carrier”.
2. Coverage must be placed through a licensed broker.
3. “White list” or List of Eligible Surplus Lines carriers is found on the DOI website.

D. Surplus Lines Tax

1. Premium taxes paid on surplus lines policies are collected by the broker.
2. The must appear on the dec page of the policy – separate from the premium.
3. Rate in SC is now a blended tax of 6%.
4. Broker must remit taxes to the DOI on a quarterly basis

E. Maintenance of Records (38-45-80)

1. Policy records showing the policy number, date, term, amount insured, premium and person insured must be kept for a minimum of five (5) years.



Notes:

F. Non-Admitted and Reinsurance Reform Act (NRRA) – Dodd-Frank Act
(Bulletins 2012-08 & 2012-09)

1. Federal Act passed in 2010.
2. Placement of non-admitted insurance under the jurisdiction of the insured's home state.
3. Broker premium tax payments made to insured's home state.
4. Insured's home state determines the licensing requirements of the broker
5. Home state is state where insured maintains principal place of business or principal residence; or if 100% of the insured risk is located out of the state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
6. In SC, it established a "blended" tax rate of 6%. (Combined the previous 4% state tax and 2% municipal tax)
7. ALL non-admitted insurance risks are subject to the 6% blended tax.
8. Established an "Exempt Commercial Purchaser" as one who:
 - a. Procures coverage through a qualified risk manager
 - b. Pays at least \$100,000 in P&C premium and meets one of the following criteria:
 - i. Had a net worth of over \$20 million at the end of the preceding fiscal year;
 - ii. Had net revenues or sales over \$50 million at the end of the preceding fiscal year;
 - iii. Has more than 500 full-time employees per individual company, or is a member of an affiliated group employing more than 1,000 employees in the aggregate;
 - iv. Is a municipality with a population of more than 50,000 people; or
 - v. Is a nonprofit organization or public entity generating annual budgeted expenditures of at least \$30 million

➤ If insured meets definition of an Exempt Commercial Purchaser, the broker does not have to satisfy the requirement of a due diligence search for an admitted market as long as the broker discloses that insurance may be available in the admitted market which may provide greater protection and more regulatory oversight; and the Exempt Commercial Purchaser requests in writing that the broker procure coverage in a nonadmitted company.

X. Other Statutes of Interest

A. UM/UIM stacking

1. There are no laws in SC that govern the “stacking” of policy limits – stacking is based on case law.
2. SC follows a “Limits to Damages” trigger – If damages of the injured insured exceed policy limits of the at-fault driver, then policy limits are triggered.

Stacking				
Type of Stacking	UM	UIM	Max. # of Vehicles	Who May Stack?
Intrapolicy	Allowed	Same as UM	Not specified	Named insured and family members
Interpolicy	Allowed	Same as UM	Not specified	Any insured
Other Coverage Details				
"UMV"	Includes a "hit and run" vehicle that makes physical contact, or the facts of the accident must be corroborated and attested to by competent evidence of an eyewitness other than the owner or operator of the vehicle at the time of accident			
UIM Trigger	Damages Trigger: Compares amount of at-fault party's liability limits to injured insured's damages			

International Risk Management Institute, Inc. (IRMI)

XI. Other SC Insurance Programs

A. SC Wind & Hail Underwriting Association (SCWHUA)

Residual property insurance market in SC that provides coverage for the perils of wind and hail in the coastal area of the state that are designated by statute as “Beach”.

Both homes and businesses are eligible. There are maximum limits available per structure and waiting periods for coverage may apply.

B. Associated Auto Insurers Plan of SC (AAIPSC)

Assigned risk plan in SC for personal automobile insurance that can't be placed in the voluntary market. All insurers licensed and writing automobile insurance in the state must participate in the AAIPSC by accepting assignments to provide automobile insurance. All producers holding a valid license to transact automobile insurance business in South Carolina must be certified by AAIPSC in order to submit eligible automobile insurance applications to the Plan. Applicants must declare and certify that they have tried and failed to obtain automobile insurance in South Carolina within the preceding 60 days.

C. South Carolina Commercial Automobile Insurance Plan (SCCAIP)

Created in 1986 to provide commercial automobile insurance coverage to those who are unable to obtain coverage in the voluntary market.

Types of vehicles insured include:

- Buses
- Tour Guide services
- Commercial trucks and tractors (over 20,000 lbs.)
- Pulpwood trucks
- Taxi cabs

D. National Council on Compensation Insurance (NCCI)

Residual market for Workers Comp in SC, but NCCI is also a rating and data collection bureau for the workers comp industry. NCCI produces manuals that govern the details of how WC premiums are calculated. They also compute the experience modifications factors for risks.

E. SC Medical JUA

Created by statute in 1975 in response to the volatile medical malpractice market in SC at the time. It covers healthcare professionals and facilities

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Exhibits

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INSURANCE BULLETIN 2002-03 Issued upon April 12, 2002

TO: All Persons Transacting the Business of Insurance Within the State of South Carolina

FROM: Ernst N. Csiszar *Ernst N. Csiszar*
Director

RE: USA Patriot Act of 2001

On October 26, 2001, President Bush signed into law the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001”¹ (the Act). This law, enacted in response to the terrorist attacks of September 11, 2001, strengthens our Nation’s ability to combat terrorism and prevent and detect money-laundering activities.

I. Purpose

The purpose of this Bulletin is to advise persons or entities regulated by the South Carolina Department of Insurance of important new responsibilities under the Act. In particular, Section 352 of the Act amends the Bank Secrecy Act (“BSA”)² to require that all financial institutions establish an anti-money laundering program, and Section 326 amends the BSA to require the Secretary of the Treasury (Treasury) to adopt minimum standards for financial institutions regarding the identity of customers that open accounts.

II. Section 352 – Establishing Anti-Money Laundering Programs

Section 352 of the Act requires the establishment of an **anti-money laundering program**, including, at a minimum:

¹ The full text of the law can be obtained at www.access.gpo.gov/congress. Scroll to public and private laws, select 107th Congress, and select Public Law 107-56.

² Codified in subchapter II of Chapter 53 of Title 31, U.S. Code.

- The development of internal policies, procedures and controls; these should be appropriate for the level of risk of money laundering identified.
- The designation of a compliance officer; the officer should have appropriate training and background to execute his responsibilities. In addition, the compliance officer should have access to senior management.
- An ongoing employee training program; a training program should match training to the employees' roles in the organization and their job functions. The training program should be provided as often as necessary to address gaps created by movement of employees within the organization and turnover.
- An independent audit function to test the programs. The independent audit function does not require engaging outside consultants. Internal staff that is independent of those developing and executing the anti-money laundering program may conduct the audit.

Treasury is currently drafting a regulation describing the anti-money laundering compliance program for insurers. The regulation may borrow from the anti-money laundering compliance program rule recently proposed by the NASD for broker-dealers,³ and is expected to be promulgated in late spring or early summer.

Insurance companies are included in the BSA's definition of "financial institution," and should be prepared to comply with the new law and the regulations promulgated thereunder. **Section 352 of the Act becomes effective on April 24, 2002; all insurance companies are required to be in compliance with the law by that date.**

As part of its rulemaking process, Treasury is determining the extent to which other insurance entities will be considered financial institutions for purposes of the regulation. It is anticipated that the regulation could cover all other persons and entities engaged in the business of insurance, including brokers, agents, and managing general agents, and may also include other regulated entities. These insurance entities will be required to comply with the regulation by the regulation's effective date.

Anti-money laundering programs are not anticipated to be "one size fits all." Rather, it is expected that they will be developed using a risk-based approach. Development of an anti-money laundering program should begin with identification of those areas, processes and programs that are susceptible to money laundering activities. The practices and procedures implemented under the program should reflect the risks of money laundering given the entity's products, methods of distribution, contact with customers and forms of customer payment and deposits.

