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CHAPTER 7.

 FEES AND TAXES

**SECTION 38‑7‑10.** License fees for insurers.

(A) Every insurer, except mutual benevolent aid associations and fraternal benefit associations, before transacting business in this State shall pay a license fee of eight hundred dollars to the department and after that initial payment pay to the department a biennial license fee of eight hundred dollars by March first every other year.

(B) In addition to the license fees required in subsection (A), the director or his designee shall collect from each insurer licensed by him to do business in this State a license fee of four hundred dollars for each kind of insurance for which the insurer is licensed as listed in Section 38‑5‑30(a) through (g). Each mutual insurer doing a property business only in no more than three counties shall pay a biennial fixed license fee of one hundred dollars and each mutual insurer doing a property business only in a single county shall pay a biennial fixed license fee of forty dollars. The license fees required in this subsection must be paid to the director or his designee before the insurer transacts business in this State and after that initial payment must be paid biennially to the director or his designee by March first every two years.

**SECTION 38‑7‑20.** Insurance premium taxes; exclusions.

(A) In addition to all license fees and taxes otherwise provided by law, there is levied upon each insurance company licensed by the director or his designee an insurance premium tax based upon total premiums, other than workers’ compensation insurance premiums, and annuity considerations, written by the company in the State during each calendar year ending on the thirty‑first day of December. For life insurance, the insurance premium tax levied herein is equal to three‑fourths of one percent of the total premiums written. For all other types of insurance, the insurance premium tax levied in this section is equal to one and one‑fourth percent of the total premiums written. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded.

(B) The insurance premium taxes collected by the director or his designee pursuant to this section must be deposited by him in the general fund of the State.

**SECTION 38‑7‑30.** Tax on fire insurers to cover expenses of inspections and investigations; annual report.

Any expenses, including expenses of counsel, detectives, and officers, incurred by the discrimination in rates, must be defrayed by the fire insurance companies doing business in this State, and a tax of one percent on the gross premium receipts less premiums returned on canceled policy contracts and less dividends and returns of unabsorbed premium deposits of all fire insurance companies is levied for this purpose, to be collected by the director or his designee as other taxes on fire insurance companies are collected. The director or his designee shall keep a separate account of all monies received and disbursed under the provisions of this section and shall include the account in his annual report. Fifty percent of the one percent tax levied in this section must be directed to the Division of Fire and Life Safety of the Department of Labor, Licensing and Regulation to be used only for expenses of this division. For fiscal year 1997‑98 only, the fifty percent of the tax levied by this section that is directed to the Department of Labor, Licensing and Regulation is capped at $2,567,325. The department shall report annually to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee where any growth above the base authorization for the preceding is expended and for what purposes within the Division of Fire and Life Safety.

**SECTION 38‑7‑35.** Portion of tax on fire insurers to be used for training, certification, and continuing education program for building codes enforcement officers; annual report.

(A) One hundred seventy‑five thousand dollars of the revenue collected annually pursuant to Section 38‑7‑30 must be transferred to the Department of Labor, Licensing and Regulation for the purpose of implementing the training, certification, and continuing education program for building codes enforcement officers as provided by law.

(B) The Department of Labor, Licensing and Regulation shall report annually to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee detailing actual program expenditures including, but not limited to, the number of instructors employed, the number of training sessions conducted, and the number of certifications issued. This report must be submitted to the respective chairmen no later than July fifteenth of each year.

(C) One hundred thousand dollars of the revenue collected annually pursuant to Section 38‑7‑30 must be transferred to the Department of Insurance for the purpose of implementing the program as provided in Section 38‑75‑480.

(D) Subsection (C) of this section ceases to be of any force or effect after June 30, 2002.

**SECTION 38‑7‑40.** Additional premium tax on fire insurers.

Each fire insurer shall pay to the director or his designee an amount equal to one percent of all premiums written on fire insurance required to be reported under Section 38‑7‑70 during the preceding year ending December thirty‑first or for such portion of that period as the insurer has done business in this State.

