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CHAPTER 83.

JOINT UNDERWRITING ASSOCIATION FOR WRITING OF PROFESSIONAL LIABILITY INSURANCE

**SECTION 38‑83‑10.** Definitions.

As used in this chapter:

(1) “Association” means any joint underwriting association established pursuant to this chapter.

(2) “Professional liability insurance” means insurance protection against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of service to or representation of any person as the result of negligence or malpractice in rendering or failing to render a professional service.

(3) “Net direct premiums” means gross direct premiums written on bodily injury liability insurance, other than automobile liability insurance, homeowners liability insurance, and farmowners liability insurance, including the liability component of multiple peril package policies, as computed by the director or his designee less return premiums or the unused or unabsorbed portions of premium deposits.

**SECTION 38‑83‑20.** Joint Underwriting Association insurers.

(A) A joint underwriting association is created, consisting of all insurers authorized to write within this State, on a direct basis, bodily injury liability insurance, other than automobile bodily injury liability insurance, homeowners liability insurance, and farmowners liability insurance, including insurers covering such peril in multiple peril package policies. Every such insurer is and must remain a member of the association as a condition of its authority to continue to transact this kind of insurance in this State.

(B) The purpose of the association is to provide professional liability insurance on a self‑supporting basis to the fullest extent possible.

(C) The association is activated when the department of Insurance finds and declares the existence of an emergency because of the unavailability of professional liability insurance or the unavailability of such insurance on a reasonable basis through normal channels.

**SECTION 38‑83‑30.** Powers of association.

The association has the power on behalf of its members to:

(1) issue, or cause to be issued, policies of insurance to applicants including incidental coverages such as, but not limited to, premises or operations liability coverage on the premises where services are rendered, all subject to limits of liability as specified in the plan of operation but not to exceed five million dollars for all claimants under one policy in any one year;

(2) underwrite professional liability insurance and to adjust and pay losses with respect thereto or to appoint service companies to perform those functions;

(3) cede and assume reinsurance.

**SECTION 38‑83‑40.** Creation of Joint Underwriters Association by professional association.

(A) Upon application by the members of a professional association seeking creation of a joint underwriting association, the Department of Insurance shall promulgate a plan of operation consistent with this chapter. The plan of operation is operative no later than thirty days after the declaration of an emergency by the Department of Insurance.

(B) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of professional liability insurance and may contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of the members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(C) The plan of operation shall provide that any profit achieved by the association must be added to the reserves of the association or returned to the policyholders as a dividend but under no circumstances whatsoever shall any profit be paid over to or received by an insurer either in currency or any other benefit of any kind.

(D) Amendments to the plan of operation may be made by the directors of the association with the approval of the director or his designee or must be made at the direction of the director or his designee after proper notice and public hearing.

**SECTION 38‑83‑50.** Coverage by the association.

Upon the activation of the plan of operation, any professional licensed in this State is entitled to apply to the association for coverage. The application shall be made on behalf of the applicant by a licensed agent or broker authorized in writing by the applicant.

If the association determines that the applicant meets the underwriting standards of the association as set forth in the approved plan of operation and there is no unpaid, uncontested premium due from the applicant for any prior insurance of the same kind, the association, upon receipt of the premium, or a portion thereof as prescribed by the plan of operation, shall cause to be issued a policy of professional liability insurance for a term of one year.

The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and the statistical and experience data relating thereto are subject to this chapter and to those provisions of Chapter 73, Title 38, Code of Laws of South Carolina, 1976, which are not inconsistent with this chapter.

**SECTION 38‑83‑60.** Costs of professional liability insurance.

The director or his designee shall obtain complete statistical data in respect to professional liability losses and reparation costs as well as all other costs or expenses which underlie or are related to professional liability insurance. The Department of Insurance shall promulgate any statistical plan he considers necessary for the purpose of gathering data referable to loss and loss adjustment expense experience and other expense experience. When the statistical plan is promulgated all members of the association shall adopt and use it. The director or his designee also shall obtain statistical data in respect to the costs of compensating victims of professional liability. The director or his designee may require from any person obtaining insurance through the association loss, claim, or expense data.

**SECTION 38‑83‑70.** Rates.

In structuring rates for professional liability insurance and determining the profit or loss of the association in respect to such insurance, consideration must be given by the director or his designee to all investment income so that investment income is a part of the rate‑making and setting process.

**SECTION 38‑83‑80.** Approval of initial filing of forms, classifications, rates, rating plans, and rating rules.

Within a time that the director or his designee directs, the association shall submit, for the approval of the director or his designee, an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to professional liability insurance to be written by the association. If the director or his designee disapproves the initial filing, in whole or in part, the association shall amend the filing, in whole or in part, in accordance with the direction of the director or his designee. If the director or his designee is unable to approve the filing or amended filing, within the time specified, he shall promulgate the policy forms, classifications, rates, rating plans, and rules to be used by the association in making rates for and writing the insurance.

**SECTION 38‑83‑90.** Form of policy and rate structure.

(A) Policy forms and rate structure must be on an occurrence basis and coverage provided by the association only on that basis.

(B) The policy may not contain any limitation in relation to the existing law in tort as provided by the statute of limitations of this State.

(C) The policy form shall not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the insured. However, such settlement or compromise is not considered an admission of fault or wrongdoing by the insured.

