1973 WL 26714 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 25, 1973

***1** Mr. Joseph F. Runey
Research Assistant
Labor, Commerce and Industry Committee
House of Representatives
Columbia, South Carolina

Dear Mr. Runey:
Your letter of April 18 inquires whether Section 4 of H-1161 may be omitted from the bill without constitutionally impairing the same.

H-1161 is a bill to require that insurance companies issuing accident and health policies, or combinations thereof, shall give a written notice to policyholders of any premium due at least ten days prior to the due date. Section 4 of the present bill provides: 'Section 4. The provisions hereof shall not apply to any contract existing on the effective date of this act.'

The removal of Section 4 would undoubtedly result in 2 court giving a retrospective application to its consideration of the statute, as the intent of the General Assembly would then be clearly to require that the provisions of H-1161 be applied to existing contracts of insurance. The courts will normally favor a prospective rather than a retrospective construction of statutes of this nature.

A retrospective application will not be per se unconstitutional but, as noted, the courts will favor a prospective application and apply it unless an intent contrary to such construction is clearly evident. A statute cannot be said to be a 'retroactive' law prohibited by the Constitution unless it is shown that its application to a contract would take away or impair vested rights acquired under existing law. A statute changing the law as to the requirement of notice as it existed under a previous statute cannot affect a policy issued while the previous statute was in force unless the policy, by its terms, expires at the end of each year if the premium for the next year is not paid.

It is my opinion that a serious constitutional question can be presented if Section 4 is removed. Present law relating to accident and health insurance provides a grace period varying from 7 to 31 days, depending upon the periods of time on which premiums are paid. Section 2 of H-1161 provides that no premium shall be considered past due until the policyholder has received at least ten days' notice 'and the policy shall remain in full force and effect until the expiration of such period after notice has been received.' The serious constitutional issue referred to would arise if an insurance company, with a present grace period of 31 days in an existing policy, should contend that the policy may be lapsed only ten days after the notice of premium due has been given to the policyholder. While a court may not adopt such a construction, it nevertheless is a tenable and persuasive argument that the grace period now existing in some policies will be lessened by H-1161. This is the only area of which I am aware that may present a difficult problem if Section 4 is omitted.

It is my recommendation that Section 4 be retained in order to avoid potential constitutional claims of invalidity. Previous statutes of a similar nature are generally made prospective only.

***2** I suggest also that the word 'received', as used in the concluding phrase 'after notice has been received' in Section 2 of the bill, be modified to follow the language existing in Section 37-474(3), Code of Laws, 1962, which reads:

'Vailed to his last address as shown by the records of the insurer.'

I suggest also that the views of the Insurance Department be obtained with respect to the application of H-1161, particularly in order to coordinate its provisions with other existing law.
Very truly yours,

Daniel R. McLeod
Attorney General

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