**SECTION 38‑7‑50.** Tax on workers’ compensation insurers.

Every insurer insuring employers in this State against liability for personal injuries to their employees or death caused by the injuries, under the provisions of Title 42, shall pay a tax upon the premiums received whether in cash or notes in this State, or on account of business done in this State, for such insurance in this State at the rate of four and one‑half percent of the amount of the premiums. For fiscal year 1990‑91, the tax is at the rate of three and one‑half percent of the amount of the premiums. For fiscal year 1991‑92 and thereafter, the tax is at the rate of two and one‑half percent of the amount of the premiums. This tax is in lieu of all other taxes on these premiums and must be assessed and collected as provided in this chapter. However, the insurers must be credited with all canceled or returned premiums actually refunded during the year on workers’ compensation insurance including any unused premiums refunded or credited to policyholders as dividends.

If an insurer fails or refuses to make the return required by Section 38‑7‑60, the director or his designee shall assess the tax against the insurer at the rate provided for in this chapter on the amount of premiums he considers just and the proceedings thereon must be the same as if the return had been made.

**SECTION 38‑7‑60.** Returns of premiums required; quarterly payment of taxes.

(1) Not later than March first of each year, every insurer licensed by the director or his designee shall file with him a return of premiums collected by the insurer in the State during the immediately preceding calendar year ending on December thirty‑first. The return must be made on forms prescribed by the director or his designee and must be made under oath by the insurer’s employee or representative responsible for the preparation of fee and tax returns, as well as an officer of the insurer.

(2) The license fees imposed in Section 38‑7‑20 must be fully reported on the return filed in accordance with subsection (1) of this section.

(3) The premium and other taxes imposed on insurers pursuant to Sections 38‑7‑20, 38‑7‑30, 38‑7‑40, 38‑7‑50, and 38‑7‑90 must be paid to the director or his designee in quarterly installments on or before March first, June first, September first, and December first of each calendar year. The quarterly payments must be calculated and paid as follows:

(a) The quarterly installments paid on or before June first, September first, and December first must each be computed based upon one‑fourth of the total premiums collected by the insurer during the immediately preceding calendar year ending on December thirty‑first. The quarterly installments for June first, September first, and December first must be reported on forms prescribed by the director or his designee.

(b) The quarterly installment paid on or before March first must equal the difference between the total tax liability of the insurer for the immediately preceding calendar year ending on December thirty‑first and the sum of the quarterly installments paid by the insurer on June first, September first, and December first of that immediately preceding calendar year. The quarterly installment for March first must be reported on the returns filed in accordance with subsection (1) of this section. An insurer whose quarterly tax installments are less than one thousand dollars per payment may elect not to pay its tax liability on a quarterly basis and, instead, may elect to report and pay its entire tax liability on the return filed in accordance with subsection (1) of this section.

(4) The director or his designee may suspend or revoke the license of any insurer which fails to make returns and pay fees and taxes as required in this section. The Attorney General shall bring suit in the name of the State to collect any unpaid portion of the fees or taxes required by law.

**SECTION 38‑7‑70.** Annual reports of premiums of fire insurers; allocation.

Each fire insurer carrying on business in this State shall annually return to the director or his designee by March first a just and true account, verified by oath, of all premiums received during the preceding year ending December thirty‑first from all fire insurance on all property located or that may be located in this State and from all fire insurance business done in this State. In the report the insurer shall allocate the premiums on this business to the county in which the property is located, regardless of where the insurance is written or premiums collected.

**SECTION 38‑7‑80.** Records to be kept; fraudulent returns; failure to keep records or reports or pay funds due.

Every fire insurer shall keep accurate books of account of all business done by it on fire insurance required to be reported under the provisions of Section 38‑7‑70. If it is apparent the return is fraudulent or dishonest, the director or his designee shall investigate the return and collect the amount he finds due.

Every fire insurer which neglects to keep books of account as required by this section, neglects or fails to report or pay any of the money due on premiums as required by Section 38‑7‑40 or 38‑7‑70, or is found upon examination to have made a false return of business done by it shall for each offense be subject to the penalty provisions of Section 38‑2‑10, to be applied to the purposes prescribed in Section 23‑9‑410.

**SECTION 38‑7‑90.** Retaliatory taxes, penalties, interest, and fees.

(A) When the laws of any other state or the regulations or actions of any public official of another state subject, or would subject, insurance companies chartered by this State, or their agents or representatives, to fees, taxes, obligations, conditions, restrictions, or penalties for the privilege of doing business in that state which are greater than those required by this State of similar insurers organized or domiciled in the other state by or in this State for the privilege of doing business herein, then all similar insurers organized or domiciled in that state are subjected to the greater requirements which are or would be imposed by or in that state upon similar insurers of this State.