III. Section 326 – Customer Identification

Section 326 of the Act amends the BSA to require that Treasury issue regulations setting forth **minimum standards for financial institutions regarding the identity of their customers** in connection with the purchase of a policy or contract of insurance. This program must set forth customer identity verification and documentation procedures, as well as procedures the insurer

³ 67 C.F.R. 8565 (February 25, 2002).

will employ to notify its customers about this requirement and determine whether the customer appears on government lists of known or suspected terrorists or terrorist organizations.

Final regulations regarding this requirement are to be issued by the Department of the Treasury by October 26, 2002. Proposed regulations will be published in the Federal Register⁴ later in the year. Through the rulemaking process, Treasury will determine which insurance entities will be subject to the regulations. Insurance entities subject to the rules will be required to comply when the final Treasury regulations become effective.

IV. Contact Information

If you have any questions or requests for additional information regarding this Bulletin, please direct them to the attention of Gwendolyn L. Fuller, Deputy Director, Office of Financial Services and General Counsel, at (803) 737-6200. Questions about the Act should be directed to Linda L. Duzick, Office of Thrift Supervision, serving as the insurance industry liaison for the Department of the Treasury, at (202) 906-6565 or at linda.duzick@ots.treas.gov.

⁴ The Federal Register website address is www.access.gpo.gov/nara.

BULLETIN NUMBER 2002 - 04

(Issued upon May 24, 2002)

To: Property and Casualty Insurers

From: Ernst N. Csiszar
Director



Subject: Credit Scoring and Private Passenger Automobile Insurance

SCOPE AND EFFECTIVE DATE

This bulletin applies to the rating, underwriting, cancellation or renewal of any policy of automobile insurance covering an individual private passenger automobile, as defined in Section 38-77-30, South Carolina Code of Laws.

The effective date for this bulletin is January 1, 2003.

PROHIBITED USES

An insurer shall not:

- a. Refuse to insure, cancel, or non-renew a policy based solely on an insured's credit history or credit score, without consideration of any other underwriting criteria. Offering to write a policy by an affiliated insurer or within a different tier of the same insurer with continuous coverage shall not constitute a refusal to insure, cancellation or non-renewal within the terms of this bulletin.
- b. Refuse to insure, cancel, or non-renew a policy based solely on an insured's credit history or credit score that the insurer knows is inaccurate or incomplete. Information contained in a credit report shall not be considered inaccurate or incomplete because an insured has protested that information unless the credit reporting agency finds that the information is inaccurate or incomplete.
- c. Use credit history or a credit score for any arbitrary, capricious, or unfairly discriminatory reason.

ACTUARIAL JUSTIFICATION AND USE

A filing that includes credit scoring must include loss experience justifying the applicable surcharge or credit. The justification may consist of an exhibit demonstrating the relationship between credit score and the loss experience. When an insurer is unable to obtain sufficient information to evaluate a

consumer's credit history or to calculate a consumer's credit score, the insurer underwriting the risk shall have the option of doing one of the following:

1. Treating the consumer as otherwise filed, if the insurer demonstrates that having no credit score is related to the risk of insurance,
2. Treating the consumer as if the applicant or insured had a neutral credit history or credit score, as defined by the insurer, or
3. Excluding the use of credit as a factor and using only other underwriting criteria.

PROPRIETARY INFORMATION

A filer may request that its credit score data be kept proprietary as a commercially valuable trade secret and designate parts of its filings accordingly. The Department, absent court order, will not release information that is filed on a proprietary basis. Any proprietary information shall be submitted under separate cover and must clearly state the desires of the party filing the information as to its confidentiality.

RECHECKING OF CREDIT SCORES

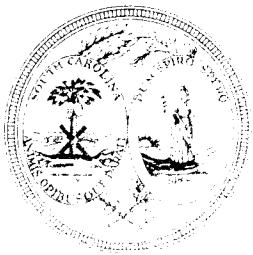
An insurer has the option of checking or rechecking an insured's credit history or credit score prior to renewal. An insured may request that the credit score be rechecked no more than once annually and the request shall be in writing.

INACCURATE CREDIT REPORTS

The federal Fair Credit Reporting Act establishes a mechanism through which disputed information is investigated and corrected. In the event of a dispute by the insured, the insurer will provide the name, telephone number and address of the information provider to the insured. If it is determined by the re-underwriting that the consumer has overpaid the premium, the insurer shall refund to the consumer the amount of the overpayment of premium. Such payment shall be calculated back to the shorter of the last twelve months of coverage or the actual period of coverage.

DISCLOSURE

The insurer should disclose at the time an insurance application is taken that it may/will gather credit information in connection with such application and in the future. The disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure to any insured on a renewal policy, if such consumer has previously been provided a disclosure. A disclosure by one insurer of a group of affiliated insurers shall be considered a disclosure for all members of the group.



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BULLETIN NUMBER 2003-05

To: All Members of the Insurance Industry

From: Ernst N. Csiszar
Director

Re: The Use of Electronic Commerce (Signature and Records) in Connection
with the Business of Insurance and Other Related Products or Engaging in
Other Business Regulated by the South Carolina Department of Insurance

Date: April 24, 2003

I. Purpose

Advances in technology are allowing businesses to integrate various elements of electronic commerce into their operations. The Internet and electronic commerce have resulted in increased opportunities and efficiencies for both industry and consumers. It has been the position of this Department that insurers and other licensees may transact the business of insurance electronically, provided they comply with the applicable law governing this medium. The purpose of this Bulletin is to provide information to consumers and members of the industry about the electronic transaction of the business of insurance.

II. Overview of the Law on Electronic Commerce

It has been the position of the South Carolina Department of Insurance that the business of insurance may be transacted electronically. This position is supported by both state and federal law. What follows is a summary of some of the pertinent state and federal statutes affecting the transaction of the business of insurance electronically.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C.A. § 7001, became effective on October 1, 2000. The E-Sign Act was intended to spur the growth of electronic commerce. It applies to foreign and interstate commerce by ensuring that electronic contracts, signatures and records have the same legal status as ink and paper counterparts. The E-Sign Act expressly applies to the business of insurance. Specifically, the E-Sign Act provides that signatures, documents or other records related to a transaction cannot be denied legal effect solely because they are in an electronic format. Especially important for the insurance industry is the E-Sign Act's recognition

that consumer disclosures required to be provided by insurers or insurance producers may be provided exclusively through electronic means, if certain procedural safeguards are followed.

The recently enacted federal "*Electronic Signatures in Global and National Commerce Act*," 15 U.S.C. §§ 7001-7031 (2000), may preempt, in whole or in part, the South Carolina Digital Signatures Law. Generally speaking, insurance transactions may be effectuated electronically over the Internet to the same extent that they may be effectuated by other means. That is, effectuating an insurance transaction over the Internet does not add any additional requirements not otherwise required under the South Carolina insurance laws. However, requirements may not be disregarded, such as document formatting and signature requirements, because the transaction is being effectuated over the Internet. Thus, if a statute or regulation requires a signature to effectuate a certain type of insurance policy, then a signature must be obtained.

Many other states have adopted a model state-based electronic signatures and records law called the Uniform Electronic Transactions Act (UETA). The E-Sign Act provides that UETA will govern the validity of electronic signatures and electronic contracts or other records if a state has adopted UETA. UETA's ultimate objective is to make electronic contracts as enforceable as contracts memorialized on paper; it does not set forth new standards for the formation or performance of contracts. UETA does not mandate electronic contracts, UETA § 5(a), but leaves it to the option of the parties involved whether or not to contract electronically or by traditional means. UETA expressly provides that it "applies only to transactions between parties each of which has agreed to conduct transactions by electronic means." UETA § 5(b). The Act also makes it clear that "[a] party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means." *Id.* at § 5(c). Decisions to contract by electronic means may be made on a case-by-case basis.