(D) The premium rate charged for coverage must be at rates established on an actuarially sound basis, including consideration of trends in the frequency and severity of losses and must be calculated to be self‑supporting.

**SECTION 38‑83‑100.** Rate increase or assessment.

The association may provide a rate increase or assessment subject to the approval of the director or his designee.

**SECTION 38‑83‑110.** Deficit sustained by the association.

Any deficit sustained by the association in any year must be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or both of the following procedures:

(1) an assessment upon the policyholders, which may not exceed one additional annual premium at the then current rate;

(2) a rate increase applicable prospectively.

**SECTION 38‑83‑120.** Basis for rate increase; contribution to financial requirements of the association.

After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment through policyholder assessment or premium rate increase must be based upon the association’s loss and expense experience and investment income, together with any other information based upon this experience and income as the director or his designee considers appropriate. The resultant premium rates must be on an actuarially sound basis and must be calculated to be self‑supporting.

If sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in Section 38‑83‑110, all members, on a temporary basis, shall contribute to the financial requirements of the association in the manner provided for in Section 38‑83‑130. Any such contribution must be reimbursed to the members following recoupment as provided in Section 38‑83‑110.

**SECTION 38‑83‑130.** Participation by insurers.

All insurers which are members of the association shall participate in its writings, expenses, and losses in the proportion that the net direct premiums of each member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bear to the aggregate net direct premiums written in this State by all members of the association. Each insurer’s participation in the association must be determined annually on the basis of the net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the Department of Insurance. The assessment of a member insurer, after hearing, may be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the director or his designee, payment of the assessment may render the insurer insolvent or in danger of insolvency or otherwise may leave the insurer in a condition that further transaction of the insurer’s business may be hazardous to its policyholders, creditors, members, subscribers, stockholders, or the public. If payment of an assessment against a member insurer is deferred by order of the director or his designee in whole or in part, the amount by which the assessment is deferred must be assessed against other member insurers in the same manner as provided in this section. In the order of deferral or in subsequent orders as may be necessary, the director or his designee shall prescribe a plan by which the assessment deferred must be repaid to the association by the impaired insurer with interest at the six‑month treasury bill rate adjusted semiannually. Profits, dividends, or other funds of the association to which the insurer is otherwise entitled may not be distributed to the impaired insurer but must be applied toward repayment of any assessment until the obligation has been satisfied. The association shall distribute the repayments, including interest on them, to the other member insurers on the basis on which assessments were made.

**SECTION 38‑83‑140.** Binding nature of plan of operation and rules of the board of directors.

Every member of the association is bound by the approved plan of operation of the association and the rules of the board of directors of the association.

**SECTION 38‑83‑150.** Termination of insurer’s obligation as member of the association; effect of merger or consolidation of insurers; insolvency of insurer.

(A) If the authority of an insurer to transact bodily injury liability insurance, other than automobile, homeowners, or farmowners, in this State terminates for any reason, its obligations as a member of the association continue until all its obligations are fulfilled and the director or his designee has so found and certified to the board of directors.

(B) If a member insurer merges into or consolidates with another insurer authorized to transact insurance in this State or another insurer authorized to transact insurance in this State has reinsured the insurer’s entire general liability business in this State, both the insurer and its successor or assuming reinsurer, as the case may be, are liable for the insurer’s obligations to the association.

(C) Any unsatisfied net liability of any insolvent member of the association must be assumed by and apportioned among the remaining members in the same manner in which assessments or gain and loss are apportioned and the association shall acquire and have all rights and remedies allowed by law in behalf of the remaining members against the estate or funds of the insolvent insurer for funds due the association.

**SECTION 38‑83‑160.** Board of directors for joint underwriting association.

Each joint underwriting association is governed by a board of seven directors, one of whom is appointed by the Governor to represent the general public and four of whom are appointed by the Governor and represent professionals covered under the association. Two directors are the Chairman of the Labor, Commerce and Industry Committee of the House of Representatives or his designee and the Chairman of the Banking and Insurance Committee of the Senate or his designee, both of whom shall serve ex officio. The approved plan of operation of the association may make provision for combining insurers under common ownership or management into groups for voting, assessment, and all other purposes and may provide that not more than one of the officers or employees of such a group may serve as a director at any one time. The Director of the Department of Insurance is chairman of the board of directors, ex officio, and he, or his designee, must preside at all meetings of the board but has no vote except in the case of a tie.

**SECTION 38‑83‑170.** Appeal from ruling.

Any applicant for insurance through the association, any person insured pursuant to this chapter, or his representative, or any insurer adversely affected, or claiming to be adversely affected, by any ruling, action, or decision by or on behalf of the association, may appeal to the director or his designee within thirty days after the ruling, action, or decision.

**SECTION 38‑83‑180.** Filing statements of transactions, etc.

The association shall file in the office of the Department of Insurance annually by March first a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement shall contain information prescribed by the director or his designee and must be in the form he directs.

The director or his designee, at any reasonable time, may require the association to furnish additional information concerning its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operations, and experience of the association.

**SECTION 38‑83‑190.** Examination of finances.

The director or his designee shall make an examination into the financial condition and affairs of the association at least annually and shall file a report thereon with the Department of Insurance, the Governor, and the General Assembly. The expenses of the examination must be paid by the association.