(B) This section must be applied, regardless of whether an insurer chartered by this State is doing business in the other state. The application of this section is based upon a comparison of the aggregate requirements imposed by this State with the aggregate requirements imposed by the other state. Taxes, fees, or other obligations imposed by municipalities are considered in the application of this section.

(C) This section is effective for all insurance premiums collected after December 31, 1989, and to all insurance premium tax returns filed beginning with the quarterly return due September 1, 1990, and all quarterly and annual returns filed after that time.

**SECTION 38‑7‑110.** Limitation on action by State for fees, taxes, penalties, and interest; disposition of funds recovered.

The State may bring suit in court for back fees, taxes, penalties, and interest imposed by this title at any time within ten years from the date on which they should have been paid. On collection of the fees and taxes, they must be distributed as provided by the statutes under which they were levied.

**SECTION 38‑7‑120.** Late payment of insurance fees and taxes; penalties; return of excess payment.

(A) As soon as practicable after each tax return or other document is filed, the director or his designee, when fees and taxes are involved, shall examine the document and compute the fees and taxes due. If the fees and taxes found due are greater than the amount paid, the excess must be paid to the director or his designee within fifteen days after notice of the amount due is mailed by the director or his designee. If the amount due is not paid within the fifteen‑day period, a penalty of five percent of the amount due may be assessed.

(B) If the additional fees and taxes found to be due upon the examination of the document are not paid within fifteen days of notice by the director or his designee, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the fees or taxes originally were due until the date the deficiency is paid. The total maximum interest to be charged may not exceed twenty‑five percent.

(C) Up to one year after the date upon which an original tax return or other document is required to be filed, an insurer or other person may file an amended return to correct errors of overpayment or other errors made by the insurer or person in the original return or document. No amended return or document may be filed by an insurer or a person or accepted by the director or his designee after one year. No tax adjustment, deduction, or credit may be made or taken by the insurer or person, or allowed by the director or his designee, on a return or document filed after one year for errors claimed to have been made by the insurer or other person in the original return or document.

(D) If, upon examination of an original or amended return or document, it appears to the director or his designee that the amount of fees or taxes due is less than the amount paid, the excess must be ordered refunded by the or his designee. No refunds may be made with respect to monies distributable to a governmental unit after the distribution has been made.

(E) This section does not apply to the continuation of biennial license fees for agencies, brokers, appraisers, or adjusters.

**SECTION 38‑7‑130.** Payment of fees, taxes, penalties, or interest under protest; action for recovery thereof.

(a) When the State charges or levies any fees, taxes, penalties, or interest against any insurer or other person, or any fees, taxes, penalties, or interest are assessed by the director or his designee and the State or director or his designee claims the payment of the fees, taxes, penalties, or interest so charged or assessed, or institutes a proceeding to collect them, the insurer or other person against whom the fees, taxes, penalties, or interest is charged or assessed or against whom the proceeding is instituted, if he conceives the fees or taxes to be unjust or illegal, may pay the fees or taxes and any penalties, or interest thereon, under protest in writing, with the type of funds the State Treasurer or director or his designee is authorized to receive. Upon this payment, the director or his designee shall pay the fees, taxes, penalties, or interest collected by him into the state treasury giving notice at the time to the State Treasurer that the payment was made under protest.

(b) Any insurer or other person paying any fees, taxes, penalties, or interest under protest must within thirty days after making the payment bring an action against the director for the recovery thereof, in the Court of Common Pleas for Richland County. If it is determined in that action that the fees, taxes, penalties, or interest was unjustly or illegally collected, the court must so certify of record, and the State Treasurer shall refund the fees, taxes, penalties, or interest to the payor.

**SECTION 38‑7‑140.** Penalty for failure to pay money due or to supply information required.

It is unlawful for a person, officer or employee of an insurer, or other person, with intent to evade a requirement of this title or a lawful requirement of the director or his designee, to:

(1) fail to pay any fees, taxes, penalties, or interest;

(2) fail to make, sign, or verify a return;

(3) fail to supply required information; or

(4) make, render, sign, or verify false or fraudulent information.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both.