III. Regulatory Requirements

South Carolina has not enacted UETA. The South Carolina Electronic Commerce Act (SCECA), SC Code Ann. § 26-5-10 *et seq.*, establishes a legal framework in South Carolina for the conduct of electronic commerce. The SCECA specifies five electronic signature criteria that, if met, give the same validity and effect to an electronic signature that is given to a signature affixed by hand. Because the SCECA is not UETA, the E-Sign Act may preempt the SCECA or certain portions thereof. Because of the broad preemption provisions of the E-Sign Act, there is uncertainty as to whether insurers, agents and other licensees of the Department must comply with some or all of the requirements of the SCECA.

Accordingly, insurance forms may be electronically created and signed and transmitted or delivered, *provided* the electronic methodology implemented meets the criteria imposed by applicable law. All other applicable statutory and regulatory requirements must also be met. The electronic version of an existing insurance application or form must be submitted to the Department for approval (if subject to prior

approval) if the electronic version differs from an already-approved form in text or other material manner. Where there are no textual differences in the forms, no separate approval is required for the electronic form.

The South Carolina Department of Insurance encourages members of the insurance industry carefully to review the SCECA as well as other applicable federal laws in connection with the use of electronic signatures and records in their operations. Insurers, agents and third party administrators, *et al.*, incorporating the use of electronic commerce into their operations should review the legal and technical ramifications of such a decision as well as their current forms and procedures to determine whether they need to be revised to accommodate electronic commerce. In addition, record retention procedures should be reviewed to ensure proper maintenance, integrity, security and privacy of electronic documents.

Insurance transactions subject to the SCECA or the E-Sign Act may also be subject to other applicable law. Regulated persons and entities should refer to other applicable law when seeking to integrate elements of electronic commerce into their insurance or other business operations. For example, the following should be considered:

- Electronic transactions must comply with the privacy requirements of the federal Gramm-Leach-Bliley Act; the federal Health Insurance Portability and Accessibility Act (HIPAA), and related state statutes and regulations;
- Any person or entity that wishes to transact the business of insurance in South Carolina must be properly licensed, registered or otherwise authorized to conduct the business of insurance within this state;
- Laws requiring that information be produced or made available to the Department also apply to information created or maintained in an electronic format;
- Contracts, policies and other products marketed to South Carolina residents by electronic commerce must meet applicable legal requirements, including the following:
 - requirements regarding the free look period specified in South Carolina law;
 - formatting requirements including pagination and type size, as well as requirements that certain language be conspicuous or be placed in a certain location within a document;
 - requirements regarding prior approval; file and use subject to review and/or approval; file for information; and/or exemption from review.

Although transactions may be conducted electronically, neither South Carolina nor federal law mandates that it be. The use of electronic signatures and records is voluntary. Accordingly, a person who has consented to conduct one transaction electronically may refuse to conduct subsequent transactions electronically. Likewise, neither state nor federal law limits the ability to assert that an electronic signature is (i) a forgery; (ii) used without permission; or (iii) invalid (other than solely on the grounds that it is electronic in nature). Concomitantly, these laws also do not affect the timing or content of any disclosure required to be provided to the consumer under any relevant law

or regulation. However, under the E-Sign Act notices of the termination or lapse of life insurance policies (but not annuities) and health insurance policies may not be provided through an electronic record. Requirements that a document be notarized or made under oath may be accomplished electronically, provided all other legal requirements of the relevant statute are satisfied.

Electronic records that take the place of paper records that are required to be provided to a consumer in writing (e.g., delivery of an insurance policy) must be capable of review, retention and printing by the consumer as long as the consumer is using the types of computer hardware and software specified by the Provider. Federal law also provides that the consumer must affirmatively consent to the use of electronic signatures and records and the consumer must not have withdrawn his or her consent to the use of electronic signatures and records prior to such use. To satisfy the consent requirement, the consumer must consent electronically, or confirm consent electronically, in a manner that reasonably demonstrates that he or she can access the record in the electronic format used by the Company.

IV. Questions

Please direct questions regarding the content of this Bulletin to the attention of:

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This Bulletin may be viewed and printed from our website at www.doi.state.sc.us.



South Carolina Department of Insurance

MARK SANFORD
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ERNST N CSISZAR
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BULLETIN NUMBER 2004 - 02

(Issued upon February 9, 2004)

To: Property and Casualty Insurers

From: Ernst N. Csiszar
Director

Subject: Glass Deductible and Loss Runs

Questions have been received at the Department concerning two issues affecting the Property and Casualty Insurance Market. This bulletin will address issues of obtaining loss runs, and glass deductibles for automobile insurance.

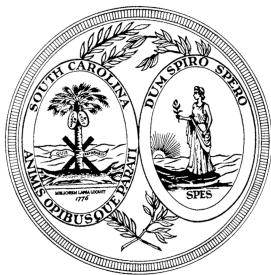
LOSS RUNS

Insurers collect the claims experience of policyholders for many lines of insurance. These reports are typically for the past three years and are often called "loss runs". An insured or a former insured may request a loss run once for each policy period and the insurer must provide such loss run at no cost. If more requests are made, the insurer may make a nominal charge for the cost of preparing and mailing such a report not to exceed 25 cents per page plus mailing cost.

GLASS DEDUCTIBLE

South Carolina Code of Laws, Title 38, Chapter 77, Section 280 provides that insurers may not offer a glass deductible. This statute applies to private passenger automobiles and small commercial automobiles as defined in Title 38, Chapter 77, Section 30. It does not apply to large commercial automobile insurance policies.

The contact person for this Bulletin is Dean Kruger, Chief Casualty Actuary, Phone 803-737-5774, Fax 803-737-6233, E-mail dkruger@doi.state.sc.us.



South Carolina Department of Insurance

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BULLETIN NUMBER 2004 - 05

(Issued upon April 7, 2004)

To: Property and Casualty Insurers Writing Automobile Insurance

From: Ernst N. Csiszar
Director *Ernst N. Csiszar*

Subject: Automobile Insurance Cancellations

Questions have been received at the Department concerning automobile cancellation laws. This bulletin will address the issue of cancellation during the first 60 days of the policy period and when such cancellation may be effective.

Section 38-77-123(B) provides that no insurer may cancel a policy except for the following reasons: 1) the driver's license has been revoked or suspended or 2) nonpayment of premium. *See S. C. Code Ann. §§ 38-77-123 (2002).* Two additional sections of the South Carolina Code address cancellation of insurance policies within the first 3 months of the policy. *See S. C. Code Ann. §§ 38-77-121, 56-10-280 (2002).* Section 38-77-121(D) provides that an insurer may cancel without cause at any time in the first ninety days during which the policy is in effect subject to Section 38-77-122. Section 56-10-280 provides that the policy can be canceled within the first 60 day for nonpayment of the initial premium.

Moreover, § 56-10-280 provides:

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. **A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured.** However, a contract or policy may be canceled within the first sixty days **only under one or more of the following circumstances** (emphasis added):

(1) a check or bank draft tendered by the insured for payment to an agent, an insurance company, or a premium finance company is returned unpaid for insufficient funds or other reason by the insured's financial institution. If the check or draft is an initial payment made by an applicant for insurance or a payment made by an insured to renew a policy, the cancellation is effective as of the policy inception or renewal date.

(2) the insured produces satisfactory proof from the department that he has sold or otherwise disposed of the insured vehicle or surrendered its tags and registration.

(3) the insured has secured another policy that meets the financial responsibility requirements prescribed in this chapter.

(B) This section does not prohibit refunds to the insured for cancellations after sixty days resulting from causes other than nonpayment of premium. Where an insurance company or premium finance company cancels a contract or policy pursuant to this section for nonpayment of premium under the circumstances in subsection (A) which occurs within the first sixty days, the insurance company, premium finance company, or agent may charge and collect a fifteen-dollar penalty in addition to that otherwise provided by law, and the penalty charge is not a premium charge.

