



ALAN WILSON  
ATTORNEY GENERAL

April 29, 2022

The Honorable Donald R. "Ryan" McCabe, Jr.  
Member  
South Carolina House of Representatives, District No. 96  
320A Blatt Bldg.  
Columbia, SC 29201

Dear Representative McCabe:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter forwards a constituent's questions concerning several statutes in Title 38 of the South Carolina Code of Laws which contains the insurance code. Broadly, they ask who is responsible for enforcing the following statutes, S.C. Code § 38-2-10 and S.C. Code §§ 38-59-10 to -30, and whether the South Carolina School Board Insurance Trust is subject to regulation thereunder.

#### Law/Analysis

It is this Office's opinion that S.C. Code § 38-2-10 and S.C. Code §§ 38-59-10 to -30 are enforceable by the S.C. Department of Insurance. See Masterclean, Inc. v. Star Ins. Co., 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001) ("The Department of Insurance is vested with determining whether an insurer has violated the insurance code."). Section 38-2-10 provides administrative penalties for "each violation of the insurance laws of this State or federal insurance laws subject to enforcement by the Department of Insurance." (emphasis added). The administrative penalties specified in subsection (A)(1) are applicable to "an insurer, pharmacy benefits manager, or a health maintenance organization licensed in this State" while those in subsection (A)(2) apply to violators who do not fall within those categories in (A)(1).

The remaining statutes identified in the letter are codified within the Claims Practices Act. S.C. Code Ann. §§ 38-59-10, et seq. (Supp.2021). In Masterclean, Inc., supra, the South Carolina Supreme Court explained that this act affords third parties the opportunity for administrative review of improper claims practices.

The Claims Practice Act provides relief for a third party victim of an improper claims practice. S.C. Code Ann. §§ 38-59-10, et seq. (Supp.2000). This relief is important because South Carolina does not recognize a third party action for bad

faith refusal to pay insurance benefits. Kleckley v. Northwestern Nat'l Cas. Co., 330 S.C. 277, 498 S.E.2d 669 (1998).

Third parties do not have a private right of action under S.C. Code Ann. § 38-59-20. Gaskins v. Southern Farm Bureau Cas. Ins. Co., 343 S.C. 666, 541 S.E.2d 269 (Ct.App.2000). Instead, third parties are entitled to administrative review before the Chief Insurance Commissioner. See Kleckley v. Northwestern National Casualty Company, *supra*; S.C. Code Ann. § 38-59-30 (Supp.1999).

Id. Specifically, section 38-59-30 states that if the Director or his designee determines that an insurer has engaged in the improper claims practices described in section 38-59-20, he is to order the insurer to cease and desist. Moreover, he is authorized to impose the administrative penalties described above in section 38-2-10.

Finally, this Office cannot offer an opinion on whether the South Carolina School Board Insurance Trust is subject to this form of administrative review as that would require findings of fact. See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions"). We note, however, that insurers are clearly subject to the insurance laws of this State.

### Conclusion

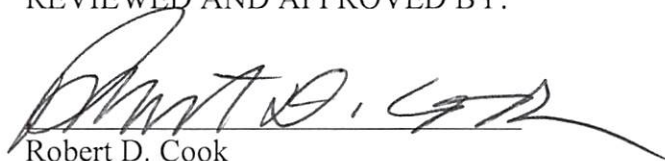
As discussed above, it is this Office's opinion that S.C. Code § 38-2-10 and S.C. Code §§ 38-59-10 to -30 are enforceable by the S.C. Department of Insurance and that insurers are subject to enforcement measures thereunder.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General