**SECTION 38‑7‑150.** Waiver or reduction of penalties or interest.

The director or his designee may, upon making a record of his reasons therefor, waive or reduce any of the penalties or interest imposed under the provisions of this title pertaining to fees and taxes.

**SECTION 38‑7‑160.** Municipal license fees and taxes.

This title may not be construed as preventing any municipality from levying and collecting license fees or taxes in accordance with its ordinances. However, no municipality may charge a license fee to fire insurers or their agents licensed by the director or his designee in any other manner than on a percentage of the premiums collected in the municipality or realized from risks located within the limits of the municipality, or both, the license fee not to exceed two percent of the premiums collected in the municipality and realized from risks located in the municipality, except in cities of fifty thousand inhabitants or more, where not exceeding five percent may be charged. Preference must be given hereunder to the municipality wherein the insured property is located, and, if a license is levied against the insuring company on such basis, that company may not be subject to a similar license from a municipality wherein it may collect the premium for such transaction.

**SECTION 38‑7‑170.** Disposition of fees, taxes, penalties, and interest.

All fees, taxes, penalties, and interest collected by the director or his designee under this title, unless specifically provided otherwise, must be deposited by the director or his designee in the general fund of the State.

**SECTION 38‑7‑180.** Company exempt from taxes.

An insurance company exempt from federal income tax pursuant to Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, and which insures only churches and their property, is exempt from taxes levied on insurance companies in Sections 38‑7‑20, 38‑7‑30, 38‑7‑40, and 38‑7‑50. To provide proof of exemption from federal income tax under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, the company shall provide to the director or his designee a certificate issued by the Internal Revenue Service demonstrating the company’s tax‑exempt status. The company shall further provide evidence satisfactory to the director or his designee that it only insures churches and their property.

**SECTION 38‑7‑190.** Tax credits

(A) Notwithstanding any other provision of law:

(1) Any credits under Chapter 6 of Title 12 may be applied against any taxes, license fees, and other assessments imposed under this title.

(2) Any credits under this title which are earned by one member of a controlled group of corporations may be used and applied by that member and any other members of the controlled group of corporations.

(3) Any limitations upon the total amount of liability for taxes that can be reduced by the use of a credit must be computed before any credit is used to reduce any tax liability under this title. Subject to item (4), the taxpayer may apply any credits arising under this title in any order the taxpayer elects.

(4) No credit can be used more than once, and all credits must be used, to the extent possible in any given year, first by the company that earned them, and second against the tax which generated them.

(5) As used in this section:

(a) The term “controlled group of corporations” has the same meaning as provided under Section 1563 of the Internal Revenue Code without regard to Section 1563(a)(4), (b)(2)(A) only with respect to corporations which are in existence for less than one‑half the number of days in the tax year referred to therein, and (b)(2)(C) and (D);

(b) The term “tax credit” or “credit” means a statutorily directed or authorized reduction in the tax liability made after any applicable tax rates are applied.

**SECTION 38‑7‑200.** Credit against premium tax.

(A) A licensed insurer providing full property and casualty coverage, to specifically include wind and hail coverage, to property owners within the area defined in Section 38‑75‑310(5), including any portion of the area as it may be expanded from time to time pursuant to Section 38‑75‑460, may claim as a nonrefundable credit against the premium tax imposed by Sections 38‑7‑20 and 38‑7‑40 in an amount equal to twenty‑five percent of the tax that otherwise is due on the premium written for the property owners for the taxable year.

(B) The credit allowed by this section is available only to an insurer licensed or authorized to do business in this State with respect to a property and casualty insurance policy providing full coverage as defined in subsection (A).

(C) A licensed insurer who claims the credit allowed by this section shall provide information required by the Department of Insurance to demonstrate that the taxpayer is eligible for the credit and that the amount paid for premiums for which the credit is claimed was not excluded from the licensed insurer’s gross income for the taxable year.

(D) The tax credit allowed under this section for a taxable year may be claimed only once for any one structure, regardless of the number of policies written on the structure.

(E) The department shall take the action necessary to monitor and examine the use of the credits claims under this section.

(F) This section applies to all new policies issued with an effective date after December 31, 2007.