“Underwriting reason” is not set forth within the statute as a ground for cancellation. Section 56-10-280 is a financial responsibility statute. It provides that a policy must stay in effect at least 60 days to meet financial responsibility requirements.

A policy may be canceled within the first 90 days for underwriting reasons in accordance with § 38-77-121(D). There appears to be a legitimate conflict between §§ 56-10-280 and 38-77-121(D). In determining the manner in which a statutory conflict is resolved the court in Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E. 2d 22 (1943) held “under the principle that the last expression of the legislative will is the law where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails.” The last legislative expression is § 56-10-280 which was amended July 20, 2001. Thus, a policy may be cancelled within the first 60 days only in accordance with the provisions set forth in § 56-10-280. However, due to the apparent conflict between §§ 56-10-280 and 37-77-121(D), the Department has construed these two statutes so as to give effect to both. “Statutes in apparent conflict should be construed, if possible, to allow both to stand and give effect to each.”

Adoptive Parents v. Biological Parents, 315 S.C. 535, 446 S.E. 2d 404 (1994)

Accordingly, a policy may be canceled within the first 60 days for underwriting reasons in accordance with §38-77-121(D), but that cancellation is not effective until the 61st day due to the 60-day financial responsibility requirement set forth in §56-10-280.

The contact person for this Bulletin is Dean Kruger, Chief Casualty Actuary, Phone 803-737-5774, Fax 803-737-6233, E-mail dkruger@doi.state.sc.us.



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BULLETIN NUMBER 2006-04

To: All Property and Casualty Insurers Writing Automobile Insurance Within the State of South Carolina

From: Eleanor Kitzman *sk*
Director

SUBJECT: Cancellation of Automobile Insurance Policies Within First 60 Days
Automobile Insurance Cancellations Pursuant to 2006 S.C. Act No. 315
(S.C. Code Ann. § 56-10-280)

DATE: July 27, 2006

The purpose of this Bulletin is to bring to your attention recent legislative changes affecting cancellation provisions for private passenger automobile insurance policies (policy). 2006 S.C. Act No. 315 (Act 315) amends § 56-10-280 by adding subsection 4 to permit cancellation of an automobile insurance policy for nonpayment of premium.

Section 56-10-280, as amended, now provides that a contract or policy may be cancelled within the first sixty days...if:

(4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

The effect of this amendment is that a policy may now be canceled *within* the first sixty days for nonpayment of premium, but may not be cancelled before the 31st day. All other provisions of South Carolina law regarding the cancellation of automobile insurance policies remain unchanged. *See* S.C. Code Ann. §38-77-120 (2002); *also* S.C. Code Ann. §38-77-390 (2002).

Effective August 1, 2006, all automobile property and casualty insurance policy forms offered in this state must comply with this statutory change. Insurers may amend their policy forms by endorsement. These forms must be submitted for approval to Carla Lachance, Manager, Forms and Rates, at the address listed below. Questions regarding

the content of this bulletin or filing requirements may be directed to her attention at the following address.

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Manager
Forms and Rates
South Carolina Department of Insurance
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Columbia, South Carolina 29223
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Director of Insurance

BULLETIN NUMBER 2006-08

TO: All Insurers and Producers Transacting Insurance Business Within the State of South Carolina

FROM: Eleanor Kitzman, Director *Eleanor Kitzman*

SUBJECT: Service and Administrative Fees

DATE: August 4, 2006

Section 38-3-110 provides that the director shall regulate the rates and service of every insurer and fix just and reasonable standards, classifications, regulations, practices and measurements of services to be observed and followed by every insurer doing business in this state. S.C. Code Ann. § 38-3-110 (2002). The purpose of this Bulletin is to clarify the Department's position regarding, and to set standards for, the charging of service or other administrative fees in connection with insurance policies issued, and risks located, in this state.

Policy-level Fees

Generally, charging additional fees for services that are an integral or necessary part of the insurance contract or insurance transaction or prerequisite to insurance coverage are limited by South Carolina law. Section 38-55-50 provides, in pertinent part, that "an insurer, its agent, or an insurance broker may not make a contract of insurance or agreement as to a contract other than as plainly expressed in the policy issued."¹ Service and/or administrative fees that apply to all insureds, or classes of insureds, constitute an agreement as to the contract of insurance and are not permissible unless plainly expressed in the policy issued, which includes the declarations page and any endorsements. Examples of these fees include application/policy/origination fees, inspection fees, risk management fees, and the like. These types of fees may only be charged by insurers and only if set forth in the policy, declarations page or endorsements and reflected in the premium rate charged for the policy.² Producers may not charge such fees and brokers may do so only as narrowly permitted by § 38-45-160.

Policy-level fees must be included in the rate filing as a part of the overall rate change request. These types of fees are considered premium for premium tax purposes and must be reported as such. Policy-level fees may not be fully earned and must be refunded on a pro-rata basis if the policy cancels prior to expiration.

¹ In *Maryland Casualty Company v. Conner*, 200 F. Supp. 647 (E.D.S.C. 1961), the court determined that a premium finance agreement was an agreement as to the insurance contract that was not referenced in the policy and was, therefore, void. Since then, the premium service company statute has been amended to allow premium service companies to charge certain fees. S.C. Code Ann., Sec. 38-39-80 (2002). There is also a specific statutory exception for surplus lines broker policy fees. S.C. Code Ann., Sec. 38-45-160 (2002). Finally, advancing of premiums is not subject to the outside agreement prohibitions of Section 38-55-50. S.C. Code Ann., Sec. 38-43-470 (2002).

² Personal lines rates and forms must be approved by the Department.

Optional Service Fees

Fees for optional services do not constitute an agreement as to the contract of insurance. “Optional services” are defined as those that are not incurred on behalf of all insureds or classes of insureds generally, are not a prerequisite to issuance of the policy and/or arise independently from the issuance and general servicing of the policy. Optional services also include those necessitated by the conduct or inaction of the insured *after* issuance of the policy. Examples of permissible optional service fees include installment payment fees, late payment fees and policy reinstatement fees. Fees for these services may be charged by insurers, producers or brokers as set forth below. An insured may only be charged a fee once per transaction for an optional service. The insurer and producer shall not both charge the applicant or insured a fee for the same service. Optional service fees may be fully earned at the time the optional service is rendered.

Notice and Disclosure

All fees charged must be reasonable in relation to the service(s) provided and each fee and the service to which it relates must be clearly defined and disclosed to and accepted by the insured in advance of the insured’s purchase of the policy, as well as any consequence for failure to pay such fees. Written notice of the fee schedule must be provided to the insured at or before delivery of the policy. To preclude discrimination, the amounts and conditions of these service fees must be applied equally and consistently to all insureds of the same class that are subject to such fees. Moreover, an insurer may not offer a discount, deductible, lower-rated tier or other benefit to an insured for selecting an optional service and then charge for that service. For example, an insurer cannot represent to the insured that he or she is receiving a discount for selecting the installment payment option and then impose a fee for such selection. Likewise, a producer may not charge an insured a fee for one of the optional services specified and waive the same fee for another insured.

Fee Schedule for Optional Services

The fees listed in the Maximum Service Fee Schedule below relate to fees for optional services being charged in the property and casualty insurance industry that have been deemed reasonable by the Department. Fees in excess of those amounts must be submitted to the Department for approval and must contain proof that actual costs exceed those amounts. The fee schedule and the notice provided to insureds must be filed with the Department for approval not less than thirty days prior to the effective date of any policy to which such fees apply. Fees for services other than those shown must also be submitted for approval not less than thirty days prior to the effective date of any policy to which such fees apply. Any insurer, agent or broker currently charging fees for optional services must file a schedule of those fees with the Department within 60 days of the date of this Bulletin. This filing will not constitute a rate filing for purposes of § 38-73-220.

Maximum Optional Fee Schedule

Fee Type	Maximum Fee
Late charge	\$10
Reinstatement Charge	\$10
Convenience Fee	\$3
Installment Payment Fee	\$10

Nothing in this Bulletin precludes an insurer or producer from charging a fee for services not related to the insurance contract. Questions regarding this Bulletin may be addressed to the attention of Carla LaChance, Manager, Rates and Forms at (803) 737-6230 or via e-mail to clachance@doi.sc.gov.

Maximum Optional Fee
Schedule Filing

Date of Filing: _____

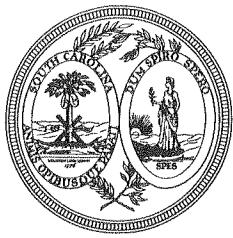
Insurer/Agent Name: _____

Address, Telephone Number and E-mail Address:

FEE TYPE	MAXIMUM FEE	PROPOSED FEE	APPROVED FEE
LATE CHARGE	\$10	\$_____	\$_____
REINSTATEMENT CHARGE	\$10	\$_____	\$_____
CONVENIENCE FEE	\$3	\$_____	\$_____
INSTALLMENT PAYMENT FEE	\$10	\$_____	\$_____
OTHER (DESCRIBE)	N/A	\$_____	\$_____

A separate fee schedule must be submitted for each coverage type for which fees will be charged.

.



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BULLETIN 2007-10

TO: All Insurers and Producers Transacting Property and Casualty Insurance Business Within the State of South Carolina

FROM: Scott H. Richardson 
Director

SUBJECT: *Omnibus Coastal Property Insurance Reform Act of 2007, Act No 78*

DATE: August 6, 2007

This is the second in a series of bulletins regarding implementation of Act 78. There will be future bulletins dealing with other provisions of the legislation. Questions have been raised as to what lines of business the cancellation/non-renewal provisions contained in the Act apply. The purpose of this bulletin is to address those questions. Section 38-75-710 provides the scope of Article 9:

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.

Both Sections 38-75-730 and 38-75-740 are contained in Article 9 of Chapter 75, Title 38, thus the cancellation/non-renewal provisions contained in these Sections apply to all property and casualty insurance policies unless there are other, specific statutory provisions of law governing cancellation and non-renewal for a particular line of business. Automobile insurance is specifically excepted by Section 38-75-710.

Laws addressing workers' compensation are codified in Title 42 of the South Carolina Code of Laws. Section 42-5-20 provides that employers accepting the provisions of the title must insure their liability or provide proof of their ability to pay compensation. Pursuant to Section 42-5-30 if an employer secures insurance for their liability under the

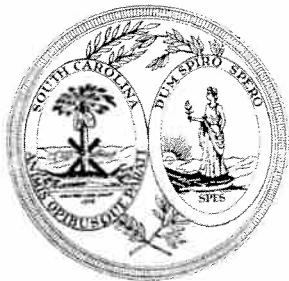
workers' compensation laws, that insurance carrier is required to make filings with the Workers' Compensation Commission. Section 42-5-60 further provides that every policy for the insurance of the compensation provided in this Title or against liability therefore shall be deemed to be made subject to provisions of this Title. Chapter 5 also prescribes certain clauses that must be contained in workers' compensation policies. See South Carolina Code of Laws Sections 42-5-70 and 42-5-80.

The South Carolina Workers' Compensation Commission is granted the authority to promulgate all regulations relating to the administration of the workers' compensation laws of this State necessary to implement the provisions of Title 42 in South Carolina Code of Laws Section 42-3-30. Pursuant to this authority, the Commission has promulgated regulations governing the cancellation and /or non-renewal of workers' compensation insurance policies. S.C. Code of Regulations 67-406 and 67-407 provide the required procedures for cancellation and non-renewal for workers' compensation policies.

The Department hereby declares that the cancellation/non-renewal provisions of Sections 38-75-730 and 38-75-740 are not applicable to workers' compensation policies as workers' compensation insurance is specifically governed by the statutes contained in Title 42 and the cancellation/non-renewal provisions are specifically addressed by regulations promulgated under authority of those statutes.

Questions regarding this Bulletin may be addressed to the attention of Leslie Jones, Deputy Director Actuarial Services at ljones@doi.sc.gov.

NOTE: Bulletins are the method by which the Director of the Department of Insurance formally communicates with entities regulated by the Department of Insurance. Bulletins are not law but are positions that the Department of Insurance has taken. They may provide direction, instructions, interpretations, or general information. Bulletins are not intended to set forth legal rights, duties or privileges nor are they intended to provide legal advice. Readers should consult applicable statutes and regulations and contact an attorney of their choice if additional information is needed.



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BULLETIN NUMBER 2009-09

TO: All Insurers, Producers and Brokers Transacting the Business of Insurance in South Carolina

FROM: Scott H. Richardson, CPCU 
Director

SUBJECT: Loss Run Reports

DATE: July 24, 2009

I. PURPOSE OF THIS BULLETIN

It has come to the Department's attention that some insurers may be withholding claims experience information from insureds when the renewal of a policy is approaching. The purpose of this bulletin is to remind insurers, producers and brokers that the claims experience data of insureds belongs to the insured and must be furnished to insureds and former insureds upon request.

II. LOSS RUN STATEMENTS AND CLAIMS EXPERIENCE REPORTS

Insurers routinely collect the claims experience of insureds occurring within a policy term. Reports of this claims experience are sometimes called "loss run statements," "loss run reports" or simply "loss runs." Loss runs reflect key claims data including reserves, payments and case status, as well as summarized policy information, such as policy number, policy period, and limits. Loss runs are useful for developing risk management plans, setting maintenance priorities and tracking the results of current risk management efforts.

A loss run statement must be provided by an insurer within ten (10) business days of receipt of a written request submitted by an insured, former insured, or a producer or broker acting on behalf of an insured or former insured. The loss run statement provided pursuant to a written request should be a three (3) year loss run history for the prior three (3) years or a complete loss run history with the insurer if the history is less than three (3) years. No fees may be charged to prepare and furnish one (1) loss run statement for each policy term. In the event that more than one request is made by an insured, former insured, or a producer or broker acting on behalf of an insured for the same policy term, an insurer may make a nominal charge for the cost of preparing and mailing such a report not to exceed twenty-five cents (25¢) per page plus mailing costs.

A producer or broker that receives a loss run statement pursuant to a request from an insured or former insured shall provide the loss run statement to the insured or former insured within five (5) business days of its receipt from the insurer. Producers or brokers that receive a loss run statement shall not divulge consumer information to any third party except in accordance with applicable laws governing the privacy of consumer financial information, health information, or other information that is otherwise required by law to be held as confidential.

Failure to provide a loss run statement within the timeframes set forth above shall be considered an unfair trade practice pursuant to S.C. Code Ann. § 38-57-10 *et seq.*

IV. QUESTIONS

Any questions or concerns about this Bulletin should be addressed to the attention of:

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South Carolina Department of Insurance
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jbyrd@doi.sc.gov

Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.



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Bulletin Number 2013-11

TO: All Insurers, Brokers, and Producers transacting Insurance Business Within the State of South Carolina

FROM: Raymond G. Farmer
Director of Insurance *R.G.F.*

SUBJECT: Service and Policy Fees

DATE: October 30, 2013

I. PURPOSE AND SCOPE

The purpose of Bulletin 2013-11 is to address additional questions from South Carolina's insurance industry concerning the permissibility of charging fees for various insurance services. The Department has reviewed the questions received and, where appropriate, revised accordingly the fee schedule attached to Bulletin 2006-08.

II. POLICY FEES

Section 38-3-110 provides that the Director shall regulate the rates and service of every insurer and fix just and reasonable standards, classifications, regulations, practices and measurements of services to be observed and followed by every insurer doing business in South Carolina. South Carolina law limits the charging of fees for services to those that are an integral or necessary part of the insurance contract, insurance transaction, or prerequisite to insurance coverage. *See e.g.*, S. C. Code Ann. § 38-55-50 (2002). These fees are generally known as policy fees.

Approved policy fees may be charged by insurers only if set forth in the policy, declarations page, or endorsements, and are reflected in the premium rate charged for the policy. Producers shall *not* charge policy fees. Brokers may do so only as narrowly permitted by S.C. Code § 38-45-160, which states that, "No policy fee may be charged by a broker unless it is a reasonable fee, it is made part of the contract, and the broker's premium tax rate is paid upon the policy fee." S.C. Code Ann. § 38-45-160 (2002).

III. AUDITS

South Carolina law requires producers to maintain a record of all business done by them showing the number, date, term, amount insured, premiums and the person to whom issued of every policy or certificate of renewal. Effective immediately, the Department will commence random audits of certain agencies to verify compliance with Bulletins 2006-08 and 2007-11. In accordance with the requirements of Sections 38-13-10 *et seq.*, producers will be required to produce records of the business transacted by their agency for inspection by Department examiners or investigators. Upon completion of the examination or other inspection, the Department shall prepare a report detailing the findings and highlighting any violations or other instances of non-compliance.

IV. FEE SCHEDULE FILINGS

Bulletins 2006-08 and 2007-11 remain in full force and effect and are incorporated into this Bulletin by reference. The Department has revised the fee schedule attached to Bulletin 2006-08. Attached is the revised 2013 Broker / Producer Fee Filing Schedule. This revised fee schedule clarifies the fees that may be charged by the insurer. It also includes the following declaration:

For all fees not specifically itemized on the updated fee schedule, the filer must submit additional support to justify any amounts considered “Other” fees. This additional support is required in order for the Department to consider the request. Please note that all previously approved fee schedules remain in full force and effect for the term of the policy. However, if a fee amount previously approved is now in excess of the maximum fee amount provided on the updated fee schedule, then a new fee schedule must be filed for the Department’s review and approval.

Broker or producer fee filings should include a completed fee schedule and should be sent to the following email address: P&CMAIL@doi.sc.gov. Insurer fee filings do not require a completed fee schedule, but all fees and support (if required) must be included as part of a filing submitted via the SERFF filing system.

V. QUESTIONS

Questions regarding this bulletin may be directed to the attention of: Michael Wise at either mwise@doi.sc.gov or 803-737-6166.

Bulletins are the methods by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are Departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.

Broker / Producer Fee Schedule Filing

Date of Filing: _____

Broker / Agency Code: _____

Broker / Producer Name: _____

Broker / Producer Address: _____

Broker / Producer Phone Number: _____

Broker / Producer Email Address: _____

Fee Type	Maximum Fee	Proposed Fee	Approved Fee
Late Charge	\$10		
Reinstatement Charge	\$10		
Convenience Fee	\$3		
Paper Installment Fee	\$10		
EFT Installment Fee	\$5		
SR22 Fee	\$25		
Certificate of Insurance/Additional Insured Form Fee	\$10		
NSF Fee	\$25		
Other (Describe and Support)	N/A		

Declaration Statement:

- All approved fees will be clearly defined and disclosed to and accepted by the insured in advance of the insured's purchase of the policy as well as any consequence for failure to pay such fees.
- All approved fees will be applied equally and consistently to all insureds of the same class that are subject to such fees.
- All approved fees will only be charged if the insurer is not charging the same type of fee.

I agree to follow the terms of the declaration statement listed above:

Signature: _____ Date: _____

Submission Instructions:

Completed fee schedules, along with any applicable support, should be sent to the following email address: P&CMAIL@doi.sc.gov



South Carolina Department of Insurance

Capitol Center
1201 Main St., Suite 1000
Columbia, South Carolina 29201

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

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Telephone: (803) 737-6160

BULLETIN NUMBER 2018-02

TO: All Licensees of the South Carolina Department of Insurance

FROM: Raymond G. Farmer, Director of Insurance 

SUBJECT: South Carolina Insurance Data Security Act
2018 S.C. Act No. 171

DATE: June 14, 2018

On May 9, 2018, Governor Henry McMaster signed into law the South Carolina Insurance Data Security Act (2017 S.C. Act No. 171, R. 184, H. 4655), a copy of which is attached to this bulletin. South Carolina is the first in the nation to pass this important and timely legislation which is modeled after the NAIC Insurance Data Security Model Law. The purpose of this legislation is to ensure that licensees of the South Carolina Department of Insurance have a strong and aggressive cybersecurity program to protect the personal data of consumers in South Carolina and elsewhere.

This is the first in a series of bulletins regarding the implementation of this legislation. As with all major pieces of insurance legislation, the Department will provide comprehensive guidance to the insurance industry regarding implementation and compliance through subsequent bulletins and other trainings. The Department is already preparing this guidance, including the process for reporting a Cybersecurity Event, and is working closely with the NAIC in an effort to ensure consistency among the states as this legislation is enacted. This legislation has staggered effective dates, so the Department will focus on those aspects of the Act that will become effective first and will provide subsequent guidance on other portions in order to provide timely and complete information to all of our affected licensees.

To Whom Does the Act Apply?

The Act applies to all licensees of the South Carolina Department of Insurance. "Licensee" is defined by the Act to include "any person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this State." It expressly excludes (i) out of state purchasing groups or risk retention groups; and (ii) out of state licensees who are only acting as an assuming reinsurer.

Exceptions: Licensees or independent contractors with fewer than 10 employees and employees, agents or representatives of a licensee with an information security program may be exempt from the requirements of the law. Licensees that are able to certify compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) via a written certification will be deemed to meet the requirements of the Act.

What Does the Legislation Do?

The Act requires licensees (unless excepted) to develop, implement and maintain a comprehensive written information security program based upon the licensee's risk assessment that provides protection for nonpublic information and the licensee's information systems. The information security program should be appropriate for the size and complexity of the licensee's business and the information it collects. The Act also:

- Establishes requirements for the information security program;
- Provides minimum requirements for a licensees' Board of Directors regarding the Board's oversight of the licensees' information security program;
- Requires licensees to establish an incident response plan and establishes requirements for the incident response plan;
- Requires insurers to submit an annual statement to the Director certifying they are in compliance within the Act;
- Establishes requirements and obligations for a licensee in the event of a cybersecurity event;
- Grants the Director authority to examine and investigate a licensee's compliance with the Act;
- Provides that documents, materials, or other information in the control or possession of the Department of Insurance obtained in an investigation or examination must be treated as confidential and privileged, but the Director may use such information in furtherance of a regulatory action and share or receive confidential documents under certain circumstances;
- Provides penalties for violations of the Act; and
- Authorizes the Director to promulgate regulations necessary for the administration of the Act.

When Will the Legislation be Effective?

The legislation becomes effective on *January 1, 2019*. Beginning on that date, licensees must comply with the reporting requirements regarding a cybersecurity event, among other requirements.

Licensees have until *July 1, 2019* to implement Section 38-99-20 of this Act, and until *July 1, 2020* to implement Section 38-99-20(F) of this Act. These sections deal with implementing and maintaining a data security program.

Under Section 38-99-20(H)(2)(l), insurers domiciled in this state will need to submit an annual written statement to the Director by *February 15, 2020* certifying their compliance with the data security program requirements.

How Will the Department Distribute Additional Guidance on this Act?

In order to ensure receipt of subsequent guidance relating to this Act, interested parties should ensure that they are registered for the Department's Bulletins & Orders distribution list by going to www.doi.sc.gov/notifyme.

To Whom Should I Direct Questions?

Questions regarding this bulletin should be directed to Melissa Manning, Associate General Counsel, at mmanning@doi.sc.gov.

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South Carolina Department of Insurance

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BULLETIN NUMBER 2018-09

TO: All Licensees of the South Carolina Department of Insurance

FROM: Raymond G. Farmer
Director of Insurance 

SUBJECT: Cybersecurity Event Reporting Form
South Carolina Insurance Data Security Act, 2018 S.C. Act No. 171

DATE: September 4, 2018

I. Purpose

This is the second in a series of bulletins addressing the implementation of the newly enacted South Carolina Insurance Data Security Act (2018 S.C. Act No. 171 ("Act")). The Act is codified as Chapter 99 of Title 38 of the South Carolina Code of Laws. This Bulletin specifically addresses the process for reporting a Cybersecurity event, as defined in the Act. The Act becomes effective on January 1, 2019. Beginning on that date, licensees subject to the Act must provide notice of a Cybersecurity event to the South Carolina Department of Insurance.

II. Notice of Cybersecurity Events

Under the Act, a "Cybersecurity event" is defined as "an event resulting in unauthorized access to, disruption or misuse of, an Information System or information stored on such Information System." The term "Cybersecurity event" does not include the unauthorized acquisition of encrypted nonpublic information if the encryption, process or key is not also acquired, released or used without authorization. Cybersecurity event does not include an event with regard to which the licensee has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed. Loss of information only in paper format does not constitute a Cybersecurity event.

Licensees will not be required to notify the Department of temporary disruptions in service due to power outages or other benign causes unless that disruption results in the unauthorized access, misuse or disruption of the licensee's information system or that of its third-party service provider.

Licensees subject to the Act must notify the Director within 72 hours after determining that a Cybersecurity event has occurred if: 1) South Carolina is the licensee's domicile; or 2) the licensee is not domiciled in South Carolina, but it is reasonably believed to have involved the release of nonpublic information of 250 or more South Carolina consumers and the Cybersecurity event impacts the licensee such that notice must be provided to another state or federal governmental entity, or there is a reasonable likelihood of material harm to a South Carolina consumer or material parts of the licensee's operations.

III. Cybersecurity Event Reports

The Department has developed the reporting form titled "Report a Cybersecurity Event" to simplify the reporting requirements for licensees in case of a Cybersecurity event. *See Exhibit A.* This form contains fields for the information required to be reported to the Department following a Cybersecurity incident. A read-only copy of this form is available on our website at www.doi.sc.gov/cyber. An operational, live version of the form will be made available prior to January 1, 2019.

The Department recognizes that detailed information may not be available within 72 hours of the discovery of a Cybersecurity event. The law contemplates that the licensee will notify the Director as soon as it is confirmed that there was unauthorized access, misuse or disruption to nonpublic information from the licensee's information system or that of the licensee's third-party service provider. Licensees must fill out as much information as possible on the form for the initial notification. Licensees will be assigned an "Event Number" when they first access the form which will allow them to return to the form to update information as it becomes available. Licensees have a continuing obligation under the law to update and supplement initial and subsequent notifications to the Director concerning the Cybersecurity event.

Certain Licensees may qualify for an exemption from the Information Security Program requirements contained in the Act. Additional guidance regarding exemptions will be provided in a subsequent bulletin.

IV. Questions

Questions concerning this bulletin should be directed to the attention of Melissa Manning, Associate General Counsel at mmanning@doi.sc.gov.



South Carolina Department of Insurance
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 Mailing Address: P.O. Box 100105, Columbia, S.C. 29202-3105
 Telephone: (803) 737-6160 or 1 (800) 768-9999
 Fax: (803) 737-6231 | Email: datasecurity@doi.sc.gov

REPORT A CYBERSECURITY EVENT

Under the South Carolina Insurance Data Security Act, licensees are required to report Cybersecurity Events to the S.C. Department of Insurance in accordance with the requirements of Section 38-99-40.

Section 1. Information of Entity Experiencing Cybersecurity Event

Licensee Type

NAIC Code

NPN #

SBS #

FEIN Code

Name

Address 1

Address 2

Suite/Apt/Building

City, State, Zip

Telephone

Fax

Email Address

Section 2. Event Dates

Estimated Occurrence

Unknown

Estimated End

Unknown

Date Discovered

Section 3. Event Type (Check all that apply)

Data Theft by Employee/ Contractor
 Phishing
 Computer and Equipment

Hackers/ Unauthorized Access
 Improperly Released/ Exposed/ Displayed
 Improperly Disposed

Lost During Move
 Stolen Laptop(s)
 Other

Section 4. Circumstances Surrounding the Cybersecurity Event

How was the information exposed, lost, stolen, or accessed? Include the identity of the source of the Cybersecurity Event, if known.

How was the Cybersecurity Event discovered?

What actions are being taken to recover lost, stolen or improperly accessed information?

Section 5. Third-Party Involvement

Did the Cybersecurity Event occur within the information / systems maintained by the licensed entity or individual reporting the Cybersecurity Event or within the information / systems maintained by a third-party service provider? Our Information / Systems

Name of the Third-Party Service Provider

Description of the Third-Party Service Provider

What were the specific roles and responsibilities of the Third-Party Service Provider?

Section 6. Information Involved (Check all that apply)

Demographic Information

- Name
- Date of Birth
- Address
- Mother's Maiden Name
- Driver's License
- SSN
- Passport
- Other

Health Information

- Medical Records
- Lab Results
- Medications
- Treatment Information
- Physician's Notes
- Other

Financial Information

- Bank Account Information
- Credit Card
- Debit Card
- Other

Other

Was the electronic information involved in the Cybersecurity Event protected in some manner? Yes No N/A It involved paper records only

Describe the efforts being undertaken to remediate the situation which permitted the Cybersecurity Event to occur

Section 7. Number of Individuals / Entities Affected

Number affected nationally

 Unknown

Number affected in South Carolina

 Unknown

Section 8. Business-Related Information

If the licensee's own business data was involved, please provide details about the type(s) of data involved

Section 9. Notification Requirements

Is a notice to impacted South Carolina residents / entities required under South Carolina or federal law? Yes No Unknown

If yes, provide the date of notification. (Note: You should also upload a copy of the notice if not already provided to the SCDOI.)

Copy of notice will be sent on a subsequent date

Section 10. Law Enforcement

Has a police report been filed? Has any regulatory, governmental, or other law enforcement agency been notified? (If yes, please attach documentation of report / notification unless already provided to the SCDOI.)

Police Report: Yes No Will be responding on a subsequent date

If yes, provide the date of notification

Regulatory Agency: Yes No Will be responding on a subsequent date

If yes, provide the date of notification

Section 11. Contact Information of Individual Familiar with Cybersecurity Event and Authorized to Act on Behalf of the Licensee

First	Middle	Last
<input type="text"/>	<input type="text"/>	<input type="text"/>
Title <input type="text"/>		
Address 1	<input type="text"/>	
Address 2	<input type="text"/>	
Suite/Apt/Building	<input type="text"/>	
City, State, Zip	<input type="text"/>	<input type="text"/>
Telephone	<input type="text"/>	
Fax	<input type="text"/>	
Email Address	<input type="text"/>	

Section 12. Attachments

Items to Attach:

1. A report of the results of any internal review identifying a lapse in either automated controls or internal procedures, or confirming that all automated controls or internal procedures were followed.
2. A copy of the licensee's privacy policy.
3. A statement outlining the steps the licensee will take to investigate and notify consumers affected by the Cybersecurity Event.

File	Document Type	Action
Click to select file	Internal Review	<input type="button"/>
Click to select file	Privacy Policy	<input type="button"/>
Click to select file	Investigation Outline	<input type="button"/>

[Click to Add File\(s\)](#)

Section 13. Attestation

I attest, to the best of my knowledge, that the information submitted on this form is true and correct to the best of my information and belief. By submitting this form, I am acknowledging that I am authorized to submit this form on behalf of the licensee or company. I further understand and agree that Section 38-99-60 of the South Carolina Code of Laws affords confidential treatment to certain information submitted to the SCDOI in accordance with Chapter 99. However, I understand that under state or federal law, the South Carolina Department of Insurance may be required to release statistical or aggregate information provided in this cybersecurity event notification. I acknowledge that copies of consumer notices may also be made available via the Department's website and the Department may also make available summary information related to cybersecurity events requiring public notification such as the identity of the licensee or third-party service provider, the number of individuals affected, the actions taken by the licensee to remedy the cybersecurity event and services available to consumers. I understand that Section 38-99-60 also gives the Director the authority to use the documents, materials or other information furnished by a licensee or someone acting on the licensee's behalf in furtherance of regulatory or legal actions brought as a part of the director's duties.

Yes

[Submit Report](#)



South Carolina Department of Insurance

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BULLETIN NUMBER 2018-12

TO: All Licensees of the South Carolina Department of Insurance

FROM: Raymond G. Farmer, Director of Insurance

SUBJECT: Information Security Program Exemptions
South Carolina Insurance Data Security Act, 2018 S.C. Act No. 171

DATE: November 2, 2018

I. Purpose

This is the third in a series of bulletins addressing the implementation of the South Carolina Insurance Data Security Act (2018 S.C. Act No. 171 ("Act")). The Act is codified as Chapter 99 of Title 38 of the South Carolina Code of Laws. This Bulletin specifically addresses exemptions from the information security program requirements.

II. Information Security Program Requirements

The Act defines licensee as a person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this State but does not include a purchasing group or a risk retention group chartered and licensed in a state other than this State or a licensee that is acting as an assuming insurer that is domiciled in another state or jurisdiction. Absent an exemption, all licensees as defined by the Act are required to develop, implement, and maintain a comprehensive written information security program based on the licensee's risk assessment. The information security program must contain administrative, technical, and physical safeguards for the protection of nonpublic information and the licensee's information system. The information security program must be commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee's possession, custody, or control. *See S.C. Code Ann. §38-99-20 for additional information regarding the Act's information security program requirements.*

III. Exemptions

The following licensees are exempt from the requirements of Section 38-99-20, including developing their own information security programs:

- A licensee with fewer than ten employees, including any independent contractors;
- A licensee who is an employee, agent, representative or designee of a licensee to the extent that the employee, agent, representative or designee is covered by the information security program of another licensee;
- A licensee who is subject to the Health Insurance Portability and Accountability Act (HIPAA), that has established and maintains an information security program pursuant to such statutes, rules, regulations, procedures or guidelines established thereunder, provided that the licensee is compliant with and submits a written statement certifying its compliance with the provisions of Section 38-99-20; and
- A licensee who is subject to the New York cybersecurity regulation, provided that the licensee is compliant with and submits a written statement certifying its compliance with the provisions of Section 38-99-20.

While a licensee may be exempt from developing its own information security program, licensees must still comply with other provisions of the Act, such as the prompt investigation and reporting of cybersecurity events to the Director. *See Bulletin Number 2018-09 for more information on the reporting requirement.*

Additionally, qualifying for an exemption under this Act does not exempt a licensee from the duty to protect data under other state and federal laws including, but not limited to, the Gramm Leach Bliley Act (GLBA), Fair Credit Reporting Act (FCRA), Fair and Accurate Credit Transactions Act (FACTA), Federal Trade Commission Act (FTC Act), and the Health Insurance Portability and Accountability Act (HIPAA).

In the event a licensee ceases to qualify for an exemption, such licensee shall have one hundred and eighty (180) days to comply with all requirements of the Act.

Licensees do not need to proactively communicate their exemption status to the Department. The Department may conduct random inspections/examinations to determine compliance with this section of the Act. Moreover, the licensee must be able to provide documentation supporting a qualifying exemption upon request of the Department.

IV. Questions

Questions regarding this bulletin should be directed to Melissa Manning, Associate General Counsel, at mmanning@doi.sc.gov.

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BULLETIN NUMBER 2020-04

TO: All Licensees of the South Carolina Department of Insurance, including Guaranty Fund Associations, Surplus Line Insurers and Other Persons Registered or Authorized to Operate Pursuant to the Insurance Laws of this State

FROM: Raymond G. Farmer Director of Insurance

SUBJECT: Guidance for Licensees Regarding Third-Party Service Providers - South Carolina Insurance Data Security Act, 2018 S.C. Act No. 171

DATE: April 17, 2020

I. OVERVIEW

This is the fourth in the series of bulletins regarding the implementation of the South Carolina Insurance Data Security Act (SCIDSA). As you are aware, the SCIDSA requires licensees that are not exempt from the information security program requirements of the SCIDSA to establish additional oversight of third-party service providers on or before July 1, 2020. Non-exempt licensees must exercise due diligence in selecting third-party service providers and ensure selected third-party service providers implement appropriate administrative, technical and physical measures to protect and secure the information system and nonpublic information (NPI) that are accessible to, or held by, the third-party service provider. *See S.C. Code Ann. Section 38-99-20(F) (2018).* Third-party service providers have been responsible for most of the cyber event notifications the South Carolina Department of Insurance (Department) has received to date.

The information provided in this bulletin and our website does not, and is not intended to, constitute legal advice. Instead, the purpose of this information is to outline issues that should be considered when reviewing the use of third-party service providers as part of a licensee's broader information security program. Licensees should ultimately be guided by their risk assessment and implement procedures commensurate with the size and complexity of their business. It is recommended that you contact your attorney for legal advice on issues related to the implementation of your information security program.

II. THIRD-PARTY SERVICE PROVIDERS (TPSP)

A third-party service provider is defined as *a person not otherwise defined as a licensee that contracts with a licensee to maintain, process, store or otherwise is permitted access to nonpublic information through its provision of services to the licensee.* *See S.C. Code Ann. Section 38-99-10 (2018).*

This may include business arrangements between a licensee and another person (by contract or otherwise) that involve outsourced products and services, use of independent consultants, networking arrangements, merchant paying processing services, services provided by affiliates and subsidiaries, joint ventures, and other arrangements where the TPSP has an ongoing relationship with the licensee

and access to the licensee's NPI. Third-party relationships do not include customer or policyholder relationships.

The SCIDSA requires licensees to implement and exercise effective risk management in their third-party relationships. A licensee's use of TPSPs does not diminish the licensee's responsibility through its board of directors or senior management to ensure that the TPSP is effectively safeguarding NPI in accordance with the SCIDSA and other applicable law.

III. REGULATORY REVIEWS OF THIRD-PARTY RELATIONSHIPS

The Department expects licensee management to engage in a robust analytical process to identify, measure, monitor, and control the risks associated with third-party relationships and to avoid excessive risk taking that may threaten a licensee's operational safety and soundness. A licensee's failure to have an effective third-party risk management process that is commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of TPSPs, and the sensitivity of the NPI used by the licensee may constitute an unsound or hazardous condition.

Licensees should advise TPSPs that the performance of activities by external parties for the licensee may be subject to Department examination oversight. The Department has jurisdiction over all situations in which a licensee arranges, by contract or otherwise, for the performance of any applicable functions of its operations.

The Department will pursue appropriate corrective action against the licensee, including enforcement action, to address violations of applicable laws and regulations or illegal or unfair practices by the licensee or its third-party. The Department has the authority to assess a licensee the costs of the examination.

IV. QUESTIONS

This bulletin and additional reference materials available on our website (www.doi.sc.gov/cyber), including checklists and links to resources about third-party service provider programs are based upon guidance provided by federal regulatory agencies and information security accrediting organizations. Questions regarding this bulletin should be directed to Melissa Manning at mmanning@doi.sc.gov.